



New South Wales

Drug and Alcohol Treatment Amendment (Rehabilitation of Persons with Severe Substance Dependence) Bill 2012

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 and Alcohol Treatment Act 2007 (the Act)* to further provide for the involuntary rehabilitative care of persons with severe substance dependence:

- (a) by providing a new option for rehabilitation, so that, instead of being detained, persons with severe substance dependence can (during a trial-period) agree to undergo out-patient treatment, including having naltrexone implanted under their skin and undergoing counselling for relapse prevention and other health issues, and
- (b) by amending the procedure for assessing persons for involuntary treatment, including by adding to the persons who can request an assessment and to the circumstances in which a person can be involuntarily treated, and
- (c) by amending the procedure for the detention and transportation of persons for the purposes of involuntary rehabilitative treatment and for the conduct of the subsequent treatment of those persons, and

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- (d) by adding to the rights of detained dependent persons, including their right to plan their treatment and their rights to competent and reasonable care, to legal representation and to information about these and other rights, and
- (e) by further restricting the conduct of detained dependent persons (including by prohibiting the abuse or possession of addictive substances, including liquor or drugs, during the period of treatment), and
- (f) by increasing the maximum time for which a person may be involuntarily detained for treatment (from 28 days to 90 days) and by removing the ability to extend that time, and
- (g) by providing for the post-rehabilitative care of persons who were formerly detained or treated (which may involve a second detention or treatment if substance use continues), and
- (h) by applying the Act to young people and specifying the rights of their parents or guardians.

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 3 months after the date of assent to the proposed Act.

Schedule 1 Amendment of Drug and Alcohol Treatment Act 2007 No 7

Objects of Act

Schedule 1 [1] updates the objects of the Act to clarify that involuntary treatment provided under the Act is rehabilitative treatment.

Schedule 1 [2] includes in the objects of the Act the objects of facilitating post-rehabilitative care and assistance of persons who were dependent persons so as to help the re-integration of those persons into the workforce and society and granting the police, and the staff of treatment centres, the necessary powers to achieve that object and the other objects.

Application of Act to minors

Schedule 1 [4] provides for the Act to apply to any person who is 16 years old or older (at present it applies only to persons who are 18 years old or older).

Declaration of premises as treatment centres

Schedule 1 [12] provides that the Director-General of the Ministry of Health must not declare any premises to be a treatment centre unless the Director-General is satisfied that its facilities for rehabilitation are safe and adequate.

Assessment of persons with suspected severe substance dependence

Schedule 1 [13] specifies (in proposed section 9) the persons who may request an accredited medical practitioner to assess a person for treatment under the Act, if they reasonably suspect that the person has a severe substance dependence (at present, only a medical practitioner can request an assessment).

Schedule 1 [13] also restates the procedure for assessing persons for treatment, including by inserting new provisions (in proposed section 9A (3) and (4)) which change the criteria that must be satisfied before a dependency certificate can be issued, so that:

- (a) a dependency certificate must not be issued unless the accredited medical practitioner who assesses a person is satisfied that the care, treatment or control of the person is necessary to protect the person from harm to his or her own physical or mental health, to protect others or to remove the risk of the person committing an offence due to the person's substance dependence (whereas, at present, the certificate may only be issued if necessary to protect the person himself or herself from serious harm), and
- (b) a dependency certificate must not be issued unless the accredited medical practitioner who assesses a person is satisfied that the person is likely to benefit from treatment for his or her substance dependence but is unable or unwilling to participate in treatment voluntarily (whereas, at present, the certificate may be issued only if the person has refused treatment), and
- (c) a dependency certificate must not be issued unless the accredited medical practitioner who assesses a person has sought the involvement of the person in the process of planning and developing a personalised plan for the person's rehabilitation and treatment. **Schedule 1 [35] and [41]** make consequential amendments.

Schedule 1 [15] inserts two new sections that provide:

- (a) that an accredited medical practitioner must not issue a dependency certificate in relation to a person unless the medical practitioner has given the person a reasonable opportunity to seek legal representation before the certificate is issued (proposed section 11A) (**Schedule 1 [19]** makes a consequential amendment), and
- (b) that, if a person proposed to be assessed is under the age of 18 years, the medical practitioner conducting the assessment must obtain the consent of the parent or guardian of the young person before conducting the assessment and before issuing a dependency certificate (proposed section 11B).

Schedule 1 [17] provides (in proposed section 14B) that the Director-General may determine the treatment centre in which a specified dependent person, or a person of a class of dependent persons, is to be treated and that, in making that determination, the Director-General is to have regard to the best interests of the dependent person or persons concerned. The Director-General may also direct that a specified dependent person receive treatment in hospital.

Schedule 1 [21] provides (in proposed section 15C) that the director of a treatment centre must make arrangements for any dependent person at the treatment centre to be provided with psychiatric treatment as an integrated part of a rehabilitation plan, and for other medical problems that the person has, and makes provision for that treatment.

Schedule 1 [26] provides (in proposed section 19A) that the Director-General may determine that a dependent person is not to be detained or treated under the Act if the Director-General is aware that the person is awaiting trial for an alleged criminal offence. The amendment also provides (in proposed section 19B) for the detention of persons for the purposes of treatment.

Implanting of naltrexone as alternative to detention

Schedule 1 [13] allows (in proposed section 9A (2) (b), (5) and (6)) for an accredited medical practitioner who determines that a person has a severe substance dependence to recommend (during a trial period) that, instead of being detained for treatment, the dependent person should receive out-patient treatment. That out-patient treatment is to consist of naltrexone being implanted under the person's skin and counselling for relapse prevention and for other medical problems. The dependency certificate issued to such a person is defined as a *Category B dependency certificate*. (A dependency certificate that recommends the detention and treatment of the relevant person is a *Category A dependency certificate*.)

Schedule 1 [21] specifies the elements of the treatment of persons subject to a Category B dependency certificate (proposed section 15A) and provides for such persons to undergo in-patient treatment if they fail to meet their obligations or in other circumstances (proposed section 15B).

Schedule 1 [37] provides (in proposed section 24B) for the release of a person from the obligation to have naltrexone treatment if an accredited medical practitioner is satisfied that the person no longer meets the criteria to be certified a dependent person or that the person's continued presence at the treatment centre will not achieve the purpose for which the person was certified a dependent person.

Schedule 1 [3], [5], [6], [8], [10], [18], [19], [23]–[25], [27], [41] and [46] make amendments consequent on the creation of new categories of dependency certificate and treatment.

Schedule 1 [5], [7], [9], [11] and [31]–[34] make amendments consequent on the creation of two categories of treatment centres (out-patient treatment centres and in-patient treatment centres).

Amendments relating to length of detention

Schedule 1 [16] provides (in proposed section 14) that a person must not be detained for treatment for more than 90 days after a dependency certificate is issued (at present the person may not be detained for more than 28 days). The amendment also provides (in proposed section 14A) for the review of the issue of a Category A dependency certificate by a Magistrate.

Schedule 1 [22] provides that a dependent person must be told that he or she cannot be involuntarily detained for more than 90 days, and that when the term of the dependency certificate finishes the person may refuse further treatment, and must also be told of his or her rights to legal representation and to competent and reasonable care.

Schedule 1 [42] and [43] remove the power of a Magistrate to extend a dependency certificate beyond the new maximum of 90 days. **Schedule 1 [39] and [44]** make consequential amendments.

Treatment of persons who are detained for treatment

Schedule 1 [14] removes a provision about the detention of persons which is transferred to proposed section 14C by **Schedule 1 [17]**.

Schedule 1 [17] provides that:

- (a) a dependent person must not be detained if more than 14 days have elapsed since the issue of the dependency certificate (proposed section 14C (1) (b)), and
- (b) the treatment of a dependent person must commence no later than 7 days after the person arrives at the relevant treatment centre (proposed section 14C (2)).

Schedule 1 [20] provides that:

- (a) an accredited medical practitioner responsible for the care of a dependent person must give the dependent person an opportunity to be involved in the process of planning and developing a personalised plan for his or her rehabilitation and treatment (proposed section 15 (3)), and
- (b) a dependent person is entitled to competent and reasonable care while being treated in a treatment centre (proposed section 15 (4)).

Schedule 1 [28] provides that when a dependent person is searched by the transport officer who transports the dependent person to a treatment centre, the rights and bodily integrity of the dependent person must be observed at all times.

Schedule 1 [30] provides that the director of an in-patient treatment centre must ensure that each dependent person detained at the centre has access to legal representation at all reasonable times. **Schedule 1 [19]** makes a consequential amendment.

Schedule 1 [36] makes additional provision for the discharge of persons who are detained.

Schedule 1 [37] provides for the discharge of detained persons so that they can undergo out-patient treatment (proposed section 24A).

Conduct of dependent persons undergoing treatment

Schedule 1 [29] provides for the conduct of dependent persons undergoing treatment, namely that:

- (a) a dependent person must not consume or have in his or her possession during the period of his or her treatment any of the substance in relation to which the person has a severe substance dependence, any liquor or illegal drug or certain other intoxicating substances (proposed section 20A (1)), and
- (b) a dependent person must not have in his or her possession objects that are able to be used by the dependent person or any other person in assisting abuse of a substance, that could be detrimental to the rehabilitation process of the dependent person, or any other person being treated at the treatment centre, or could be detrimental to the good order of the treatment centre (proposed section 20A (2)), and
- (c) those substances or objects may be confiscated (proposed section 20A (3)).

Post-rehabilitative care

Schedule 1 [38] makes provision for the post-rehabilitative care of persons who were dependent persons and, in particular, provides that:

- (a) a case worker or social worker must be appointed to manage the post-rehabilitative care of any person who was a dependent person, and
- (b) the case worker or social worker must take steps during the first 90 days after the person's discharge from an in-patient treatment centre or completion of out-patient treatment to assist the person to integrate back into the community, including any reasonable steps required to secure housing, employment, training, social security payments, personal support and psychiatric or psychological treatment, and
- (c) the case worker or social worker must contact the person at least once a week for the first 90 days after the person's discharge from an in-patient treatment centre or completion of out-patient treatment, and
- (d) the case worker or social worker must report on the progress of the person's post-rehabilitative care, the progress of the person in securing housing, employment, training, social security payments and personal support and whether the person has abstained from using the substance in relation to which the person was certified a dependent person, and
- (e) the Director-General may direct an accredited medical practitioner to assess a person who was a dependent person for further detention and treatment if he or she reasonably believes that, during the 90-day post-rehabilitation period, the person has not stopped using the substance in relation to which the person was certified a dependent person.

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Other amendments

Schedule 1 [45] provides that the Director-General may delegate the exercise of any function of the Director-General under the Act.

Schedule 1 [47] makes savings, transitional and other provisions consequent on the enactment of the proposed Act.