

Compulsory Drug Treatment Correctional Centre Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to amend certain Acts of Parliament to establish a scheme to provide for the compulsory treatment and rehabilitation of recidivist drug dependent offenders. Under the proposed compulsory drug treatment scheme, certain eligible convicted offenders are to be referred to the Drug Court of New South Wales (*the Drug Court*) for assessment. To be eligible for the program an offender must:

- (a) appear to have a long-term drug dependency, and
- (b) have been convicted of an offence related to the offender's drug dependency and lifestyle and been sentenced to imprisonment with an unexpired non-parole period of at least 18 months but not more than 3 years, and
- (c) have been convicted of other offences at least 3 times in the previous 5 years.

If it is determined by the Drug Court that an offender is eligible and suitable, the Drug Court will be empowered to order that the offender serve his or her sentence of imprisonment by way of compulsory drug treatment detention in the Compulsory Drug Treatment Correctional Centre (to be established for the purposes of this scheme) and later in the community.

While an offender is serving a sentence by way of compulsory drug treatment detention, the offender will be required to comply with a compulsory drug treatment personal plan prepared for the offender. The personal plan will contain conditions relating to conduct and good behaviour, attendance for counselling or other treatment, the management of the offender in the Compulsory Drug Treatment Correctional Centre, periodic drug testing that the offender must undergo and involvement in activities, courses, training or employment for the purpose of promoting the re-integration of the offender into the community.

Compulsory drug treatment detention under the proposed scheme is to consist of three stages: closed detention (Stage 1), semi-open detention (Stage 2) and community custody (Stage 3). Under closed detention (Stage 1), the offender is to be kept in full-time custody at the Compulsory Drug Treatment Correctional Centre. Under semi-open detention (Stage 2), the offender is to be kept in the Compulsory Drug Treatment Correctional Centre with leave approved by the Drug Court to allow the offender to attend employment, training or social programs. Under community custody (Stage 3), the offender may reside outside the Compulsory Drug Treatment Correctional Centre under intensive supervision at accommodation approved by the Drug Court. An offender will be able to progress from one stage of detention to a higher stage after the offender has served at least 6 months in the stage, but only on the order of the Drug Court after comprehensive assessment reports relating to the offender have been prepared. The Drug Court will also be empowered to regress an offender to a lower stage of detention if the offender has failed to comply with his or her personal plan.

If an offender has progressed under the proposed scheme to semi-open detention (Stage 2) or community custody (Stage 3) and is eligible to spend time outside the Compulsory Drug Treatment Correctional Centre, the Drug Court is to impose a community supervision order on the offender. A community supervision order may contain conditions relating to the supervision of the offender outside the Compulsory Drug Treatment Correctional Centre (for example, by way of electronic monitoring), conditions relating to drug testing that the offender must undergo and conditions relating to residence, association with other persons or attendance at specified locations.

The Drug Court is to supervise the offender while the offender is serving the offender's sentence by way of compulsory drug treatment detention. The Drug Court will be empowered to impose sanctions on and grant rewards to the offender in response to the offender's level of compliance with his or her compulsory

drug treatment personal plan. If necessary, the Drug Court will be able to terminate a drug offender's participation in the compulsory drug treatment scheme and return the offender to full-time detention in the normal correctional centre system.

The Drug Court also is to act as the parole authority in relation to drug offenders serving their sentences by way of compulsory drug treatment detention. It will determine whether such an offender is to be released on parole and the conditions of that parole.

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.

Clause 4 is a formal provision that gives effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 3.

Schedule 1 Amendment of Drug Court Act 1998

Schedule 1 amends the *Drug Court Act 1998* to give effect to the Overview above relating to the making of orders for compulsory drug treatment detention.

Schedule 1 [1]–[3] amend section 3 (Objects) of the *Drug Court Act 1998* to provide that it is an object of that Act to establish a scheme for compulsory drug treatment and rehabilitation for certain drug dependent persons.

Schedule 1 [4] inserts certain definitions into section 4 (Definitions) of the *Drug Court Act 1998* for the purposes of the proposed compulsory drug treatment scheme.

Schedule 1 [5] inserts proposed section 5A into the *Drug Court Act 1998* to define persons who are "eligible convicted offenders". A person is an eligible convicted offender if:

be served by way of full-time detention and the unexpired non-parole period in relation to that s(a) the person is convicted of an offence and sentenced to a term of imprisonment for the offence to entence is a period of at least 18 months but not more than 3 years, and

(b) the person has, in the 5-year period immediately before the person was sentenced, been convicted, under the law of this State or under the law of the Commonwealth or another State or Territory or of another country, of at least 3 other offences, not being offences arising out of the same circumstances, that resulted in any 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

(c) the person has, in the opinion of the Drug Court, a long-term dependency on the use of prohibited drugs or other drugs prescribed by the regulations, and

(d) 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, in the opinion of the Drug Court, that the offence was related to the person's long-term drug dependency and associated lifestyle, and

(e) the person satisfies such other criteria as are prescribed by the regulations.

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) any offence that, in the opinion of the Drug Court, involves serious violence (such as malicious wounding or assault with intent to do grievous bodily harm, but not including common assault),
- (e) certain offences under 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 the proposed section.

Further, a person is not an eligible convicted offender if:

- (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.

Schedule 1 [6] inserts proposed Part 2A into the *Drug Court Act 1998*. Division 1 of Part 2A contains certain definitions for the purposes of the proposed Part.

Division 2 of Part 2A provides that it is the duty of certain prescribed courts that sentence persons to imprisonment:

- (a) to certain 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. Division 3 of Part 2A contains provisions relating to making of compulsory drug treatment orders by the Drug Court, including restrictions on the making of those orders and the requirement for certain assessments to be made before making those orders.

Division 4 of Part 2A contains miscellaneous provisions dealing with certain consequences of making compulsory drug treatment orders.

Schedule 1 [7] and [8] make certain consequential amendments.

Schedule 1 [9] and [10] make amendments relating to savings and transitional matters, including allowing the Drug Court to make compulsory drug treatment orders in relation to certain persons currently imprisoned.

Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999

Schedule 2 makes amendments to the *Crimes (Sentencing Procedure) Act 1999* to give effect to the Overview above. The amendments insert provisions into the *Crimes (Sentencing Procedure) Act 1999* to point to the ability of the Drug Court to make orders for imprisonment by way of compulsory drug treatment detention as an alternative to imprisonment by way of full-time detention. The Schedule also amends the heading to Division 2 of Part 2 so that it better describes the custodial sentencing options under the Part.

Schedule 3 Amendment of Crimes (Administration of Sentences) Act 1999

Schedule 3 makes amendments to the *Crimes (Administration of Sentences) Act 1999* to give effect to the Overview above relating to the administration of offenders serving sentences by way of compulsory drug treatment detention.

Schedule 3 [1]–[3] insert certain definitions into section 3 (Interpretation) of the *Crimes (Administration of*

Sentences) Act 1999, and amend another definition in that section, for the purposes of the proposed compulsory drug treatment scheme.

Schedule 3 [4] inserts proposed Part 4A into the *Crimes (Administration of Sentences) Act 1999*.

Division 1 of Part 4A contains certain definitions for the purposes of the proposed Part. The proposed Division also sets out the objects of compulsory drug treatment, the obligations of offenders serving sentences by way of compulsory drug treatment detention and the stages and duration of compulsory drug treatment detention.

Division 2 of Part 4A deals with compulsory drug treatment personal plans, sanctions and rewards for non-compliance and compliance with those personal plans, progression and regression between stages of detention, community supervision orders and the power of the Commissioner of Corrective Services to make certain regression and removal orders.

Division 3 of Part 4A deals with the revocation of compulsory drug treatment orders.

Division 4 of Part 4A provides that the Drug Court is the authority that will determine whether an offender serving a sentence by way of compulsory drug treatment detention is to be released on parole. The proposed Division also makes it clear that after release on parole (and the consequent expiry of the offender's compulsory drug treatment order), the Parole Board is responsible for the supervision and revocation of any parole order made in relation to the offender.

Division 5 of Part 4A contains miscellaneous provisions dealing with the administration of persons in compulsory drug treatment detention. The proposed Division includes provisions relating to the provision of information to the Drug Court and the Director of the Compulsory Drug Treatment Correctional Centre by persons (such as health professionals) relating to an offender's drug treatment.

Schedule 3 [5] makes an amendment to section 135 of the *Crimes (Administration of Sentences) Act 1999* to require the Parole Board in deciding whether to make a parole order to have regard to the circumstances of any decision by the Drug Court to decline to make a compulsory drug treatment order in relation to an offender's sentence on the ground that the offender's participation in the program might damage the program or any other person's participation in it.

Schedule 3 [6] makes an amendment to enable regulations of a savings or transitional nature consequent on the amendment of the *Crimes (Administration of Sentences) Act 1999* by the proposed Act to be made.