



New South Wales

Drug Court Act 1998 No 150

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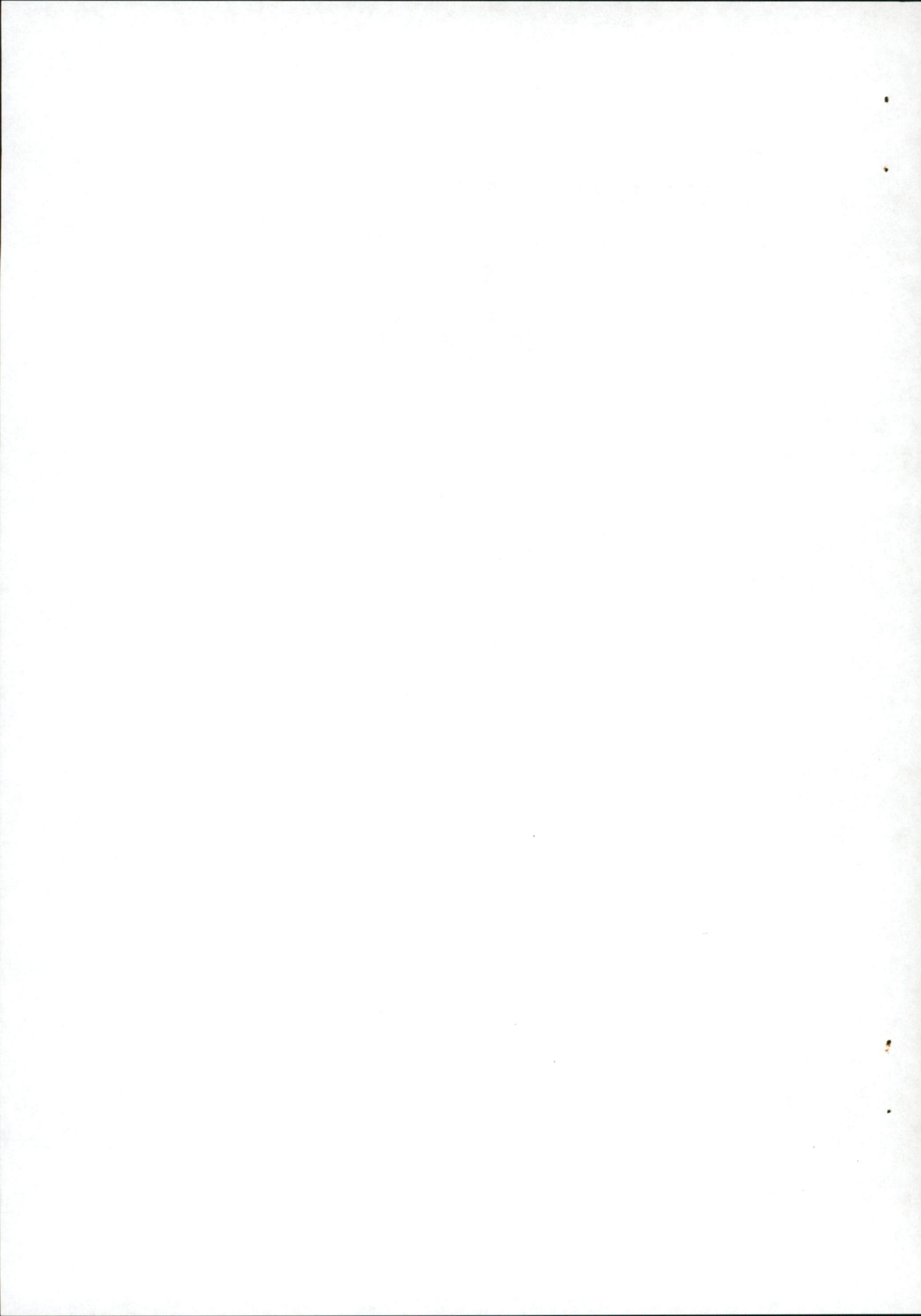
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New South Wales

Drug Court Act 1998 No 150

Act No 150, 1998

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.
[Assented to 8 December 1998]

The Legislature of New South Wales enacts:

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 object of this Act is to reduce the level of criminal activity that results from drug dependency.
- (2) This Act achieves that object 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.
- (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:

court includes a Magistrate or Justice.

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

drug offender means a person who has been convicted and sentenced by the Drug Court under section 7.

eligible person is defined in section 5.

exercise a function includes perform a duty.

function includes a power, authority or duty.

initial sentence, in relation to a person who is convicted and sentenced under section 7, means the sentence imposed on the person under section 7 (2).

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, in relation to a person who is convicted and sentenced under section 7, means the program of supervision and control that arises from the conditions accepted by the person and imposed by the Drug Court under section 7 (3) (a).

referring court, in relation to a person who has been referred to the Drug Court under section 6, means the court by which the person has been referred.

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, in relation to a person who is convicted and sentenced under section 7, means an order under section 7 (3) (b) by which the person's 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, or by one or more Justices, under the *Justices Act 1902*.

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 likely that the person will, if convicted, be sentenced to 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 Part 9A 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.

Part 2 Drug Court programs

Division 1 Acceptance into program

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:
 - (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 is charged with 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, under this section, convict and sentence a person who has pleaded guilty to the offence for which the person has been referred (whether before the referring court or the Drug Court) if, and only if, it is satisfied as to each of the following matters:
 - (a) that the person is an eligible person,
 - (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 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.
- (3) On 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*).
- (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.
- (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.

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 convicted and sentenced under section 7.
- (2) The Drug Court may, under this section, convict and sentence a person who has pleaded guilty to the offence for which the person has been referred (whether before the referring court or the Drug Court) if, and only if, the person consents to being dealt with under this section.

- (3) If the person does not consent to being dealt with under this section, the Drug Court is to refer the person back to the referring court.
- (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.

Division 2 Administration of program

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 that there is no useful purpose to be served in the drug offender's further participation in the program, 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 offender successfully completes 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.
- (3) After reconsidering 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 discharging the drug offender, either unconditionally or conditionally on his or her entering into a recognizance to be of good behaviour of the kind referred to in section 556A (1) (b) of the *Crimes Act 1900*, or

- (b) by making an order setting aside the initial sentence, deferring the passing of sentence and releasing the drug offender conditionally on his or her entering into a recognizance to be of good behaviour of the kind referred to in section 558 (1) of the *Crimes Act 1900*, or
 - (c) by making an order setting aside the initial sentence and imposing instead any sentence that it could have imposed for the offence to which the initial sentence related, or
 - (d) 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) Part 15 of the *Crimes Act 1900*:
- (a) applies to a recognizance under subsection (3) (a) in the same way as it applies to a recognizance under section 556A (1) (b) of that Act, and
 - (b) applies to a recognizance under subsection (3) (b) in the same way as it applies to a recognizance under section 558 (1) of that Act.

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.

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 Part 9A 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 Part 9A 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.

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, 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 Act 1986

In the application of the *Criminal Procedure Act 1986* to proceedings before the Drug Court:

- (a) the provisions of Part 6 of that Act that enable the Drug Court, when sentencing a person for one offence, to take other offences into account in determining the penalty to impose on the person do not enable the Drug Court to take into account any offence of the kind referred to in section 5 (2), and
- (b) the provisions of Part 9A of that Act are subject to such modifications (if any) as are prescribed by the regulations under this Act.

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 or Justice under the *Justices Act 1902*,
 - (c) such other functions as are conferred or imposed on it by or under this or any other Act.

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, 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 and the regulations 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 *Justices Act 1902* 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 provided for the purposes of this section (*protected information*):
 - (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 Amendment of other Acts

Each Act referred to in Schedule 1 is amended as set out in that Schedule.

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 Amendment of other Acts

(Section 33)

1.1 Bail Act 1978 No 161

[1] Section 4 Definitions

Insert after paragraph (c) of the definition of *court* in section 4 (1):

(c1) the Drug Court, or

[2] Section 6 Grant of bail for certain periods

Insert after section 6 (g8):

(g9) the period between a person being referred to the Drug Court under section 6 of the *Drug Court Act 1998* and the person being brought before the Drug Court consequent on the referral,

(g10) the period between a person being referred back to a court under section 8 of the *Drug Court Act 1998* and the person being brought before that court consequent on the referral,

1.2 Children (Criminal Proceedings) Act 1987 No 55

Section 7 Jurisdiction of Children's Court not to be exercised by certain other courts

Insert at the end of the section:

- (2) The Drug Court may not hear or determine criminal proceedings that a Children's Court has jurisdiction to hear and determine.

1.3 Criminal Appeal Act 1912 No 16

[1] Section 5AE

Insert after section 5AD:

5AE Appeals from sentences imposed by the Drug Court

- (1) Section 5AA applies to and in respect of a person convicted of an offence by the Drug Court in the exercise of its jurisdiction under Part 2 of the *Drug Court Act 1998* (in relation only to a final sentence determined by the Court under section 12 of that Act) in the same way as it applies to a person referred to in section 5AA (1).
- (2) For the purposes of this section, a reference in section 5AA to the Supreme Court is to be construed as including a reference to the Drug Court.
- (3) The power of the Court of Criminal Appeal to hear and determine an appeal under this section is to be exercised by such single judge of the Supreme Court as the Chief Justice may direct.

[2] Section 10 Time for appealing

Omit "or 5AD" from section 10 (4).

Insert instead ", 5AD or 5AE".

1.4 Criminal Procedure Act 1986 No 209

Section 20 Definitions

Insert after paragraph (d) of the definition of *court* in section 20 (1):

(d1) the Drug Court, or

1.5 Justices Act 1902 No 27

[1] Section 51A Effect of plea of guilty in committal proceedings

Insert after section 51A (6) (a):

- (a1) is being dealt with in accordance with Part 2 of the
Drug Court Act 1998, or

[2] Section 121B No appeal in certain cases

Insert after section 121B (2):

- (3) Despite section 122, there is no appeal to the District Court in relation to any order made on the conviction of a person by the Drug Court under the provisions of the *Drug Court Act 1998*.

1.6 Search Warrants Act 1985 No 37

Section 3 Definitions

Insert "or the registrar of the Drug Court" after "Local Court" in paragraph (b) of the definition of *authorised justice*.

1.7 Victims Compensation Act 1996 No 115

Section 78 Application of Part

Insert "the Drug Court," after "the District Court," in section 78 (1) (b).

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

- (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.

[Minister's second reading speech made in—
Legislative Assembly on 27 October 1998
Legislative Council on 25 November 1998]

BY AUTHORITY