

Queensland



DRUG REHABILITATION (COURT DIVERSION) ACT 2000

**Reprinted as in force on 8 November 2000
(includes amendments up to Act No. 46 of 2000)**

Reprint No. 1A

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 8 November 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



**DRUG REHABILITATION (COURT
DIVERSION) ACT 2000**

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	5
2	Commencement	5
3	Objects of this Act	5
4	Relationship with Penalties and Sentences Act 1992	6
PART 2—DEFINITIONS AND IMPORTANT TERMS		
5	Definitions	6
6	Who is an “eligible person”	6
7	What is a “disqualifying offence”	7
8	What is a “relevant offence”	8
PART 3—PILOT PROGRAM COURTS AND PILOT PROGRAM MAGISTRATES		
9	Pilot program courts	8
10	Pilot program magistrates	8
11	Functions, additional jurisdiction and powers of pilot program magistrates	9
12	Other functions of pilot program magistrates	9
PART 4—REFERRAL FOR ASSESSMENT		
13	Application of pt 4	10
14	Referral to be decided as soon as practicable	10
15	Deciding whether to refer for assessment	10
16	Referral for assessment	10

Drug Rehabilitation (Court Diversion) Act
2000

PART 5—INTENSIVE DRUG REHABILITATION ORDERS

Division 1—Preliminary

17	Application of pt 5	12
----	-------------------------------	----

Division 2—Making an order

18	Pilot program magistrate may make order only if conviction recorded . . .	12
19	Making of order	12
20	Contents of order	13
21	Delaying suspension of sentence	14
22	General requirements of order	14
23	Additional requirements of order	15
24	Contents and requirements of rehabilitation program	16
25	Explaining orders	17
26	Offender to agree to making or amending of order	18
27	Copy of order to offender	18
28	Multiple offences	18

Division 3—Not making an order

29	Dealing with offenders if no intensive drug rehabilitation order made	19
----	---	----

Division 4—Rewards and sanctions

30	Application for reward or sanction	19
31	Rewards	19
32	Sanctions	20

Division 5—Amending orders and terminating rehabilitation programs

33	Amending intensive drug rehabilitation orders	21
34	Terminating rehabilitation programs	21
35	Process for application to amend intensive drug rehabilitation order or terminate rehabilitation program	22
36	Final sentence to be decided on completion or termination of rehabilitation program	23

Division 6—General

37	Immunity from prosecution	25
38	Random drug testing	25
39	Disclosing compliance or failure to comply with rehabilitation program . .	26

Drug Rehabilitation (Court Diversion) Act
2000

40	Arrest warrants	26
41	Warrants of commitment	27
42	When no appeal	27

PART 6—GENERAL

43	Regulation-making power	28
44	Approved forms	28
45	Review of Act by Minister	28
46	Report on Act's operation by pilot program magistrate	28
47	Expiry of Act	29

	SCHEDULE	30
--	---------------------------	----

DICTIONARY

ENDNOTES

1	Index to endnotes	32
2	Date to which amendments incorporated	32
3	Key	33
4	Table of earlier reprints	33
5	List of legislation	33
6	List of annotations	34

Drug Rehabilitation (Court Diversion) Act
2000

**DRUG REHABILITATION (COURT
DIVERSION) ACT 2000**

[as amended by all amendments that commenced on or before 8 November 2000]

**An Act to establish a pilot court diversion program to provide
intensive drug rehabilitation for drug dependant offenders**

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Drug Rehabilitation (Court Diversion) Act 2000*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Objects of this Act

3.(1) The objects of this Act are to reduce—

- (a) the level of drug dependency in the community; and
- (b) the level of criminal activity associated with drug dependency; and
- (c) health risks to the community associated with drug dependency;
and
- (d) pressure on resources in the court and prison systems.

(2) The objects are to be achieved by establishing a pilot court diversion program—

Drug Rehabilitation (Court Diversion) Act
2000

- (a) to identify drug dependant persons who are suitable to receive intensive drug rehabilitation; and
- (b) to improve their ability to function as law abiding citizens; and
- (c) to improve their employability; and
- (d) to improve their health.

Relationship with Penalties and Sentences Act 1992

4.(1) A pilot program magistrate—

- (a) must have regard to the principles stated in the *Penalties and Sentences Act 1992*, section 9;¹ and
- (b) may exercise the powers and make the orders a magistrate may exercise or make under that Act.

(2) Subsection (1) applies unless a contrary intention appears.

PART 2—DEFINITIONS AND IMPORTANT TERMS

Definitions

5. The dictionary in the schedule defines particular words used in this Act.

Who is an “eligible person”

6.(1) A person appearing before a pilot program court charged with an offence is an “**eligible person**” if—

- (a) the person is not a person who must be dealt with as a child under the *Juvenile Justice Act 1992*; and
- (b) the person is drug dependent and that dependency contributed to

¹ *Penalties and Sentences Act 1992*, section 9 (Sentencing guidelines)

Drug Rehabilitation (Court Diversion) Act
2000

the person committing the offence; and

- (c) it is likely the person would, if convicted of the offence, be sentenced to imprisonment; and
- (d) the person satisfies any other criteria prescribed under a regulation.

(2) The person is not an eligible person if—

- (a) the person is serving a term of imprisonment, other than under the *Penalties and Sentences Act 1992*, section 112;² or
- (b) a charge against the person for a disqualifying offence is pending in a court.

(3) Without limiting subsection (1)(d), the regulation may require that the person be someone who resides within a stated locality.

What is a “disqualifying offence”

7.(1) A “disqualifying offence” is—

- (a) an offence of a sexual nature; or
- (b) an indictable offence³ involving violence against another person, other than an offence charged under any of the following provisions of the Criminal Code—
 - section 335
 - section 340(a), but only if the offence is the assault of another with intent to resist or prevent the lawful arrest or detention of the person or of any other person
 - section 340(b).⁴

(2) For section 6(2)(b), a reference in subsection (1) to a provision of the

² *Penalties and Sentences Act 1992*, section 112 (Making of order) deals with the making of intensive correction orders.

³ *Acts Interpretation Act 1954*, section 36—
“**indictable offence**” includes an act or omission committed outside Queensland that would be an indictable offence if it were committed in Queensland.

⁴ Criminal Code, section 335 (Common assault) or 340 (Serious assaults)

Drug Rehabilitation (Court Diversion) Act
2000

Criminal Code includes a reference to a corresponding provision of a law of another State or the Commonwealth.

(3) For subsection (1), an offence of a sexual nature does not include an offence by a prostitute in providing prostitution, or in offering or accepting an offer to provide prostitution.

What is a “relevant offence”

8.(1) Each of the following is a “relevant offence”—

- (a) a simple offence;
- (b) an indictable offence that may be dealt with summarily;
- (c) a prescribed drug offence;
- (d) another offence prescribed under a regulation that is punishable by imprisonment for a term of not more than 7 years.

(2) A relevant offence does not include a disqualifying offence.

**PART 3—PILOT PROGRAM COURTS AND PILOT
PROGRAM MAGISTRATES**

Pilot program courts

9.(1) The Governor in Council, by regulation, may declare 1 or more Magistrates Courts to be pilot program courts.

(2) A court is a pilot program court under subsection (1) whether or not it is constituted by a pilot program magistrate.

(3) However, a power of a pilot program magistrate may be exercised only in a pilot program court.

Pilot program magistrates

10.(1) The Chief Stipendiary Magistrate must allocate the functions of a

Drug Rehabilitation (Court Diversion) Act
2000

pilot program magistrate to 1 or more magistrates.

(2) Nothing in this Act prevents a pilot program magistrate exercising the jurisdiction of a Magistrates Court at any time.

Functions, additional jurisdiction and powers of pilot program magistrates

11.(1) A pilot program magistrate has the functions given by this Act.

(2) For the performance of a pilot program magistrate's functions, a pilot program magistrate has jurisdiction to deal with a person appearing before the magistrate charged with a prescribed drug offence.

(3) A pilot program magistrate has power to do all things necessary or convenient to be done for the performance of the magistrate's functions.

(4) A pilot program magistrate must conduct proceedings under this Act quickly and in a way that avoids unnecessary technicalities and facilitates the fair and practical conduct of the proceedings.

(5) In a proceeding under this Act, the pilot program magistrate is not bound by the rules of evidence, but may inform himself or herself in any way the magistrate considers appropriate.

Other functions of pilot program magistrates

12.(1) This Act does not affect the application of the *Stipendiary Magistrates Act 1991* to a pilot program magistrate.

(2) For example, a pilot program magistrate, in addition to exercising functions as a pilot program magistrate, must—

- (a) exercise other functions as a magistrate as directed by the Chief Stipendiary Magistrate; and
- (b) comply with reasonable directions given, or requirements made, by the Chief Stipendiary Magistrate.

PART 4—REFERRAL FOR ASSESSMENT

Application of pt 4

13. This part applies if—

- (a) a person charged with a relevant offence appears before a magistrate in a pilot program court; and
- (b) there is evidence the person is drug dependant.

Referral to be decided as soon as practicable

14.(1) The powers conferred on a magistrate under this part must be exercised as soon as practicable after the person first comes before the pilot program court for a relevant offence.

(2) Despite subsection (1), the powers may be exercised at any time before the court sentences the person or commits the person for trial or sentence for the offence.

Deciding whether to refer for assessment

15.(1) The magistrate must decide whether the person appears to be an eligible person.

(2) If the person appears to be an eligible person, the magistrate may decide to refer the person for assessment if satisfied—

- (a) the person has pleaded guilty to the offence or has indicated that he or she intends to plead guilty to the offence; and
- (b) the person is willing to be assessed for suitability for rehabilitation and to appear before a pilot program magistrate to be dealt with for the offence.

Referral for assessment

16.(1) If the magistrate decides to refer the person for assessment, the magistrate may adjourn the proceedings and—

Drug Rehabilitation (Court Diversion) Act
2000

- (a) remand the person in custody to appear before a pilot program magistrate; or
- (b) release the person on bail to appear before a pilot program magistrate.

(2) If the magistrate adjourns the proceedings, the magistrate must require the corrective services' chief executive to prepare and submit to a pilot program magistrate, within the time allowed by the magistrate, a report under the *Corrective Services Act 1988*, section 201⁵ that contains—

- (a) an assessment of the person's suitability for rehabilitation; and
- (b) if the person is suitable, a proposed rehabilitation program.

(3) If the magistrate releases the person on bail, the grant of bail must be made subject to the condition that, for the purpose of preparing the report, the person—

- (a) reports to a stated community correctional office within a stated time; and
- (b) reports to other persons at the times and places directed by a community correctional officer.

(4) If the magistrate remands the person in custody, the corrective services' chief executive must ensure the person appears before a pilot program magistrate to be dealt with for the offence.

⁵ *Corrective Services Act 1988*, section 201 (Chief executive to cause reports to be prepared)

PART 5—INTENSIVE DRUG REHABILITATION ORDERS

Division 1—Preliminary

Application of pt 5

17.(1) This part applies if a person charged with a relevant offence (the “**offender**”) appears before a pilot program magistrate—

- (a) on proceedings adjourned under part 4; or
- (b) if expressly provided in relation to a provision of this part, on other proceedings.

(2) In deciding whether to make an order under this part, it does not matter whether the offence was committed before or after the commencement of this Act.

Division 2—Making an order

Pilot program magistrate may make order only if conviction recorded

18.(1) A pilot program magistrate may make an intensive drug rehabilitation order for the offender for a relevant offence only if the magistrate records a conviction.

(2) Subsection (1) also applies if the proceedings for the offence are before the magistrate other than on adjournment under part 4.

Making of order

19. A pilot program magistrate may make an order (“**intensive drug rehabilitation order**”) for the offender for an offence if satisfied—

- (a) the offence is a relevant offence; and
- (b) the offender is an eligible person; and
- (c) the offender has pleaded guilty to the offence; and

Drug Rehabilitation (Court Diversion) Act
2000

- (d) the magistrate would, apart from this Act, sentence the offender to a term of imprisonment; and
- (e) the offence is—
 - (i) a prescribed drug offence, or an offence against the *Drugs Misuse Act 1986* that may be prosecuted summarily, for which the offender may be adequately punished with imprisonment of not more than 2 years; or
 - (ii) another offence for which the offender may be adequately punished with imprisonment of not more than 3 years; and
- (f) the offender is not suffering from any mental condition that could prevent the offender's active participation in a rehabilitation program; and
- (g) the facilities to supervise and control the offender's participation in a rehabilitation program are available for allocation to the offender under guidelines prescribed under a regulation; and
- (h) it would be otherwise appropriate for an intensive drug rehabilitation order to be made, having regard to all relevant matters including, for example—
 - (i) the report mentioned in section 16(2);⁶ and
 - (ii) whether a charge for an offence that can not be dealt with under this Act (other than a disqualifying offence⁷) is pending in a court against the offender, and if so, the nature and seriousness of the offence and when the charge is likely to be dealt with.

Contents of order

20. If the pilot program magistrate decides to make an intensive drug rehabilitation order for the offender, the order must contain—

- (a) an order—

⁶ Section 16 (Referral for assessment)

⁷ For the effect of a disqualifying offence, see section 6(2)(b).

*Drug Rehabilitation (Court Diversion) Act
2000*

- (i) sentencing the offender to serve a term of imprisonment (the “**initial sentence**”); and
- (ii) suspending the whole of the term of imprisonment under this Act; and
- (b) the requirements of the order; and
- (c) a rehabilitation program decided by the pilot program magistrate for the offender.

Delaying suspension of sentence

21. If the pilot program magistrate is satisfied sufficient grounds exist, the magistrate may—

- (a) direct that the commencement of the suspension of the sentence be delayed for not more than 14 days; and
- (b) order that the offender be detained in custody in a prison until the earlier of the following days—
 - (i) the day the general manager of the prison is given a release authority in the approved form signed by the clerk of the court of a pilot program court;
 - (ii) the day the 14 day period ends.

Example—

The pilot program magistrate is satisfied the offender requires detoxification but suitable facilities for detoxification are not immediately available.

General requirements of order

22. The intensive drug rehabilitation order must contain requirements that the offender—

- (a) must not commit an offence, in or outside Queensland, during the period of the order; and
- (b) must notify an authorised corrective services officer of every change of the offender’s place of residence or employment within 2 business days after the change happens; and

Drug Rehabilitation (Court Diversion) Act
2000

- (c) must not leave or stay out of Queensland without an authorised corrective services officer's permission; and
- (d) must comply with every reasonable direction of an authorised corrective services officer, including a direction to appear before a pilot program magistrate at a stated time and place; and
- (e) must attend before a pilot program magistrate at the times and places stated in the order.

Additional requirements of order

23.(1) The intensive drug rehabilitation order may also contain requirements that the offender—

- (a) make restitution, or pay compensation; and
- (b) satisfactorily perform community service of up to 120 hours for the period stated in the order, as and when directed by an authorised corrective services officer; and
- (c) do another thing that a pilot program magistrate considers may help the offender's rehabilitation.

(2) A requirement to make restitution may be made for property—

- (a) in relation to which an offence was committed; or
- (b) taken in the course of, or in connection with, the commission of the offence.

(3) A requirement to pay compensation may be made—

- (a) to a person for any loss or destruction of, damage caused to, or unlawful interference with, property—
 - (i) in relation to which an offence was committed; or
 - (ii) in the course of, or in connection with, the commission of the offence; and
- (b) for personal injury suffered by a person, whether or not the person is the victim against whom an offence was committed, because of the commission of the offence.

(4) The *Penalties and Sentences Act 1992*, part 3, division 4, does not

Drug Rehabilitation (Court Diversion) Act
2000

apply to restitution or compensation under an intensive drug rehabilitation order.

(5) The *Penalties and Sentences Act 1992*, part 5, division 2 and 3, does not apply to community service under an intensive drug rehabilitation order.

(6) A requirement under subsection (1) is not a sentence within the meaning of the *Penalties and Sentences Act 1992*, section 4.

Contents and requirements of rehabilitation program

24.(1) The intensive drug rehabilitation order must, as far as practicable, state the details of the rehabilitation program the offender must undertake, including, for example, that the offender must—

- (a) report to, or receive visits from, an authorised corrective services officer; or
- (b) report for drug testing to an authorised corrective services officer; or
- (c) attend vocational education and employment courses; or
- (d) submit to medical, psychiatric or psychological treatment.

(2) As part of the medical, psychiatric or psychological treatment, the offender may be required to remain at a place, and for a time, stated in the program.

(3) The offender's rehabilitation program must also state that a pilot program magistrate may, at any time, commit the offender to a prison for up to 7 days at a time if, in the magistrate's opinion, the committal is necessary to facilitate—

- (a) detoxification of the offender; or
- (b) assessment of the offender's participation in the program.

(4) However, the offender must not be committed to a prison for detoxification unless the pilot program magistrate is satisfied no other suitable facilities are immediately available.

Drug Rehabilitation (Court Diversion) Act
2000

Explaining orders

25.(1) Before making an intensive drug rehabilitation order, the pilot program magistrate must ensure the following matters are explained to the offender—

- (a) that the intensive drug rehabilitation order has 3 parts—
 - (i) the sentence of imprisonment and the suspension of the sentence; and
 - (ii) the requirements of the order; and
 - (iii) the rehabilitation program;
- (b) the purpose and effect of the order;
- (c) what may happen if the offender does not comply with the order;
- (d) that, subject to divisions 4 and 5, the requirements of the order or the rehabilitation program may be amended or a rehabilitation program terminated on a pilot program magistrate's own initiative or on application by—
 - (i) the offender; or
 - (ii) an authorised corrective services officer; or
 - (iii) the commissioner of the police service; or
 - (iv) the director of public prosecutions.

(2) If the offender is charged with a prescribed drug offence, the magistrate must also explain—

- (a) the offender would normally be dealt with in the Supreme Court for the offence; and
- (b) the magistrate is dealing with the offender on the condition the offender successfully complete the rehabilitation program; and
- (c) if the offender does not successfully complete the rehabilitation program, the offender will be dealt with in the Supreme Court for the offence.

(3) The explanation must be made in language, or in a way, likely to be readily understood by the offender.

Offender to agree to making or amending of order

26.(1) The pilot program magistrate may make an intensive drug rehabilitation order for the offender only if the offender agrees to the order being made and agrees to comply with it.

(2) The pilot program magistrate may amend the requirements of an intensive drug rehabilitation order or a rehabilitation program only if the offender agrees to the order being amended and agrees to comply with it.

Copy of order to offender

27.(1) The clerk of the court of the pilot program court must give the offender a copy of the intensive drug rehabilitation order.

(2) The offender must acknowledge receipt of the copy in writing.

(3) Until subsections (1) and (2) are complied with, the offender must remain in the custody of a police officer.

Multiple offences

28.(1) Under section 19,⁸ the pilot program magistrate (“**magistrate**”) may make more than 1 intensive drug rehabilitation order (“**order**”) for the offender for more than 1 offence.

(2) If the magistrate makes an order for the offender in proceedings adjourned before the magistrate under part 4, the magistrate may also make an order under section 19 for the offender in relation to another relevant offence even though proceedings for the other offence are before the magistrate other than on adjournment under part 4.

(3) However, in no case may the magistrate make more than 1 order for the offender for more than 1 offence if the total period of imprisonment for which the offender would be sentenced under section 20(a)(i)⁹ would be more than 3 years.

⁸ Section 19 (Making of order)

⁹ Section 20 (Contents of order)

*Drug Rehabilitation (Court Diversion) Act
2000*

(4) The orders may be included in a single form of order that specifies each offence for which an intensive drug rehabilitation order is made.

Division 3—Not making an order

Dealing with offenders if no intensive drug rehabilitation order made

29. If the pilot program magistrate decides not to make an intensive drug rehabilitation order for the offender, the magistrate must exercise the jurisdiction of a Magistrates Court and deal with the offender according to law.

Division 4—Rewards and sanctions

Application for reward or sanction

30. A reward or sanction under this division may be given or imposed on the application of an authorised corrective services officer or the offender or on the pilot program magistrate's own initiative.

Rewards

31.(1) A pilot program magistrate may give the following kinds of rewards to the offender if the magistrate is satisfied on the balance of probabilities the offender is satisfactorily complying with the offender's intensive drug rehabilitation order—

- (a) stated privileges;
- (b) a decrease in the amount of any monetary penalty payable, but not yet paid, by the offender under section 32;
- (c) a decrease in the frequency of drug testing of the offender;
- (d) a decrease in the level of supervision of the offender by a pilot program magistrate or someone else;
- (e) a change in—
 - (i) the nature of the vocational education and employment

Drug Rehabilitation (Court Diversion) Act
2000

- courses the offender attends; or
- (ii) the nature of medical, psychiatric or psychological treatment the offender is undergoing;
- (f) a decrease in the frequency with which the offender must attend the courses or treatment;
- (g) a decrease in the amount of community service the offender must perform under the order.

(2) The magistrate may, if necessary, amend the requirements of the offender's intensive drug rehabilitation order or the offender's rehabilitation program to give the reward.

Sanctions

32.(1) A pilot program magistrate may impose the following kinds of sanctions on the offender if the magistrate is satisfied on the balance of probabilities the offender is not satisfactorily complying with the offender's intensive drug rehabilitation order—

- (a) the withdrawal of stated privileges;
- (b) the imposition of a monetary penalty payable to the clerk of the court of a pilot program court;
- (c) an increase in the frequency of drug testing of the offender;
- (d) an increase in the level of supervision of the offender by a pilot program magistrate or someone else;
- (e) a change in—
 - (i) the nature of the vocational education and employment courses the offender attends; or
 - (ii) the nature of medical, psychiatric or psychological treatment the offender is undergoing;
- (f) an increase in the frequency with which the offender must attend the courses or treatment;
- (g) the imposition of a term of imprisonment for up to 14 days for each failure to comply with the order;

Drug Rehabilitation (Court Diversion) Act
2000

(h) an increase in the amount of community service the offender must perform, but not so as to increase the total number of hours to be performed under this section and under the order to more than 120 hours.

(2) The magistrate may, if necessary, amend the requirements of the offender's intensive drug rehabilitation order or the offender's rehabilitation program to give the sanction.

(3) A monetary penalty imposed under subsection (1)(b) is not a penalty within the meaning of the *Penalties and Sentences Act 1992*, section 4.

(4) A term of imprisonment imposed under subsection (1)(g) is not a sentence within the meaning of the *Penalties and Sentences Act 1992*, section 4.¹⁰

Division 5—Amending orders and terminating rehabilitation programs

Amending intensive drug rehabilitation orders

33.(1) A pilot program magistrate may, on application under this division or on the magistrate's own initiative, amend the requirements of an intensive drug rehabilitation order or a rehabilitation program.

(2) If the magistrate amends the order, the magistrate must give reasons.

(3) This section is subject to section 26(2).¹¹

Terminating rehabilitation programs

34.(1) A pilot program magistrate may, on application under this division or on the magistrate's own initiative, terminate a rehabilitation program decided for the offender if—

(a) the offender asks the magistrate to terminate the rehabilitation program; or

¹⁰ *Penalties and Sentences Act 1992*, section 4 (Definitions)

¹¹ Section 26 (Offender to agree to making or amending of order)

Drug Rehabilitation (Court Diversion) Act
2000

- (b) if the magistrate proposes to amend the order—
 - (i) the offender does not agree to the order being amended; or
 - (ii) the offender does not agree to comply with the amended order; or
- (c) the offender does not attend before a pilot program magistrate as required under the offender's intensive drug rehabilitation order or otherwise; or
- (d) the offender has otherwise failed to comply with the intensive drug rehabilitation order; or
- (e) the magistrate is satisfied, on the balance of probabilities, the offender's further participation in the rehabilitation program would serve no useful purpose.

(2) If the magistrate terminates the rehabilitation program, the magistrate must give reasons.

(3) If the offence in relation to which the intensive drug rehabilitation order for the offender was made is a prescribed drug offence, the magistrate must—

- (a) revoke the conviction recorded for the offence; and
- (b) vacate the intensive drug rehabilitation order; and
- (c) under the *Justices Act 1886*, section 113,¹² commit the offender to the Supreme Court for sentence.

Process for application to amend intensive drug rehabilitation order or terminate rehabilitation program

35.(1) An application under section 33 or 34 may be made by any of the following persons—

- (a) the offender;
- (b) an authorised corrective services officer;
- (c) the commissioner of the police service;

¹² *Justices Act 1886*, section 113 (Procedure if defendant pleads guilty)

Drug Rehabilitation (Court Diversion) Act
2000

(d) the director of public prosecutions.

(2) The application may be made—

(a) if the offender is before a pilot program magistrate—without notice; or

(b) if the offender is not before a pilot program magistrate—after giving notice in the approved form and as required under subsection (3), (4), (5) or (6).

(3) If an application is made by the offender, notice must be given by the court to the corrective services' chief executive and the prosecutor.

(4) If an application is made by an authorised corrective services officer, notice must be given to the court, the offender and the prosecutor.

(5) If an application is made by the commissioner of the police service, notice must be given to the court, the offender and the corrective services' chief executive.

(6) If an application is made by the director of public prosecutions, notice must be given to the court, the offender and the corrective services' chief executive.

(7) Notice under subsection (3), (4), (5) or (6) must be given to the person at least the day before the application is to be heard before the magistrate.

(8) In this section—

“prosecuting authority” means the commissioner of the police service or the director of public prosecutions.

“prosecutor” means the prosecuting authority that appeared before the court when the intensive drug rehabilitation order was made.

Final sentence to be decided on completion or termination of rehabilitation program

36.(1) This section applies when an offender's rehabilitation program ends—

(a) if the offence for which the offender's intensive drug rehabilitation order was made was a prescribed drug

Drug Rehabilitation (Court Diversion) Act
2000

offence—because the offender has successfully completed the rehabilitation program under the order; or

- (b) if the offence for which the offender's intensive drug rehabilitation order was made was not a prescribed drug offence—for any reason.

(2) The magistrate must reconsider the offender's initial sentence, vacate the intensive drug rehabilitation order and impose a final sentence.

(3) When reconsidering the initial sentence, the magistrate must consider the extent to which the offender participated in his or her rehabilitation program, including, for example, whether any rewards or sanctions were given to or imposed on the offender.

(4) The final sentence may be—

- (a) for a prescribed drug offence—any sentence that a magistrate could impose for an offence against the *Drugs Misuse Act 1986* on proceedings taken summarily under section 13¹³ of that Act; or
- (b) for any other relevant offence—any sentence that the magistrate could have imposed for the offence.

(5) The magistrate must revoke the conviction recorded for the offence—

- (a) if the *Penalties and Sentences Act 1992*, section 16 or 22¹⁴ applies; or
- (b) otherwise, if the magistrate has a discretion not to record a conviction and decides not to record a conviction.

(6) If the magistrate sentences the offender to serve a term of imprisonment with or without suspending the sentence, the term of imprisonment must not be greater than the term imposed in the initial sentence.

¹³ *Drugs Misuse Act 1986*, section 13 (Certain offences may be dealt with summarily)

¹⁴ *Penalties and Sentences Act 1992*, section 16 (Court may make order under this division if it does not record conviction) or 22 (Court may make order under this division if it does not record conviction)

Division 6—General

Immunity from prosecution

37.(1) A person is not liable to be prosecuted for an offence as a result of an admission made by the person—

- (a) for the purposes of deciding whether the person—
 - (i) is, or appears to be, an eligible person; or
 - (ii) is suitable for rehabilitation; or
- (b) to someone responsible for the person’s supervision or treatment under this Act.

(2) The admission, and any evidence obtained as a result of the admission, is not admissible against the person in proceedings for an offence.

(3) However, this section does not apply to—

- (a) a disqualifying offence; or
- (b) an indictable offence, other than an indictable offence mentioned in the Criminal Code, section 552B;¹⁵ or
- (c) an offence committed in connection with an offence mentioned in paragraph (a) or (b).

Random drug testing

38. If a rehabilitation program under an intensive drug rehabilitation order includes a requirement that the offender must report for drug testing and states the frequency for the testing, an authorised corrective services officer—

- (a) may decide when and where the offender is to report; and
- (b) may require the offender to report for further random testing as directed by the officer.

¹⁵ Criminal Code, section 552B (Charges of indictable offences that may be dealt with summarily)

Disclosing compliance or failure to comply with rehabilitation program

39.(1) A prescribed person must promptly give the corrective services' chief executive, or a pilot program magistrate, any information the prescribed person has about the offender's compliance with, or failure to comply with—

- (a) the requirements of the offender's intensive drug rehabilitation order; or
- (b) the offender's rehabilitation program.

(2) The prescribed person is not liable, civilly or under an administrative process, if the information is given in good faith.

(3) Without limiting subsection (2)—

- (a) in a civil proceeding for defamation, the prescribed person has a defence of absolute privilege for publishing the information; and
- (b) if the prescribed person would otherwise be required to maintain confidentiality about the information under an Act, oath, rule of law or practice—
 - (i) the prescribed person does not contravene the Act, oath, rule of law or practice by disclosing the information; and
 - (ii) is not liable to disciplinary action for disclosing the information.

(4) Subsection (1) applies despite any Act, oath, rule of law or practice that prohibits or restricts the disclosure of information.

(5) In this section—

“information” includes a document.

“prescribed person” means a person involved in the administration of, or who provides services in connection with, an offender's rehabilitation program who is prescribed under a regulation.

Arrest warrants

40.(1) A pilot program magistrate may issue a warrant for the offender's

Drug Rehabilitation (Court Diversion) Act
2000

arrest if the magistrate—

- (a) reasonably suspects an offender has failed to comply with his or her rehabilitation program; or
- (b) terminates the offender's rehabilitation program.

(2) The warrant authorises any police officer to arrest the offender and to bring the offender before a pilot program magistrate.

(3) The *Bail Act 1980* does not apply to an offender who is arrested on the authority of a warrant under this section.

(4) The clerk of the court of a pilot program court may perform the magistrate's functions under subsection (1).

Warrants of commitment

41.(1) A pilot program magistrate may issue a warrant of commitment for the purposes of section 21 or 32(1)(g).¹⁶

(2) The clerk of the court of a pilot program court may perform the magistrate's functions under subsection (1).

When no appeal

42.(1) An appeal does not lie against—

- (a) an initial sentence; or
- (b) a decision to do or not to do any of the following—
 - (i) remand a person to appear before a pilot program magistrate;
 - (ii) make an intensive drug rehabilitation order for a person;
 - (iii) amend an intensive drug rehabilitation order or terminate a rehabilitation program for an offender;
 - (iv) give a reward to or impose a sanction on an offender.

¹⁶ Section 21 (Delaying suspension of sentence) or 32 (Sanctions)

(2) Subsection (1) applies despite the *Justices Act 1886*, section 222 and the Criminal Code, chapter 67.¹⁷

PART 6—GENERAL

Regulation-making power

43. The Governor in Council may make regulations under this Act.

Approved forms

44. The chief executive may approve forms for this Act.

Review of Act by Minister

45.(1) The Minister must ensure this Act's operation is reviewed—

- (a) to decide whether the objects of the Act remain valid; and
- (b) to evaluate the effectiveness of the provisions of this Act for achieving the objects.

(2) The review must start as soon as practicable after this Act commences.

(3) A final report outlining the review must be prepared before the expiry of this Act.

(4) The Minister must table a copy of the final report in the Legislative Assembly within 14 days after receiving it.

Report on Act's operation by pilot program magistrate

46.(1) A pilot program magistrate must prepare a report on the Act's operation.

¹⁷ *Justices Act 1886*, section 222 (Appeal to a single judge) and Criminal Code, chapter 67 (Appeal—Pardon)

Drug Rehabilitation (Court Diversion) Act
2000

(2) The report may deal with any aspect of this Act's operation that the magistrate considers appropriate.

(3) A final report outlining the review must be prepared before the expiry of this Act.

(4) The magistrate must give a copy of the final report to the Minister.

(5) The Minister must table a copy of the final report in the Legislative Assembly within 14 days after receiving it.

Expiry of Act

47.(1) This Act expires 30 months after it commences.

(2) Despite the expiry of this Act under subsection (1), a warrant issued under section 40(1), but not executed before the expiry, remains in force and may be executed after the expiry as if it authorised the police officer arresting the offender to bring the offender before any magistrate to be dealt with according to law.

(3) It is declared that subsection (2) is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

SCHEDULE

DICTIONARY

section 5

“approved form” see section 44.

“authorised corrective services officer” see *Penalties and Sentences Act 1992*, section 4A.

“community correctional officer” see *Corrective Services (Administration) Act 1988*, section 7(1).

“community service” means any activity declared by the corrective services’ chief executive to be community service for the *Corrective Services Act 1988*.

“corrective services’ chief executive” means the chief executive of the department within which the *Corrective Services Act 1988* is administered.

“disqualifying offence” see section 7.

“drug” means—

- (a) a dangerous drug within the meaning given by the *Drugs Misuse Act 1986*; or
- (b) another drug prescribed under a regulation.

“eligible person” see section 6.

“initial sentence” see section 20(a)(i).

“intensive drug rehabilitation order” see section 19.

“offender” see section 17.

“period of imprisonment” means the unbroken duration of imprisonment that an offender is to serve for 2 or more terms of imprisonment, whether—

SCHEDULE (continued)

- (a) ordered to be served concurrently or cumulatively; or
 - (b) imposed at the same time or different times;
- and includes a term of imprisonment.

“pilot program court” means a Magistrates Court declared to be a pilot program court under section 9.

“pilot program magistrate” means a magistrate to whom functions are allocated under section 10(1).

“prescribed drug offence” means an offence under the *Drugs Misuse Act 1986*—

- (a) for which the maximum penalty is 20 years imprisonment; and
- (b) that is prescribed under a regulation.

“prison” means a prison within the meaning of the *Corrective Services Act 1988*.

“rehabilitation program” means a rehabilitation program under an intensive drug rehabilitation order.

“relevant offence” see section 8.

“term of imprisonment” means the duration of imprisonment imposed for a single offence.

ENDNOTES**1 Index to endnotes**

	Page
2 Date to which amendments incorporated	32
3 Key	33
4 Table of earlier reprints	33
5 List of legislation	33
6 List of annotations	34

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 8 November 2000. Future amendments of the Drug Rehabilitation (Court Diversion) Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Drug Rehabilitation (Court Diversion) Act
2000*

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 July 2000

5 List of legislation

Drug Rehabilitation (Court Diversion) Act 2000 No. 3

date of assent 8 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 13 June 2000 (2000 SL No. 103)

exp 13 December 2002 (see s 47(1))

as amended by—

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch
date of assent 25 October 2000
commenced on date of assent

6 List of annotations

SCHEDULE—DICTIONARY
def “**offender**” amd 2000 No. 46 s 3 sch