Drug Court Legislation Amendment Bill 2014

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Second Reading

Debate resumed from 9 September 2014.

The Hon. DUNCAN GAY (Minister for Roads and Freight, and Vice-President of the Executive Council) [6.07 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the Drug Court Legislation Amendment Bill 2014. The bill implements reforms recommended by the statutory review of the legislation governing the compulsory drug treatment correctional centre.

The compulsory drug treatment correctional centre [CDTCC] is the first, and so far the only, correctional centre of its kind in Australia.

Established in 2006, the CDTCC is a correctional centre designed specifically to target long-term drug dependent offenders who have failed past treatment in voluntary drug and alcohol programs in either correctional centres or in the community, or who have never accessed treatment.

The compulsory drug treatment program offered at the CDTCC targets up to 100 recidivist male offenders with long-term drug dependency and an associated life of crime and imprisonment. It is a treatment and rehabilitation program of judicial care, stabilisation, case management, educational and vocational support, and rehabilitation and supervision, intended to manage offender risk and meet offender need.

The statutory objectives of the compulsory drug treatment program include providing drug-related offenders with a comprehensive treatment and rehabilitation program, with judicial supervision. It also provides effective treatment for their drug dependency to eliminate illicit drug use while in the program and reduce the likelihood of relapse on release. Further, the program is intended to promote the reintegration of offenders into the community and to prevent and reduce crime by reducing their need to resort to criminal activity to support their dependency.

Offenders on the compulsory drug treatment program are supervised by the Drug Court of New South Wales. Eligible offenders are referred by sentencing courts to the Drug Court so that it can consider whether to make a compulsory drug treatment order. Before making an order, the Drug Court must refer the offender to its multidisciplinary team for assessment as to the offender's eligibility and suitability for compulsory drug treatment detention. If suitable, a compulsory drug treatment order can be made in relation to the offender including a structured individual personal plan that will be closely monitored by CDTCC staff and the Drug Court and revised where necessary. The program is divided into five stages, including three custodial stages, and is expected to take approximately 18 months to three years to complete, depending on the offender's individual sentence.

The compulsory drug treatment program and the CDTCC are key components of this Government's ongoing strategy to tackle the problem of illicit drugs in the community and to reduce the level of reoffending. By breaking offenders' addictions and providing them with the skills to successfully reintegrate into the community, the program helps the State's most desperately entrenched criminal addicts take personal responsibility to lead productive, crime- and drug-free lives.

The program has been independently evaluated by the Bureau of Crime Statistics and Research [BOCSAR]. The BOCSAR review made positive findings regarding the CDTCC meeting its aims of effectively treating drug dependency and promoting the reintegration of participants into the community.

The CDTCC and the compulsory drug treatment program are supported by legislation. Section 106Z of the Crimes (Administration of Sentences) Act requires that the program and its legislative provisions be reviewed to determine whether any amendment is required, and for a report on the review to be tabled in Parliament as soon as practicable after its completion.

The statutory review was completed by my department, and tabled in Parliament on 29 October 2013.

The overwhelming response from stakeholders indicated support for the continued operation of the compulsory drug treatment program. The review concluded that the policy objectives of the program and its underpinning legislation remain valid.

The review made 12 recommendations to clarify aspects of the legislation to better achieve the program's policy objectives, and to make the program available to a greater number of eligible and suitable participants. Nine of the recommendations were legislative and the three remaining recommendations relate to administrative aspects of the program. This bill implements the legislative recommendations of the review.

I will now outline the key features of the bill.

Schedule 1 to the bill amends the Drug Court Act 1998. Item [1] amends the definition of eligible convicted offender in section 5A to change the maximum sentence length for which an offender can be referred to the program. The review noted that the CDTCC has been unable to operate at full capacity since its commencement and gave particular consideration to the criteria for entry into the program.

At present, a person will only be eligible for the program if they have been sentenced to full-time imprisonment and the unexpired non-parole period on that sentence is, at the time the Drug Court is determining whether to make a compulsory drug treatment order, no more than three years, and at the time that the sentence was imposed at least 18 months.

Limiting eligibility to those offenders who have three years or less left on their non-parole period has meant that many offenders referred to the program run out of time to complete its three custodial stages prior to becoming eligible for parole. Placing an upper limit for eligibility based on the total sentence, rather than the non-parole period, should help to address this issue. Judge Dive, the senior judge of the Drug Court, advocated for such a reform in his submission to the review.

The review concluded that an upper limit of six years on the unexpired total sentence, determined at the time the sentence was imposed rather than at the time eligibility is being assessed, would be a more appropriate restriction on eligibility. No change is made to the required minimum sentence length.

Requiring the lower and upper limits of the sentence to be considered from the same point, being when the sentence was imposed, will significantly reduce complexity in determining eligibility.

The increase in the maximum sentence is expected to increase the volume of eligible offenders, but will not change the offences that are eligible for the program. People serving sentences for offences of murder, sexual assault, firearms matters and commercial supply of prohibited drugs will remain ineligible as is made clear by the amendment at item [4] of schedule 1.

Item [2] of schedule 1 removes the mandatory requirement that an offender must have been convicted of at least two offences in the last five years to be eligible for the program. When the CDTCC legislation was first introduced in 2004, the requirement was that the offender had to have been convicted of at least three offences in the previous five years. This was amended in 2006 to implement the less stringent requirement for two prior convictions.

The review noted that one of the statutory objects of compulsory drug treatment is to provide rehabilitation for drug dependent persons who repeatedly resort to criminal activity to support that dependency. Recidivist offenders are the intended target of the program.

Examples were, however, provided to the review by the senior judge of the Drug Court indicating that the recidivism criteria has excluded otherwise appropriate and suitable offenders from participating in compulsory drug treatment.

The review concluded that relying on a specific number of convictions in a fixed period to indicate recidivism may not reflect the realities of a drug dependent lifestyle. However, in order to ensure that recidivist offenders remain the target of the program, the recidivism criteria is to be replaced with a mandatory requirement that, when assessing suitability, the Drug Court's multidisciplinary team must consider the offender's history of prior criminal offending related to long-term drug dependency and lifestyle. Item [8] of schedule 1 makes an amendment to section 18E (2) of the Act to implement this. It will allow more flexibility to admit recidivist offenders who may not have had two convictions within the

previous five-year period.

Items [3], [5] and [6] of the bill implement a recommendation of the review to provide the State Parole Authority with power to refer offenders whose parole has been revoked on a sentence that was previously the subject of a compulsory drug treatment order, back to the Drug Court to assess whether they should be subject to a new compulsory drug treatment order.

In particular, new section 18BA will impose a requirement on the State Parole Authority, when it revokes parole on a sentence that was previously the subject of a compulsory drug treatment order, to consider whether or not the offender is still an eligible convicted offender and, if so, to refer the offender to the Drug Court to determine whether a compulsory drug treatment order should be made in relation to the balance of parole period. This is essentially the same obligation that section 18B imposes on all sentencing courts when sentencing offenders at first instance.

Item [3] makes a consequential amendment to section 5A to provide that the restrictions it imposes on sentence length, which I have already outlined, will not prevent an offender referred under section 18BA being eligible for the program. These offenders will not need a minimum of 18 months to run on their sentence in order to be eligible, noting that they will previously have completed part of the program and may therefore not need as long to finish it. The upper limit of six years will still apply as the offender will have to have met that criteria before receiving their original compulsory drug treatment order. The other eligibility criteria will also still apply and the offender will have to be assessed again by the multidisciplinary team.

Item [6] amends section 18C of the Act to provide that if an eligible convicted offender is referred to the Drug Court under new section 18BA, the court may make another compulsory drug treatment order in relation to the offender. Significantly, it requires the court to consider the circumstances which led to revocation of the offender's parole and any offences committed by the offender either while they were serving the original sentence in compulsory drug treatment or while on parole. This provides an important safeguard which will allow the court to exclude offenders whose behaviour whilst originally on the program, or whilst out on parole, renders them unsuitable for further participation in it.

Item [4] of schedule 1 makes amendments to the eligibility criteria relating to firearm offences as recommended by the review.

Existing section 5A (2) provides that a person is not an "eligible convicted offender" if they have been convicted at any time of a firearms offence. This means that if an offender is referred for assessment in relation to a matter involving a firearm or has any conviction for an offence involving a firearm, no matter the circumstances or age of the conviction, they will be automatically ineligible for the program. This exclusion reflects the seriousness with which firearms matters are regarded and, along with the other exclusions, operates to prevent potentially dangerous offenders from entering the program.

The review did not recommend any change to allow offenders who are serving a sentence for a firearms matter to enter the program and these offenders will remain excluded from the program pursuant to the remade section 5A (2) (a).

However, the review considered that the application of the firearms restriction to historical convictions is operating too broadly and resulting in otherwise appropriate offenders being excluded from the program. The review noted the matter of *Regina v Paton*, which considered the eligibility of an offender who, as a juvenile, had been sentenced for a firearms offence involving an airgun more than 20 years prior to coming before the Drug Court. The offender had received a $50 fine for the offence. He had no offences on his adult criminal record that would have excluded him from the program and was otherwise suitable and appropriate to participate in it. But for the fact that no conviction had been recorded in relation to the juvenile matter, the firearm restriction would have excluded the offender from the program automatically.

The review therefore recommended reform of the historical firearms restriction. In proposed section 5A (2) (b) (iii), the bill amends the restriction so that it will render an offender ineligible if they have a prior conviction for any offence involving the violent use of a firearm. This will ensure that offenders who commit dangerous firearms offences are excluded from compulsory drug treatment while providing more flexibility in relation to other types of firearm offenders.

The review recommended introduction of a further safeguard in relation to this change, being a mandatory requirement for the multidisciplinary team to consider an offender's history of committing offences involving weapons or violence when assessing their suitability for the program. It is noted that the extension of the criteria to weapons, not just firearms, will allow the multidisciplinary team to consider a broader range of prior offences rather than just firearms matters. This amendment to section 18E of the Act is implemented by item [7] of the bill.

Item [9] of schedule 1 amends section 18G of the Act to provide that the making of a compulsory drug treatment order operates to suspend any entitlement of the eligible convicted offender to be considered for parole. This is intended to address an anomaly identified by the senior judge of the Drug Court in his submission to the review relating to the treatment of parole for offenders on the program.

Where an offender is sentenced to a total term of three years imprisonment or less with a non-parole period, section 50 of the Crimes (Sentencing Procedure) Act 1999 requires the court to make a parole order. Existing section 18G (b) of the Drug Court Act cancels such a parole order once a compulsory drug treatment order is made.

However, where a sentence exceeds three years, and a non-parole period is set, the sentencing court does not make an order under section 50. Instead, pursuant to section 137 of the Crimes (Administration of Sentences) Act, the parole authority has to consider parole at least 60 days prior to the offender's parole eligibility date being the expiration of their non-parole period. There is no provision in the Drug Court legislation suspending or cancelling that requirement. Offenders on the compulsory drug treatment program are therefore being treated inconsistently with regard to parole, depending on the length of their sentence. The existence of a parole eligibility date for offenders serving sentences greater than three years may impact on how an offender perceives their compulsory drug treatment program particularly if, as is often the case, parole is refused by the Drug Court to allow the offender to continue on the program.

The review considered that it was appropriate to align the parole consideration requirements in relation to all offenders subject to a compulsory drug treatment order. Item [9] of schedule 1 implements this reform.

Item [10] of schedule 1 removes the word "administrative" from section 29 (2) (a) of the Act to make clear that the functions that can be exercised by the Drug Court registrar are not solely administrative functions. This reform is consistent with similar provisions conferring functions on registrars in other courts.

Items [11] and [12] of schedule 1 contain savings and transitional provisions. It is noted that the reforms to the definition of "eligible convicted offender" in section 5A will only apply to offenders sentenced after its commencement. The reforms relating to consideration of parole under section 18G will apply to compulsory drug treatment orders made after the bill's commencement.

Schedule 2 makes amendments to the Crimes (Administration of Sentences) Act 1999 consistent with the recommendations of the review. Items [1] and [2] of schedule 2 make amendments which will allow the director of the CDTCC to regress an offender to an earlier stage of the program if satisfied that the offender has failed to comply in a serious respect with one of their program conditions. In many instances, regression between stages is an obvious and necessary response to a breach of the program. Yet, under the existing provisions, a regression decision can only be made by the Drug Court. This means that a great deal of administrative effort is required for the director to prepare reports and for the Drug Court to consider those reports.

Under proposed section 106MA, the director will be able to direct that the offender regress to a lower stage of the program for a specified period. The provision incorporates safeguards recommended by the review. Regression directions will not exceed three months. Further, when the director makes a regression order, he or she will have to notify the Drug Court within seven days of the direction. The offender will be able to apply within 14 days to the Drug Court for a review of the direction. On such a review the Drug Court, if satisfied of the failure on the balance of probabilities, will be able to confirm or set aside the direction, or vary its terms. These reforms ensure that the director of the CDTCC can respond quickly to a breach of the program's conditions while maintaining appropriate Drug Court oversight of the director's decision.

Item [1] of schedule 2 makes a consequential amendment removing the requirement for the Commissioner of Corrective Services to advise the Drug Court of a sanction issued under section 1061 if the sanction constitutes a decision to regress the offender under new section 106MA. As I have noted, there will be a requirement to notify the Drug Court of a regression decision under section 106MA in any event.

Item [3] of schedule 2 makes an amendment to section 106Q, which governs revocation of compulsory drug treatment orders. The amendment will clarify that the Drug Court can revoke an offender's order if, on the advice of the director of the CDTCC, it is of the opinion that the offender is unlikely to make further progress on their program. Submissions to the review noted that the current specified grounds for revocation in section 106Q may be too narrow. Particular concern was expressed about the ground of failing to comply with the program, which requires that the failure be serious in nature and that the Drug Court be satisfied that the offender is unlikely to make further progress. Some concern was expressed that the limited scope of this ground for revocation may lead offenders to think that they need to deliberately breach a condition to effect termination.

Whilst section 106Q does presently allow revocation for "any other reason the Drug Court sees fit", the review noted that this ground may be interpreted narrowly, given the specific and targeted nature of the other grounds for revocation. On that basis, the review supported providing an explicit discretionary ground for the Drug Court to revoke the offender's program where there are limited prospects of the offender making further progress.

Items [4] and [5] of schedule 2 make minor amendments to section 106W of the Act to clarify that a court which imposes a sentence on an offender that is to be served concurrently or partly concurrently

with a sentence which is the subject of a compulsory drug treatment order, is required to refer that sentence to the Drug Court so that the Drug Court can consider whether or not to make a compulsory drug treatment order in relation to that sentence. This obligation will apply to sentences imposed both before and after the making of the compulsory drug treatment order, where some portion of the sentence will be served concurrently with the sentence which is the subject of the order.

Both the Senior Judge of the Drug Court and the former Director of Public Prosecutions raised concerns about the operation of this provision in their submissions to the review. In particular, it was noted that the provision currently only allows a sentence to be referred if it is imposed after an offender receives their compulsory drug treatment order. This creates difficulties where a sentence is imposed prior to the offender's referral to the program or where a sentence is imposed while the offender's suitability for the program is being assessed, but prior to a compulsory drug treatment order being made. The review recommended amendments to make clear that sentences imposed prior to referral to the Drug Court can also be referred and the amendment will achieve this goal.

Item [6] of schedule 2 amends section 137 to allow the State Parole Authority to consider an offender's parole less than 60 days before their parole eligibility date where the Drug Court has revoked their compulsory drug treatment order. This is a complementary amendment to the parole reforms I have already noted. Section 137 presently requires that parole be considered at least 60 days before the eligibility date, however, pursuant to proposed section 18G (d), the requirement to consider parole will be suspended while a compulsory drug treatment order is in place. This would prevent an offender whose compulsory drug treatment order is revoked within 60 days of their parole eligibility date from having parole considered until after the eligibility date. The reforms to section 137 will ensure this can occur.

Schedule 2.2 makes an amendment to the Crimes (Administration of Sentences) Regulation 2008 to provide that where the Drug Court has revoked a compulsory drug treatment order this can constitute circumstances of manifest injustice for the purposes of section 137B of the Act. Section 137B allows for parole to be considered at any time after an offender's parole eligibility date has passed if circumstances of manifest injustice exist. This amendment ensures that if an offender's entitlement to parole is suspended by the making of a compulsory drug treatment order, and the order is subsequently revoked after the offender's parole eligibility date has passed, parole can still be considered for the offender. If this amendment were not made, offenders would need to wait at least 12 months from their parole eligibility date before parole could be considered.

This Government considers the compulsory drug treatment program to be a valuable tool in the battle to break long-term drug dependency that leads to recidivist offending. By not simply addressing addiction issues, but by arming offenders with skills to reintegrate successfully into the community, the program is a holistic sentencing option that is future-oriented and aims to achieve long-term and lasting benefits for offenders, the community, and the State of New South Wales.

However, as noted by the review there are areas in which the program could be improved. I am confident that the provisions contained in the bill will not only improve the processes of the CDTCC, but will allow a greater number of eligible offenders to enter the program and to benefit from its tried and tested processes.

I commend the bill to the House.