

Queensland



# **DRUG DIVERSION AMENDMENT ACT 2002**

**Act No. 59 of 2002**



Queensland



**DRUG DIVERSION AMENDMENT  
ACT 2002**

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Queensland



## **Drug Diversion Amendment Act 2002**

### **Act No. 59 of 2002**

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**An Act to amend the *Juvenile Justice Act 1992* and the *Penalties and Sentences Act 1992* to facilitate the provision of drug assessment and education sessions to particular offenders appearing before drug diversion courts**

*[Assented to 14 November 2002]*

The Parliament of Queensland enacts—

## PART 1—PRELIMINARY PROVISIONS

### 1 Short title

This Act may be cited as the *Drug Diversion Amendment Act 2002*.

## PART 2—AMENDMENT OF JUVENILE JUSTICE ACT 1992

### 2 Act amended in pt 2

This part amends the *Juvenile Justice Act 1992*.

### 3 Amendment of s 5 (Definitions)

Section 5—

*insert—*

‘**“approved provider”**, for part 5, division 1B,<sup>1</sup> see section 119J.

**“attend”**, for part 5, division 1B, see section 119F.

**“disqualifying offence”**, for part 5, division 1B, see section 119I.

**“drug assessment and education session”**, for part 5, division 1B, see section 119F.

**“drug diversion court”**, for part 5, division 1B, see section 119F.

**“eligible child”**, for part 5, division 1B, see section 119G.

**“eligible drug offence”**, for part 5, division 1B, see section 119H.’

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1 Part 5 (Sentencing), division 1B (Court referred drug assessment and education sessions before sentencing)

#### 4 Insertion of new pt 5, div 1B

Part 5—

*insert—*

***‘Division 1B—Court referred drug assessment and education sessions before sentencing***

***‘Subdivision 1—Interpretation***

#### **‘119F Definitions for div 1B**

‘In this division—

**“approved provider”** see section 119J.

**“attend”**, for a drug assessment and education session, means attend all of the session.

**“disqualifying offence”** see section 119I.

**“drug assessment and education session”**, for a child, means a single one-on-one session provided by an approved provider involving assessment of the child’s drug use, drug education and identification of any appropriate treatment options for the child.

**“drug diversion court”** means a court prescribed under a regulation for the *Penalties and Sentences Act 1992*, section 15B<sup>2</sup> to be a drug diversion court.

**“eligible child”** see section 119G.

**“eligible drug offence”** see section 119H.

#### **‘119G Meaning of “eligible child”**

‘(1) An **“eligible child”** is a child charged with an eligible drug offence who has pleaded guilty to the offence.

‘(2) The child is not an **“eligible child”** if—

- (a) a charge against the child for a disqualifying offence is pending in a court; or

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2 *Penalties and Sentences Act 1992*, section 15B (Definitions for div 1)

(b) the child has, at any time, been convicted of a disqualifying offence; or

(c) 2 diversion alternatives have previously been given to the child.

‘(3) For subsection (2)(b), a conviction of a disqualifying offence does not include a conviction in relation to which the rehabilitation period has expired, and not been revived, under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

‘(4) For subsection (2)(c)—

(a) a diversion alternative has been given to the child if—

(i) a court has referred the child to a drug assessment and education session under section 119K;<sup>3</sup> or

(ii) the child has, at any time, agreed under the *Police Powers and Responsibilities Act 2000*, section 211<sup>4</sup> to attend a drug diversion assessment program; or

(iii) the child has been given a prescribed diversion alternative under a law of another State or the Commonwealth; and

(b) for counting the number of diversion alternatives given to the child, a diversion alternative—

(i) is counted even if it was given for an offence committed before the diversion alternative counted as the first diversion alternative was given; and

(ii) is not counted if it was given on the same day as the diversion alternative counted as the first diversion alternative was given.

‘(5) In this section—

“**conviction**” see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.<sup>5</sup>

“**prescribed diversion alternative**” means circumstances prescribed under a regulation for this definition that are similar to the circumstances mentioned in subsection (4)(a)(i) or (ii).

3 Section 119K (Reference to drug assessment and education session by court)

4 *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

5 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3 (Interpretation)



**“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.

### **‘119H Meaning of “eligible drug offence”**

**(1)** An **“eligible drug offence”** is—

- (a) an offence by a child against the *Drugs Misuse Act 1986*, section 9<sup>6</sup> of unlawfully having possession of a dangerous drug if—
  - (i) each dangerous drug mentioned in the charge for the offence is a prescribed dangerous drug; and
  - (ii) for each dangerous drug mentioned in the charge, the total quantity of the substances, preparations, solutions and admixtures in the child’s possession containing the dangerous drug is not more than the prescribed quantity in relation to the dangerous drug; and

*Example—*

Assume the charge mentioned prescribed drugs X and Y. The prescribed quantity in relation to X is 1.0 g and the prescribed quantity in relation to Y is 0.2 g. The child had—

- 0.2 g of a preparation containing X and Y; and
- 0.7 g of a preparation containing X; and
- 0.1 g of an admixture containing Y.

The total quantity of the preparations in the child’s possession containing X is 0.9 g (0.2 + 0.7) which is not more than the prescribed quantity in relation to X (1.0 g).

The total quantity of the preparation and admixture in the child’s possession containing Y is 0.3 g (0.2 + 0.1) which is more than the prescribed quantity in relation to Y (0.2 g).

Subsection (1)(a)(ii) is not satisfied.

- (iii) the court considers each dangerous drug mentioned in the charge was for the child’s personal use; or

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6 *Drugs Misuse Act 1986*, sections 9 (Possessing dangerous drugs)

(b) an offence against the *Drugs Misuse Act 1986*, section 10(2).<sup>7</sup>

‘(2) In this section—

“**dangerous drug**” see the *Drugs Misuse Act 1986*, section 4.<sup>8</sup>

“**prescribed dangerous drug**” means a dangerous drug prescribed under a regulation for the *Penalties and Sentences Act 1992*, section 15D.<sup>9</sup>

“**prescribed quantity**” means a quantity prescribed under a regulation for the *Penalties and Sentences Act 1992*, section 15D.

### ‘119I Meaning of “disqualifying offence”

‘(1) A “**disqualifying offence**” is—

- (a) an offence of a sexual nature; or
- (b) an offence against the *Drugs Misuse Act 1986*, section 5, 6, 8 or 9,<sup>10</sup> other than an offence dealt with, or to be dealt with, summarily; or
- (c) an indictable offence involving violence against another person,<sup>11</sup> 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 child or of any other person
  - section 340(b).<sup>12</sup>

<sup>7</sup> *Drugs Misuse Act 1986*, section 10 (Possessing things)

<sup>8</sup> *Drugs Misuse Act 1986*, section 4 (Definitions)

<sup>9</sup> *Penalties and Sentences Act 1992*, section 15D (Meaning of “eligible drug offence”)

<sup>10</sup> *Drugs Misuse Act 1986*, section 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs), 8 (Producing dangerous drugs) or 9 (Possessing dangerous drugs)

<sup>11</sup> *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.

<sup>12</sup> Criminal Code, sections 335 (Common assault) and 340 (Serious assaults)

‘(2) A reference to a provision in subsection (1) or (4) includes a reference to a law of another State or the Commonwealth that corresponds to the provision.

‘(3) A reference in subsection (1)(c) to an indictable offence includes a reference to an indictable offence dealt with summarily.

‘(4) In this section—

“**offence of a sexual nature**” means an offence defined in the Criminal Code, section 208, 209, 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 228, 229B, 323A, 323B, 363A or chapter 32.<sup>13</sup>

### ‘119J Meaning of “approved provider”

‘(1) An “**approved provider**” is an entity approved by the chief executive (health) by gazette notice to provide drug assessment and education sessions.

‘(2) In this section—

“**chief executive (health)**” means the chief executive of the department within which the *Health Act 1937* is administered.

### ‘*Subdivision 2—Reference and consequences*

### ‘119K Reference to drug assessment and education session by court

‘(1) This section applies if a finding of guilt for an eligible drug offence is made against an eligible child before a drug diversion court.

‘(2) The court may refer the child to a drug assessment and education session if the child consents to attend the session.

13 Criminal Code, section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16 years), 213 (Owner etc. permitting abuse of children on premises), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 217 (Procuring young person etc. for carnal knowledge), 218 (Procuring sexual acts by coercion etc.), 219 (Taking child for immoral purposes), 221 (Conspiracy to defile), 222 (Incest), 227 (Indecent acts), 228 (Obscene publications and exhibitions), 229B (Maintaining a sexual relationship with a child), 323A (Female genital mutilation), 323B (Removal of child from State for female genital mutilation), 363A (Abduction of child under 16) or chapter 32 (Rape and sexual assaults)

‘(3) On making the referral, the court must—

- (a) direct the child attend a drug assessment and education session by a stated date; and
- (b) adjourn the proceeding for the offence.

#### **‘119L If child attends drug assessment and education session**

‘(1) This section applies if—

- (a) a court refers a child to a drug assessment and education session and directs the child attend the session by a stated date; and
- (b) the child attends the session by the stated date.

‘(2) The approved provider for the drug assessment and education session must give notice to the court’s proper officer that the child attended the session by the stated date.

‘(3) A notice under subsection (2)—

- (a) brings the court proceeding for the offence to an end; and
- (b) the child is then not liable to be further prosecuted for the offence.

‘(4) On the day the notice is received by the court, the child is taken to have been found guilty by the court of the offence without a conviction being recorded.

#### **‘119M If child fails to attend drug assessment and education session**

‘(1) This section applies if—

- (a) a court refers a child to a drug assessment and education session and directs the child attend the session by a stated date; and
- (b) the child fails to attend the session by the stated date.

‘(2) The approved provider for the drug assessment and education session must give notice to the court’s proper officer that the child failed to attend the session by the stated date.

‘(3) The court’s proper officer may—

- (a) take no action; or

(b) bring the charge for the offence back on before the court for sentencing.

‘(4) For subsection (3)(b), the proper officer must give notice to the child and the chief executive that the proceeding for the offence is to be heard by the court on a stated day.’.

## **PART 3—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992**

### **5 Act amended in pt 3**

This part amends the *Penalties and Sentences Act 1992*.

### **6 Amendment of s 4 (Definitions)—**

Section 4—

*insert—*

‘**“approved provider”**, for part 3, division 1,<sup>14</sup> see section 15F.

**“attend”**, for part 3, division 1, see section 15B.

**“disqualifying offence”**, for part 3, division 1, see section 15E.

**“drug assessment and education session”**, for part 3, division 1, see section 15B.

**“drug diversion condition”**, for part 3, division 1, see section 19(2A).

**“drug diversion court”**, for part 3, division 1, see section 15B.

**“eligible drug offence”**, for part 3, division 1, see section 15D.

**“eligible drug offender”**, for part 3, division 1, see section 15C.’.

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14 Part 3 (Releases, restitution and compensation), division 1 (Orders to release certain offenders)

## 7 Insertion of pt 3, div 1, sdiv 1 and sdiv 2, heading

Before section 16—

*insert—*

### *‘Subdivision 1—Interpretation*

#### **‘15B Definitions for div 1**

‘In this division—

**“approved provider”** see section 15F.

**“attend”**, for a drug assessment and education session, means attend all of the session.

**“disqualifying offence”** see section 15E.

**“drug assessment and education session”**, for an offender, means a single one-on-one session provided by an approved provider involving assessment of the offender’s drug use, drug education and identification of any appropriate treatment options for the offender.

**“drug diversion condition”** see section 19(2A).

**“drug diversion court”** means a court prescribed under a regulation for this definition.

**“eligible drug offence”** see section 15D.

**“eligible drug offender”** see section 15C.

#### **‘15C Meaning of “eligible drug offender”**

‘(1) An **“eligible drug offender”** is a person charged with an eligible drug offence who has pleaded guilty to the offence.

‘(2) The person is not an **“eligible drug offender”** if—

- (a) a charge against the person for a disqualifying offence is pending in a court; or
- (b) the person has, at any time, been convicted of a disqualifying offence; or
- (c) 2 diversion alternatives have previously been given to the person.

‘(3) For subsection (2)(b), a conviction of a disqualifying offence does not include a conviction in relation to which the rehabilitation period has expired, and not been revived, under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

‘(4) For subsection (2)(c)—

- (a) a diversion alternative has been given to the person if—
  - (i) a court has made an order in relation to the person under section 19(1)(b) that includes a drug diversion condition; or
  - (ii) the offender has, at any time, agreed under the *Police Powers and Responsibilities Act 2000*, section 211<sup>15</sup> to attend a drug diversion assessment program; or
  - (iii) the person has been given a prescribed diversion alternative under a law of another State or the Commonwealth; and
- (b) for counting the number of diversion alternatives given to the person, a diversion alternative—
  - (i) is counted even if it was given for an offence committed before the diversion alternative counted as the first diversion alternative was given; and
  - (ii) is not counted if it was given on the same day as the diversion alternative counted as the first diversion alternative was given.

‘(5) In this section—

“**conviction**” see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.<sup>16</sup>

“**prescribed diversion alternative**” means circumstances prescribed under a regulation for this definition that are similar to the circumstances mentioned in subsection (4)(a)(i) or (ii).

“**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.

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15 *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

16 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3 (Interpretation)

### ‘15D Meaning of “eligible drug offence”

‘(1) An “eligible drug offence” is—

- (a) an offence by a person against the *Drugs Misuse Act 1986*, section 9<sup>17</sup> of unlawfully having possession of a dangerous drug if—
- (i) each dangerous drug mentioned in the charge for the offence is a prescribed dangerous drug; and
  - (ii) for each dangerous drug mentioned in the charge, the total quantity of the substances, preparations, solutions and admixtures in the person’s possession containing the dangerous drug is not more than the prescribed quantity in relation to the dangerous drug; and

*Example—*

Assume the charge mentioned prescribed drugs X and Y. The prescribed quantity in relation to X is 1.0 g and the prescribed quantity in relation to Y is 0.2 g. The person had—

- 0.2 g of a preparation containing X and Y; and
- 0.7 g of a preparation containing X; and
- 0.1 g of an admixture containing Y.

The total quantity of the preparations in the person’s possession containing X is 0.9 g (0.2 + 0.7) which is not more than the prescribed quantity in relation to X (1.0 g).

The total quantity of the preparation and admixture in the person’s possession containing Y is 0.3 g (0.2 + 0.1) which is more than the prescribed quantity in relation to Y (0.2 g).

Subsection (1)(a)(ii) is not satisfied.

- (iii) the court considers each dangerous drug mentioned in the charge was for the person’s personal use; or
- (b) an offence against the *Drugs Misuse Act 1986*, section 10(2).<sup>18</sup>

‘(2) In this section—

“**dangerous drug**” see the *Drugs Misuse Act 1986*, section 4.<sup>19</sup>

17 *Drugs Misuse Act 1986*, section 9 (Possessing dangerous drugs)

18 *Drugs Misuse Act 1986*, section 10 (Possessing things)

19 *Drugs Misuse Act 1986*, section 4 (Definitions)



**“prescribed dangerous drug”** means a dangerous drug prescribed under a regulation for this definition.

**“prescribed quantity”** means a quantity prescribed under a regulation for this definition.

**‘15E Meaning of “disqualifying offence”**

**‘(1)** A **“disqualifying offence”** is—

- (a) an offence of a sexual nature; or
- (b) an offence against the *Drugs Misuse Act 1986*, section 5, 6, 8 or 9,<sup>20</sup> other than an offence dealt with, or to be dealt with, summarily; or
- (c) an indictable offence involving violence against another person,<sup>21</sup> 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).<sup>22</sup>

**‘(2)** A reference to a provision in subsection (1) or (4) includes a reference to a law of another State or the Commonwealth that corresponds to the provision.

**‘(3)** A reference in subsection (1)(c) to an indictable offence includes a reference to an indictable offence dealt with summarily.

**‘(4)** In this section—

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20 *Drugs Misuse Act 1986*, section 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs), 8 (Producing dangerous drugs) or 9 (Possessing dangerous drugs)

21 *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.

22 *Criminal Code*, sections 335 (Common assault) and 340 (Serious assaults)

“**offence of a sexual nature**” means an offence defined in the Criminal Code, section 208, 209, 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 228, 229B, 323A, 323B, 363A or chapter 32.<sup>23</sup>

#### ‘15F Meaning of “approved provider”

‘(1) An “**approved provider**” is an entity approved by the chief executive (health) by gazette notice to provide drug assessment and education sessions.

‘(2) In this section—

“**chief executive (health)**” means the chief executive of the department within which the *Health Act 1937* is administered.

#### ‘Subdivision 2—Orders’.

### 8 Amendment of s 17 (Making of order)

Section 17—

*insert—*

‘(2) Despite subsection (1), a drug diversion court may make an order under section 19(1)(b) that includes a drug diversion condition if the matters mentioned in section 19(2A)(b) and (c) are satisfied.’.

### 9 Amendment of s 19 (Order of court)

After section 19(2)—

*insert—*

23 Criminal Code, section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16 years), 213 (Owner etc. permitting abuse of children on premises), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 217 (Procuring young person etc. for carnal knowledge), 218 (Procuring sexual acts by coercion etc.), 219 (Taking child for immoral purposes), 221 (Conspiracy to defile), 222 (Incest), 227 (Indecent acts), 228 (Obscene publications and exhibitions), 229B (Maintaining a sexual relationship with a child), 323A (Female genital mutilation), 323B (Removal of child from State for female genital mutilation), 363A (Abduction of child under 16) or chapter 32 (Rape and sexual assaults)

‘(2A) Without limiting subsection (2), the court may impose a condition that the offender must attend a drug assessment and education session by a stated date (a “**drug diversion condition**”) if—

- (a) the court is a drug diversion court; and
- (b) the offender is an eligible drug offender; and
- (c) the offender consents to attending a drug assessment and education session.’.