

Queensland



DRUG REHABILITATION (COURT DIVERSION) ACT 2000

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DRUG REHABILITATION (COURT DIVERSION) ACT 2000

[as amended by all amendments that commenced on or before 25 October 2002]

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

PART 1—PRELIMINARY

1 Short title

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

2 Commencement

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

3 Objects of this Act

(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—

- (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.

4 Relationship with Penalties and Sentences Act 1992

(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.

4A Notes in text

A note in the text of this Act is part of the Act.

PART 2—DEFINITIONS AND IMPORTANT TERMS

5 Definitions

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

6 Who is an “eligible person”

(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 the person committing the offence; and

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

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

(3) The person is not an “**eligible person**” if—

- (a) the person is serving a term of imprisonment other than a community term of imprisonment; or
- (b) a charge against the person for a disqualifying offence is pending in a court.

Note to subsection (3)(a)—

A person on post-prison community based release is taken to be still serving the sentence imposed on the person: *Corrective Services Act 2000*, section 153.

(4) For the purpose of deciding whether a person ordered to serve a term of imprisonment under a law of another State or the Commonwealth (the “**relevant law**”) is a person serving a term of imprisonment for subsection (3)(a)—

- (a) the *Corrective Services Act 2000*, section 153 applies; and
- (b) a reference in the *Corrective Services Act 2000*, section 153 to post-prison community based release includes a reference to a release under the relevant law that is similar to post-prison community based release.

(5) Also, a person appearing before a pilot program court prescribed by regulation for this subsection is not an “**eligible person**” if, at any previous time, the person has been ordered to serve a disqualifying term of imprisonment.

7 What is a “disqualifying offence”

(1) A “disqualifying offence” is—

- (a) an offence of a sexual nature; or

(b) an indictable offence² 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)³
- section 413.⁴

(2) For section 6(3)(b), a reference in subsection (1) to a provision of the 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.

7A What is a “disqualifying term of imprisonment”

(1) A “disqualifying term of imprisonment” is a single term of imprisonment of more than 6 months.

(2) However, the following terms of imprisonment are not terms of imprisonment for subsection (1)—

- (a) a community term of imprisonment;
- (b) a suspended term of imprisonment;
- (c) a rehabilitated term of imprisonment.

(3) Also, a period of detention under the *Juvenile Justice Act 1992* or a corresponding law of another State or the Commonwealth is not a term of imprisonment for subsection (1).

(4) It is immaterial whether the term of imprisonment is in relation to a conviction for a disqualifying offence.

2 *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.

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

4 Criminal Code, section 413 (Assault with intent to steal)

7B What is a “community term of imprisonment”

(1) A term of imprisonment in relation to a person is a **“community term of imprisonment”** if the person is ordered to serve the term of imprisonment—

- (a) by way of intensive correction in the community under an intensive correction order made under the *Penalties and Sentences Act 1992*, section 112; or
- (b) in a similar way under an order made under a law of another State or the Commonwealth.

(2) However, a term of imprisonment is not a **“community term of imprisonment”** if the order mentioned in subsection (1) was revoked and the person was committed to prison.

7C What is a “suspended term of imprisonment”

(1) A term of imprisonment is a **“suspended term of imprisonment”** if the whole of the term of imprisonment was suspended under an order made under the *Penalties and Sentences Act 1992*, section 144(1) or a corresponding provision.

(2) However, a term of imprisonment is not a **“suspended term of imprisonment”** if the person for whom the order was made was ordered under the *Penalties and Sentences Act 1992*, section 147(1) or a corresponding provision to serve the whole or part of the suspended imprisonment.

7D What is a “rehabilitated term of imprisonment”

(1) A **“rehabilitated term of imprisonment”** is a term of imprisonment that was ordered to be served in relation to a rehabilitated conviction.

(2) In this section—

“conviction” see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

“rehabilitated conviction” means a conviction in relation to which the rehabilitation period has expired, and not been revived, under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

“rehabilitation period” see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

“revived” see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

8 What is a “relevant offence”

(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

9 Pilot program courts

(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.

10 Pilot program magistrates

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

11 Functions, additional jurisdiction and powers of pilot program magistrates

(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.

12 Other functions of pilot program magistrates

(1) This Act does not affect the application of the *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

13 Application of pt 4

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.

14 Referral to be decided as soon as practicable

(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.

15 Deciding whether to refer for assessment

(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; and
- (c) the maximum number of active intensive drug rehabilitation orders prescribed under a regulation has not been exceeded.

16 Referral for assessment

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

- (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 2000*, section 245⁵ that contains—

5 *Corrective Services Act 2000*, section 245 (Pre-sentence reports)

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

PART 5—INTENSIVE DRUG REHABILITATION ORDERS

Division 1—Preliminary

17 Application of pt 5

(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**18 Pilot program magistrate may make order only if conviction recorded**

(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.

19 Making of order

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
- (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 maximum number of active intensive drug rehabilitation orders prescribed under a regulation has not been exceeded; and
- (h) 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

- (i) there are reasonable prospects the offender would satisfactorily comply with an intensive drug rehabilitation order and 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.

20 Contents of order

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

- (a) an order—
 - (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.

21 Delaying suspension of sentence

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—

6 Section 16 (Referral for assessment)

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

- (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.

22 General requirements of order

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
- (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.

23 Additional requirements of order

(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—

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- (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 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.

24 Contents and requirements of rehabilitation program

(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.

25 Explaining orders

(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.

26 Offender to agree to making or amending of order

(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.

27 Copy of order to offender

(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.

28 Multiple offences

(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.

8 Section 19 (Making of order)

(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.

(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

29 Dealing with offenders if no intensive drug rehabilitation order made

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

30 Application for reward or sanction

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.

31 Rewards

(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;

9 Section 20 (Contents of order)

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- (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 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.

32 Sanctions

(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;
- (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

33 Amending intensive drug rehabilitation orders

(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

34 Terminating rehabilitation programs

(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
- (b) if the magistrate proposes to amend the order—

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

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

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- (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, there are not reasonable prospects of the offender satisfactorily complying with the offender's intensive drug rehabilitation order.

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

(3) If the magistrate terminates the rehabilitation program and 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.

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

(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;
- (d) the director of public prosecutions.

(2) The application may be made—

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

Drug Rehabilitation (Court Diversion) Act 2000

- (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.

35A Inclusion of new rehabilitation program

(1) This section applies when an offender is brought before a pilot program magistrate after the offender's rehabilitation program has been terminated by a magistrate in the offender's absence for a reason mentioned in section 34(1)(c) or (d).

(2) Unless the offender's intensive drug rehabilitation order has been vacated under section 34(3), the pilot program magistrate may amend the intensive drug rehabilitation order to include a new rehabilitation program.

(3) The pilot program magistrate may amend the intensive drug rehabilitation order to include a new rehabilitation program only if—

- (a) the pilot program magistrate is satisfied of the matters mentioned in section 19 and is satisfied the offender has reasonable prospects of successfully completing the new rehabilitation program; and
- (b) the offender agrees to the order being amended and agrees to comply with it.

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

(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 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 unless a new rehabilitation program is included in the offender's intensive drug rehabilitation order under section 35A.

(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.

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

(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.

Division 6—General

37 Immunity from prosecution

(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.

(1A) To remove any doubt, it is declared that subsection (1) does not prevent a prosecution if there is evidence, other than the admission or evidence obtained as a result of the admission, implicating the accused.

(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

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)

- (b) an indictable offence, other than an indictable offence mentioned in the Criminal Code, section 552B¹⁵ or the *Drugs Misuse Act 1986*, section 13;¹⁶ or
- (c) an offence committed in connection with an offence mentioned in paragraph (a) or (b).

38 Random drug testing

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.

39 Disclosure of compliance and related information

(1) A prescribed person—

- (a) must promptly give the corrective services' chief executive, or a pilot program magistrate, any compliance information the prescribed person has about the offender; and
- (b) may enter in the pilot program database any compliance information or related information the prescribed person has about the offender.

(2) The prescribed person is not liable, civilly or under an administrative process, if the information is given or entered 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—

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

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

- (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—

“compliance information” means any information 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.

“information” includes a document.

“pilot program database” means a database for the pilot court diversion program to which only a prescribed person has access.

“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.

“related information” means any information, other than compliance information, about the offender obtained in the administration of, or in the provision of services in connection with, the offender’s rehabilitation program.

40 Arrest warrants

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

41 Warrants of commitment

(1) A pilot program magistrate may issue a warrant of commitment for the purposes of section 21 or 32(1)(g).¹⁷

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

42 When no appeal

(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.

(2) Subsection (1) applies despite the *Justices Act 1886*, section 222 and the Criminal Code, chapter 67.¹⁸

PART 6—GENERAL

43 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

¹⁷ Section 21 (Delaying suspension of sentence) or 32 (Sanctions)

¹⁸ *Justices Act 1886*, section 222 (Appeal to a single judge) and Criminal Code, chapter 67 (Appeal—Pardon)

(2) A regulation prescribing the maximum number of active intensive drug rehabilitation orders may prescribe the maximum number of active intensive drug rehabilitation orders applicable for persons who reside within a stated locality.

(3) A regulation may prescribe guidelines for a particular pilot program court.

(4) Without limiting subsection (3), a regulation may prescribe guidelines for a particular pilot program court about the following matters—

- (a) the requirements of an intensive drug rehabilitation order;

Example—

The maximum number of attendances ordinarily required before a pilot program magistrate during a particular period.

- (b) the contents and requirements of a rehabilitation program;

Example—

The maximum number of times an offender must ordinarily report for drug testing during a particular period.

- (c) the ordinary requirements for successful completion of a rehabilitation program.

44 Approved forms

The chief executive may approve forms for this Act.

45 Review of Act by Minister

(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.

46 Report on Act's operation by pilot program magistrate

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

(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.

46A Transitional provisions for Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Act 2002

(1) Sections 6 and 19,¹⁹ as in force immediately before the commencement of this subsection, continue to apply in relation to an intensive drug rehabilitation order made before the commencement.

(2) The release under section 16(1)²⁰ during the transitional period of a person on bail subject to a condition that the person report to persons at the times and places directed by a community correctional officer is taken instead to have been subject to a condition that the person report to persons at the times and places directed by a corrective services officer.

(3) In this section—

“**transitional period**” means the period beginning on 1 July 2001 and ending immediately before the commencement of subsection (2).

47 Expiry of Act

(1) This Act expires 42 months after it commences.

(1A) However, a regulation made before the end of the 42 months may defer the expiry of this Act, but only for 1 year.

(2) Despite the expiry of this Act under this section, a warrant issued under section 40(1), but not executed before the expiry, remains in force

19 Sections 6 (Who is an “eligible person”) and 19 (Making of order)

20 Section 16 (Referral for assessment)

Drug Rehabilitation (Court Diversion) Act 2000

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 20A²¹ applies.

²¹ *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

SCHEDULE**DICTIONARY**

section 5

“active intensive drug rehabilitation order” means an intensive drug rehabilitation order other than—

- (a) an intensive drug rehabilitation order, the rehabilitation program for which has been terminated under section 34; or
- (b) an intensive drug rehabilitation order that has been vacated.

“approved form” see section 44.

“authorised corrective services officer” see *Penalties and Sentences Act 1992*, section 4A.²²

“community service” means any activity declared by the corrective services’ chief executive to be community service for the *Corrective Services Act 2000* or the *Penalties and Sentences Act 1992*.

“community term of imprisonment” see section 7B.

“corrective services’ chief executive” means the chief executive of the department within which the *Corrective Services Act 2000* is administered.

“corrective services office” means an office of the department within which the *Corrective Services Act 2000* is administered.

“corrective services officer” see the *Corrective Services Act 2000*.

“corresponding provision” means a corresponding provision of a law of another State or the Commonwealth.

“disqualifying offence” see section 7.

“disqualifying term of imprisonment” see section 7A.

²² *Penalties and Sentences Act 1992*, section 4A (Meaning of “authorised corrective services officer”)

SCHEDULE (continued)

“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—

- (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 2000*.

“rehabilitated term of imprisonment” see section 7D.

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

“relevant offence” see section 8.

“suspended term of imprisonment” see section 7C.

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

ENDNOTES

1 Index to endnotes

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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 25 October 2002. 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.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
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	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of earlier reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	13 June 2000	7 July 2000
1A	to Act No. 46 of 2000	25 October 2000	8 November 2000
1B	to Act No. 58 of 2000	17 November 2000	27 November 2000
1C	to Act No. 23 of 2002	19 July 2002	

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 2003 (see s 47(1), as amd 2002 No. 23 s 45)

amending legislation—

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch

date of assent 25 October 2000

commenced on date of assent

Justice and Other Legislation (Miscellaneous Provisions) Act 2000 No. 58 ss 1–2 sch

date of assent 17 November 2000

s 2 sch amdt 4 (amdt could not be given effect)

commenced on date of assent

Criminal Law Amendment Act 2002 No. 23 ss 1, 2(3), pt 5

date of assent 23 May 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 19 July 2002 (2002 SL No. 157)

Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Act 2002 No. 41

date of assent 12 September 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 25 October 2002 (2002 SL No. 279)

6 List of annotations

Notes in text

s 4A ins 2002 No. 41 s 4

Who is an “eligible person”

s 6 amd 2002 No. 41 s 5

What is a “disqualifying offence”

s 7 amd 2000 No. 58 s 2 sch; 2002 No. 41 s 6

What is a “disqualifying term of imprisonment”

s 7A ins 2002 No. 41 s 7

What is a “community term of imprisonment”

s 7B ins 2002 No. 41 s 7

What is a “suspended term of imprisonment”

s 7C ins 2002 No. 41 s 7

What is a “rehabilitated term of imprisonment”

s 7D ins 2002 No. 41 s 7

Other functions of pilot program magistrates

s 12 amd 2002 No. 41 s 3 sch

Deciding whether to refer for assessment

s 15 amd 2002 No. 23 s 38

Referral for assessment

s 16 amd 2002 No. 41 s 3 sch

Making of order

s 19 amd 2002 No. 23 s 39; 2002 No. 41 s 8

Terminating rehabilitation programs

s 34 amd 2002 No. 23 s 40; 2002 No. 41 s 9

Inclusion of new rehabilitation program

s 35A ins 2002 No. 23 s 41

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

s 36 amd 2002 No. 23 s 42

Immunity from prosecution

s 37 amd 2000 No. 58 s 2 sch

Disclosure of compliance and related information

prov hdg sub 2002 No. 23 s 43(1)

s 39 amd 2002 No. 23 s 43(2)–(4)

Regulation-making power

s 43 amd 2002 No. 23 s 44

Transitional provisions for Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Act 2002

s 46A ins 2002 No. 41 s 10

Expiry of Act

s 47 amd 2002 No. 23 s 45

SCHEDULE—DICTIONARYdef “**active intensive drug rehabilitation order**” ins 2002 No. 23 s 46def “**community correctional officer**” om 2002 No. 41 s 3 schdef “**community service**” amd 2002 No. 41 s 3 schdef “**community term of imprisonment**” ins 2002 No. 41 s 3 schdef “**corrective services’ chief executive**” amd 2002 No. 41 s 3 schdef “**corrective services office**” ins 2002 No. 41 s 3 schdef “**corrective services officer**” ins 2002 No. 41 s 3 schdef “**corresponding provision**” ins 2002 No. 41 s 3 schdef “**disqualifying term of imprisonment**” ins 2002 No. 41 s 3 schdef “**offender**” amd 2000 No. 46 s 3 sch; 2000 No. 58 s 2 sch (amdt could not be given effect)def “**prison**” amd 2002 No. 41 s 3 schdef “**rehabilitated term of imprisonment**” ins 2002 No. 41 s 3 schdef “**suspended term of imprisonment**” ins 2002 No. 41 s 3 sch**7 List of forms****Form 1 Version 1—Order—Referral for assessment**

pubd gaz 9 June 2000 p 446

Form 2 Version 1—Instrument ordering production of a prisoner

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Form 3 Version 1—Intensive drug rehabilitation order

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Form 4 Version 1—Amendments to intensive drug rehabilitation order

pubd gaz 9 June 2000 p 446

Form 5 Version 1—Warrant of commitment where suspension of sentence delayed

pubd gaz 9 June 2000 p 446

Form 6 Version 1—Release authority

pubd gaz 9 June 2000 p 446

Form 7 Version 1—Permit for offender to leave or stay out of Queensland

pubd gaz 9 June 2000 p 446

Form 8 Version 1—Community service order

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Form 9 Version 1—Warrant of commitment for detoxification or assessment

pubd gaz 9 June 2000 p 446

Form 10 Version 1—Application for reward or sanction

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Form 11 Version 1—Warrant of commitment for sanction of imprisonment

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Form 12 Version 1—Application to amend intensive drug rehabilitation order
pubd gaz 9 June 2000 p 446

Form 13 Version 1—Application to terminate an intensive drug rehabilitation program
pubd gaz 9 June 2000 p 446

Form 14 Version 1—Notice of application to amend or terminate intensive drug rehabilitation order
pubd gaz 9 June 2000 p 446

Form 15 Version 1—Bench warrant to arrest and detain a participant in a rehabilitation program
pubd gaz 9 June 2000 p 446