



Queensland

Drug Legislation Amendment Act 2006

Act No. 8 of 2006



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Queensland

Drug Legislation Amendment Act 2006

Act No. 8 of 2006

An Act to amend the *Drug Rehabilitation (Court Diversion) Act 2000* and *Drugs Misuse Act 1986*, and for other purposes

[Assented to 15 March 2006]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Drug Legislation Amendment Act 2006*.

2 Commencement

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

Part 2 Amendment of Drug Rehabilitation (Court Diversion) Act 2000

3 Act amended in pt 2

This part amends the *Drug Rehabilitation (Court Diversion) Act 2000*.

4 Replacement of long title

Long title—

omit, insert—

‘An Act to provide a drug court program for intensive drug rehabilitation of drug dependent offenders’.

5 Replacement of s 1 (Short title)

Section 1—

omit, insert—

‘1 Short title

‘This Act may be cited as the *Drug Court Act 2000*.’.

6 Replacement of s 3 (Objects of this Act)

Section 3—

omit, insert—

‘3 Objects of this Act

‘(1) The objects of this Act are—

- (a) to reduce the level of drug dependency in the community and the drug dependency of eligible persons; and
- (b) to reduce the level of criminal activity associated with drug dependency; and
- (c) to reduce the health risks associated with drug dependency of eligible persons; and
- (d) to promote the rehabilitation of eligible persons and their re-integration into the community; and
- (e) to reduce pressure on resources in the court and prison systems.

‘(2) The objects are to be achieved by establishing drug courts.’.

7 Amendment of s 4 (Relationship with Penalties and Sentences Act 1992)

Section 4(1), ‘pilot program’—

omit, insert—

‘drug court’.

8 Amendment of s 6 (Who is an *eligible person*)

(1) Section 6(1), ‘pilot program’—

omit, insert—

‘drug’.

- (2) Section 6(5)—
omit.

9 Amendment of s 7 (What is a *disqualifying offence*)

- (1) Section 7(1)(b), ‘an indictable offence’—
omit, insert—
‘an offence’.

- (2) Section 7—
insert—

- ‘(4) For subsection (1)(b), an offence involving violence against another person is an offence that involves any allegation of personal violence, whether as an element of the offence or as an act of violence associated with the offence.

Examples of offences involving violence other than as an element of the offence—

- operating a vehicle dangerously involving dragging a person behind the vehicle
- operating a vehicle dangerously involving intentionally colliding with another vehicle or a person
- breaching a domestic violence order involving a wilful injury’.

10 Omission of s 7A (What is a *disqualifying term of imprisonment*)

Section 7A—
omit.

11 Renumbering of s 7B (What is a *community term of imprisonment*)

Section 7B—
renumber as section 7A.

12 Omission of ss 7C and 7D

Sections 7C and 7D—

omit.

13 Replacement of pt 3, hdg (Pilot program courts and pilot program magistrates)

Part 3, heading—

omit, insert—

‘Part 3 Drug courts and drug court magistrates’.**14 Amendment of s 9 (Pilot program courts)**

(1) Section 9, heading—

omit, insert—

‘Drug courts’.

(2) Section 9(1), ‘pilot program courts’—

omit, insert—

‘drug courts’.

(3) Section 9(2) and (3), ‘pilot program court’—

omit, insert—

‘drug court’.

(4) Section 9(2) and (3), ‘pilot program magistrate’—

omit, insert—

‘drug court magistrate’.

15 Amendment of s 10 (Pilot program magistrates)

(1) Section 10, heading, ‘Pilot program’—

omit, insert—

‘Drug court’.

(2) Section 10, ‘Chief Stipendiary Magistrate’—

omit, insert—

‘Chief Magistrate’.

- (3) Section 10(1) and (2), ‘pilot program’—

omit, insert—

‘drug court’.

16 Amendment of s 11 (Functions, additional jurisdiction and powers of pilot program magistrates)

Section 11, ‘pilot program’—

omit, insert—

‘drug court’.

17 Amendment of 12 (Other functions of pilot program magistrates)

- (1) Section 12, ‘pilot program’—

omit, insert—

‘drug court’.

- (2) Section 12(2)(a) and (b), ‘Chief Stipendiary Magistrate’—

omit, insert—

‘Chief Magistrate’.

18 Insertion of new pt 3A

After section 12—

insert—

‘Part 3A Indicative assessment of drug dependency

‘12A Application of pt 3A

‘This part applies if—

- (a) a person charged with a relevant offence appears before a magistrate; and

- (b) the person has pleaded guilty to the offence or has indicated that he or she intends to plead guilty to the offence; and
- (c) the magistrate is satisfied the person may be drug dependent; and
- (d) the person appears, to the magistrate, to be an eligible person.

‘12B Referral for indicative assessment

- ‘(1) The magistrate may decide to refer the person for an indicative assessment.
- ‘(2) If the magistrate decides to refer the person for an indicative assessment, the magistrate may adjourn the proceedings and—
 - (a) remand the person in custody to appear before a drug court magistrate; or
 - (b) release the person on bail to appear before a drug court magistrate.
- ‘(3) If the magistrate adjourns the proceedings to refer the person for an indicative assessment, the magistrate must require—
 - (a) the person to attend at the times and places decided by the chief executive (health) for an indicative assessment by an appropriately qualified health professional decided by the chief executive (health); and
 - (b) the chief executive (health) to prepare and submit to a drug court magistrate, within the time allowed by the magistrate, a report (an *indicative assessment report*) containing an indicative assessment of the person by the appropriately qualified health professional.
- ‘(4) The magistrate may require the indicative assessment report to be given orally or in writing.
- ‘(5) If the magistrate remands the person in custody, the chief executive (corrective services) must ensure the person—
 - (a) is assessed by an appropriately qualified health professional decided by the chief executive (health); and

- (b) appears before a drug court magistrate to be dealt with as required by the drug court magistrate.
- ‘(6) After the indicative assessment report is submitted to a drug court magistrate, the prosecuting authority appearing before the court and the person’s legal representatives may make submissions about whether the proceedings should continue in the drug court or the matter should be dealt with by a magistrates court.

‘12C Indicative assessment reports

- ‘(1) When required to do so by a magistrate, the chief executive (health) must arrange for an appropriately qualified health professional to prepare an indicative assessment report for a drug court magistrate about a stated person remanded or required to appear before the drug court magistrate.
- ‘(2) The indicative assessment report must be given to the drug court magistrate within the time allowed under section 12B(3) by the drug court magistrate.
- ‘(3) The drug court magistrate must give a copy of the indicative assessment report to—
 - (a) the prosecuting authority that appeared before the court when the offender was referred for an indicative assessment; and
 - (b) the person’s legal representatives; and
 - (c) the chief executive (corrective services).
- ‘(4) The drug court magistrate must ensure the prosecuting authority and the person’s legal representatives have sufficient time before the proceedings to consider and respond to the report.

‘12D Additional matters for indicative assessment report

- ‘(1) The drug court magistrate may order that the report, or part of the report, not be shown to the person.
- ‘(2) A report purporting to be an indicative assessment report made by an appropriately qualified health professional is evidence of the matters contained in it.

- ‘(3) An objection must not be taken or allowed to the evidence on the ground that it is hearsay.
- ‘(4) To remove any doubt, it is declared that this section does not limit the jurisdiction and powers of the drug court magistrate under section 11.’.

19 Amendment of s 13 (Application of pt 4)

Section 13(a), ‘pilot program’—

omit, insert—

‘drug’.

20 Amendment of s 14 (Referral to be decided as soon as practicable)

Section 14(1), ‘pilot program’—

omit, insert—

‘drug’.

21 Amendment of s 15 (Deciding whether to refer for assessment)

Section 15(2)(b), ‘pilot program’—

omit, insert—

‘drug court’.

22 Amendment of s 16 (Referral for assessment)

(1) Section 16(1)(a) and (b), (2) and (4), ‘pilot program’—

omit, insert—

‘drug court’.

(2) Section 16(2), ‘corrective services’ chief executive’—

omit, insert—

‘chief executive (corrective services)’.

(3) Section 16(2), ‘report’—

omit, insert—

‘pre-sentence report’.

(4) Section 16—

insert—

‘(2A) Also, if the magistrate adjourns the proceedings, the magistrate must require the chief executive (health) to prepare and submit to a drug court magistrate, within the time allowed by the magistrate, a written report (an *assessment report*) containing an assessment of the person by an appropriately qualified health professional.’.

(5) Section 16(3), ‘report’—

omit, insert—

‘pre-sentence report and assessment report’.

(6) Section 16(3)(a), ‘a stated corrective services office’—

omit, insert—

‘an authorised corrective services officer’.

(7) Section 16(3)(b), ‘a corrective services officer’—

insert—

‘an authorised corrective services officer, including to an appropriately qualified health professional decided by the chief executive (health) for assessment’.

(8) Section 16(4)—

omit, insert—

‘(4) If the magistrate remands the person in custody, the chief executive (corrective services) must ensure the person—

- (a) is assessed by an appropriately qualified health professional decided by the chief executive (health); and
- (b) appears before a drug court magistrate to be dealt with as required by the drug court magistrate.’.

(9) Section 16(2A) to (4)—

renumber as section 16(3) to (5).

23 Insertion of new ss 16A and 16B

Part 4—

insert—

‘16A Assessment report

- ‘(1) When required to do so by a magistrate, the chief executive (health) must arrange for an appropriately qualified health professional to prepare an assessment report for a drug court magistrate about a stated person remanded or required to appear before the drug court magistrate.
- ‘(2) The assessment report must be given to the drug court magistrate within the time allowed under section 16(3) by the magistrate.
- ‘(3) The drug court magistrate must give a copy of the assessment report to—
 - (a) the prosecuting authority that appeared before the court when the offender was referred for assessment; and
 - (b) the person’s legal representatives; and
 - (c) the chief executive (corrective services).
- ‘(4) The drug court magistrate must ensure the prosecuting authority and the person’s legal representatives have sufficient time before the proceedings to consider and respond to the assessment report.

‘16B Additional matters for assessment report

- ‘(1) The drug court magistrate may order that the assessment report, or part of the assessment report, not be shown to the person.
- ‘(2) A report purporting to be an assessment report made by an appropriately qualified health professional is evidence of the matters contained in it.
- ‘(3) An objection must not be taken or allowed to the evidence on the ground that it is hearsay.’.

24 Amendment of s 17 (Application of pt 5)

Section 17(1), 'pilot program'—

omit, insert—

'drug court'.

25 Amendment of s 18 (Pilot program magistrate may make order only if conviction recorded)

(1) Section 18, heading, 'Pilot program'—

omit, insert—

'Drug court'.

(2) Section 18(1), 'pilot program'—

omit, insert—

'drug court'.

26 Amendment of s 19 (Making of order)

(1) Section 19, 'pilot program'—

omit, insert—

'drug court'.

(2) Section 19(e)(i), '2'—

omit, insert—

'3'.

(3) Section 19(e)(ii), '3'—

omit, insert—

'4'.

(4) Section 19(i)(i)—

omit, insert—

'(i) the pre-sentence report and assessment report mentioned in section 16; and'.

27 Amendment of s 20 (Contents of order)

- (1) Section 20, ‘pilot program’—

omit, insert—

‘drug court’.

- (2) Section 20—

insert—

- ‘(2) For subsection (1)(a)(i), the intensive drug rehabilitation order may contain an order sentencing the offender to serve a term of imprisonment of more than 3 years only if the prosecuting authority appearing before the court and the offender have consented to the offence being prosecuted summarily on the ground that the defendant will be adequately punished on summary conviction.’.

28 Amendment of s 21 (Delaying suspension of sentence)

- (1) Section 21, ‘pilot program magistrate’—

omit, insert—

‘drug court magistrate’.

- (2) Section 21(a) and (b), ‘14’—

omit, insert—

‘15’.

- (3) Section 21(b)(i), ‘pilot program court’—

omit, insert—

‘drug court’.

29 Replacement of s 22 (General requirements of order)

Section 22—

omit, insert—

‘22 Core conditions of intensive drug rehabilitation order

‘An intensive drug rehabilitation order is subject to the following core conditions—

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

30 Amendment of s 23 (Additional requirements of order)

- (1) Section 23(1)(b), '120'—
omit, insert—
'240'.
- (2) Section 23(1)(c), 'pilot program'—
omit, insert—
'drug court'.
- (3) Section 23—
insert—
'(3A) In deciding whether to require the offender to perform community service under subsection (1)(b), the drug court magistrate must consider the number of hours of community service the offender has outstanding under another order and when the hours must be completed.
'(3B) If the drug court magistrate decides to require the offender to perform community service under subsection (1)(b), the drug court magistrate must consider whether the offender is in a residential rehabilitation facility and is able to complete the community service.'

- (4) Section 23(3A) to (6)—
renumber as section 23(4) to (8).

31 Amendment of s 24 (Contents and requirements of rehabilitation program)

- (1) Section 24(3) and (4), ‘pilot program’—
omit, insert—
‘drug court’.
- (2) Section 24(3), ‘for up to 7 days at a time’—
omit.
- (3) Section 24—
insert—
- ‘(5) If a drug court magistrate commits an offender to prison to facilitate detoxification, the offender is committed to the prison until the earliest of the following—
- (a) 22 days after the offender is committed to prison for detoxification;
 - (b) the chief executive (corrective services) or chief executive (health) is satisfied the offender is detoxified;
 - (c) a drug court magistrate, on the offender’s application, orders the committal of the offender end.
- ‘(6) If an offender is committed to prison for an assessment of the offender’s participation in the program, the committal must not be for more than—
- (a) if the assessment is because the offender has failed to attend on a person or at a place as stated in the rehabilitation program—30 days; or
 - (b) otherwise—15 days.
- ‘(7) If a drug court magistrate commits an offender to prison under subsection (5) to facilitate detoxification, the drug court magistrate must order that after the committal ends the person must appear before a drug court magistrate at the time and place stated.

- ‘(8) If a drug court magistrate commits an offender to prison under subsection (6) for assessment, the drug court magistrate must state that after the committal ends the offender must—
- (a) appear before a drug court magistrate at the times and places stated; or
 - (b) attend at another place at the times stated.’.

32 Amendment of s 25 (Explaining orders)

- (1) Section 25(1), ‘pilot program’ to ‘to the offender’—
omit, insert—
‘drug court magistrate must explain, or cause to be explained, to the offender the following matters’.
- (2) Section 25(1)(a)(ii), before ‘requirements’—
insert—
‘core conditions and additional’.
- (3) Section 25(1)(d), ‘pilot program’—
omit, insert—
‘drug court’.

33 Amendment of 26 (Offender to agree to making or amending of order)

- (1) Section 26, ‘pilot program’—
omit, insert—
‘drug court’.
- (2) Section 26(1), after ‘order being made’—
insert—
‘, including the core conditions,’.

34 Amendment of s 27 (Copy of order to offender)

- (1) Section 27, ‘pilot program court’—
omit, insert—

‘drug court’.

(2) Section 27—

insert—

‘(1A) A copy of the core conditions must be included in, or attached to, the intensive drug rehabilitation order.’.

(3) Section 27(2), ‘copy’—

omit, insert—

‘copy of the intensive drug rehabilitation order’.

(4) Section 27(3), ‘(2)’—

omit, insert—

‘(3)’.

(5) Section 27(1A) to (3)—

renumber as section 27(2) to (4).

35 Amendment of s 28 (Multiple offences)

(1) Section 28(1), ‘pilot program’—

omit, insert—

‘drug court’.

(2) Section 28(3), ‘3’—

omit, insert—

‘4’.

36 Amendment of s 29 (Dealing with offenders if no intensive drug rehabilitation order made)

Section 29, ‘pilot program’—

omit, insert—

‘drug court’.

37 Amendment of s 30 (Application for reward or sanction)

Section 30, ‘pilot program’—

omit, insert—

‘drug court’.

38 Amendment of s 31 (Rewards)

Section 31(1), ‘pilot program’—

omit, insert—

‘drug court’.

39 Amendment of s 32 (Sanctions)

(1) Section 32(1), ‘pilot program magistrate’—

omit, insert—

‘drug court magistrate’.

(2) Section 32(1)(b), ‘pilot program court’—

omit, insert—

‘drug court’.

(3) Section 32(1), ‘satisfactorily’—

omit.

(4) Section 32(1)(c)—

omit.

(5) Section 32(1)(g) and (h)—

omit, insert—

‘(g) a term of imprisonment for up to 15 days for each failure to comply with the order, but not so as to impose a term of more than 22 days at any 1 hearing under this section;

(h) an increase in the amount of community service the offender must perform, but—

(i) not more than 40 hours community service for each failure to comply with the order; and

(ii) not so as to impose more than 40 hours community service at any 1 hearing under this section; and

- (iii) not so as to increase the total number of hours to be performed under this section and under the order to more than 240 hours.’.
- (6) Section 32(1)(d) to (h)—
renumber as section 32(1)(c) to (g).
- (7) Section 32(2) to (4)—
renumber as section 32(3) to (5).
- (8) Section 32—
insert—
- ‘(2) In deciding whether to increase the amount of community service the offender must perform under subsection (1)(g), the drug court magistrate must consider—
- (a) the number of hours of community service the offender has outstanding under another order and when the hours must be completed; and
- (b) whether the offender is in a residential rehabilitation facility and is able to complete the community service.’.
- (9) Section 32(5) (as renumbered), ‘subsection (1)(g)’—
omit, insert—
‘subsection (1)(f)’.

40 Amendment of s 33 (Amending intensive drug rehabilitation orders)

Section 33(1), ‘pilot program’—
omit, insert—
‘drug court’.

41 Amendment of s 34 (Terminating rehabilitation programs)

Section 34(1), ‘pilot program’—
omit, insert—
‘drug court’.

42 Amendment of s 35 (Process for application to amend intensive drug rehabilitation order or terminate rehabilitation program)

- (1) Section 35(1)(c) and (d)—
omit, insert—
'(c) a prosecuting authority.'
- (2) Section 35(2)(a) and (b), 'pilot program'—
omit, insert—
'drug court'.
- (3) Section 35(3) and (5), 'corrective services' chief executive'—
omit, insert—
'chief executive (corrective services)'
- (4) Section 35(5), 'the commissioner of the police service'—
omit, insert—
'a prosecuting authority'.
- (5) Section 35(6)—
omit.
- (6) Section 35(7), ', (5) or (6)'—
omit, insert—
'or (5)'
- (7) Section 35(8), definition *prosecuting authority*—
omit.
- (8) Section 35(7) and (8)—
renumber as section 35(6) and (7).

43 Amendment of s 35A (Inclusion of new rehabilitation program)

- Section 35A, 'pilot program'—
omit, insert—
'drug court'.

44 **Amendment of s 36 (Final sentence to be decided on completion or termination of rehabilitation program)**

(1) Section 36(3)—

omit, insert—

‘(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—

(a) whether any rewards or sanctions were given to or imposed on the offender; and

(b) if sanctions were imposed on the offender that included the imposition of a term of imprisonment under section 32(1)(f), the number and length of the terms imposed.’.

(2) Section 36(4)—

insert—

‘Note to subsection (4)—

See also the Criminal Code, section 552H(1)(b) for an express extension of a drug court magistrate’s power to impose a maximum penalty of 4 years imprisonment on summary conviction under section 552A or 552B of the Code.’.

(3) Section 36—

insert—

‘(7) It is declared that in applying the *Penalties and Sentences Act 1992*, section 161, to a sentence for a term of imprisonment imposed on an offender under this section, time spent in custody under this Act, other than under section 32(1)(f), is taken to be imprisonment already served under the sentence.’.

45 **Insertion of new s 36A**

Part 5, division 6—

insert—

‘36A **Drug court magistrate must consider views of drug court team**

‘(1) This section applies if a drug court magistrate is making a decision (a *relevant decision*) about any of the following matters—

-
- (a) whether an offender's rehabilitation program should include medical, psychiatric or psychological treatment (**health treatment**);
 - (b) what matters should be included in an offender's rehabilitation program about the offender's health treatment;
 - (c) where the offender should be placed for health treatment, including, for example, in a residential rehabilitation facility, an outpatient facility or with a particular service provider;
 - (d) how often the offender should meet with the persons providing or supervising the offender's rehabilitation program, including health treatment;
 - (e) how often the offender should appear before a drug court magistrate;
 - (f) whether or not to give a reward to, or impose a sanction on, an offender;
 - (g) whether or not an intensive drug rehabilitation order or a rehabilitation program for an offender should be amended;
 - (h) whether or not an intensive drug rehabilitation order for an offender should be terminated.
- '(2) The drug court magistrate must consider the views of the members of the offender's drug court team in making the relevant decision.
- '(3) In this section—
- drug court team**, for an offender, means the persons who—
- (a) act for an interested entity; and
 - (b) attend a hearing at which a relevant decision is made about the offender.
- interested entity** means any of the following—
- (a) Legal Aid (Queensland);
 - (b) a prosecuting authority;
 - (c) the department in which the *Corrective Services Act 2000* is administered;

- (d) the department in which the *Health Services Act 1991* is administered.’.

46 Amendment of s 39 (Disclosure of compliance and related information)

- (1) Section 39(1), ‘corrective services’ chief executive’—
omit, insert—
‘chief executive (corrective services)’.
- (2) Section 39(1), ‘pilot program’—
omit, insert—
‘drug court’.
- (3) Section 39(2) and (3)—
omit.
- (4) Section 39(5), definition *pilot program database*—
omit, insert—
‘**drug court database** means a database for the drug court diversion program to which only a prescribed person has access.’.
- (5) Section 39(4) and (5)—
renumber as section 39(2) and (3).

47 Insertion of new ss 39A–39C

After section 39—

insert—

‘39A Disclosure of relevant information

- ‘(1) A person who is a member of a drug court team for an offender may give another member of the drug court team any relevant information the person has about the offender.

- ‘(2) In this section—

compliance information see section 39.

drug court team, for an offender, means any of the following persons who are responsible for attending the drug court and

providing reports to the drug court magistrate about the performance of the offender under the intensive drug rehabilitation order—

- (a) a corrective services officer;
- (b) a police officer;
- (c) a person employed for the purposes of the *Director of Public Prosecutions Act 1984*;
- (d) a health service employee under the *Health Services Act 1991*;
- (e) a Legal Aid employee under the *Legal Aid Queensland Act 1997*.

related information see section 39.

relevant information means—

- (a) compliance information; or
- (b) related information; or
- (c) any other information prescribed under a regulation for this section;

but does not include information to which legal professional privilege attaches.

‘39B Protection from liability

‘(1) This section applies if—

- (a) a person who is a health professional gives an indicative assessment report to the chief executive (health) or a drug court magistrate; or
- (b) a person who is a health professional gives an assessment report to the chief executive (health) or a drug court magistrate; or
- (c) a prescribed person gives the chief executive (corrective services) or a drug court magistrate compliance information under section 39; or
- (d) a prescribed person enters compliance information or related information in the drug court database under section 39; or

- (e) a person who is a member of a drug court team for an offender gives another member of the team relevant information under section 39A.
- ‘(2) The person is not liable, civilly, criminally or under an administrative process, for giving the report, or giving or entering the information, honestly and on reasonable grounds.
- ‘(3) Also, merely because the person gives the report, or gives or enters the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.
- ‘(4) Without limiting subsections (2) and (3)—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the report or information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the report or information under an Act, oath or rule of law or practice, the person—
 - (i) does not contravene the Act, oath or rule of law or practice by giving the report or giving or entering information; and
 - (ii) is not liable to disciplinary action for giving the report or giving or entering information.

‘39C Protection of personal information about offenders

- ‘(1) This section applies if a personal information document about an offender is given to a drug court.
- ‘(2) The clerk of the court of a drug court may give a copy of a personal information document to a person, other than the offender to whom the document relates, only if—
 - (a) the person applies to the drug court for a copy of the document; and
 - (b) the court is satisfied the person has a sufficient interest in the document; and

- (c) the court orders the person is to be given a copy of the document.
- ‘(3) A regulation may provide for the storage of personal information documents to ensure the confidentiality of information in the document.
- Example for subsection (3)—*
- A regulation may provide that a medical report about an offender, kept in the offender’s file, is to be stored in a sealed envelope.
- ‘(4) This section applies despite any other Act, including the *Justices Act 1886*, section 154.
- ‘(5) In this section—
- personal information document*** means a document that is prescribed, under a regulation, to be a document to which this section applies.’.

48 Amendment of s 40 (Arrest warrants)

- (1) Section 40(1) and (2), ‘pilot program magistrate’—
- omit, insert—*
- ‘drug court magistrate’.
- (2) Section 40(4), ‘pilot program court’—
- omit, insert—*
- ‘drug court’.
- (3) Section 40(4), as amended—
- renumber* as section 40(7).
- (4) Section 40—
- insert—*
- ‘(4) If the drug court magistrate decides to refer the offender for an assessment as to whether the offender should continue with the offender’s intensive drug rehabilitation order or to reserve making a decision about terminating the offender’s rehabilitation program, the magistrate may remand the offender in custody to appear before a drug court magistrate.
- ‘(5) The period for which an offender may be remanded in custody is as follows—

- (a) an initial period of not more than 30 days;
 - (b) a further period or periods of not more than 8 days.
- ‘(6) If the drug court magistrate remands the offender in custody, the chief executive (corrective services) must ensure the person appears before a drug court magistrate to be dealt with as required by the drug court magistrate.’.

49 Amendment of s 41 (Warrants of commitment)

- (1) Section 41(1), ‘pilot program magistrate’—
omit, insert—
‘drug court magistrate’.
- (2) Section 41(1), ‘(g)’—
omit, insert—
‘(f)’.
- (3) Section 41(2), ‘pilot program court’—
omit, insert—
‘drug court’.

50 Amendment of s 42 (When no appeal)

- Section 42(1)(b)(i), ‘pilot program’—
omit, insert—
‘drug court’.

51 Insertion of new s 42A

- Part 5, division 6—
insert—

‘42A Application of Penalties and Sentences Act 1992, s 188

- ‘To remove any doubt, it is declared that the *Penalties and Sentences Act 1992*, section 188 applies to initial sentences and final sentences imposed under this Act.’.

52 Amendment of s 43 (Regulation-making power)

- (1) Section 43(3) and (4), ‘a particular pilot program court’—
omit, insert—
‘drug courts or a particular drug court’.
- (2) Section 43(4)(a), example, ‘pilot program’—
omit, insert—
‘drug court’.
- (3) Section 43—
insert—
- ‘(5) A regulation may prescribe the minimum frequency with which offenders must be drug tested under the offenders’ intensive drug rehabilitation orders.’.

53 Omission of ss 45 and 46

Sections 45 and 46—
omit.

54 Insertion of new pt 7, hdg and pt 7, div 1, hdg

Before section 46A—
insert—

‘Part 7 Transitional provisions

‘Division 1 Transitional provision for Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Act 2002’.

55 Insertion of new pt 7, div 2, hdg

After section 46A—

insert—

‘Division 2 Transitional provision for Drug Legislation Amendment Act 2006’.**56 Replacement of s 47 (Expiry of Act)**

Section 47—

omit, insert—

‘47 Definition for div 2

‘In this division—

commencement means the commencement of this division.

‘48 References to Act

‘In an Act or document, a reference to the *Drug Rehabilitation (Court Diversion) Act 2000* may, if the context permits, be taken as a reference to this Act.

‘49 Transitional provision for courts

‘A Magistrate Court that was, immediately before the commencement, declared to be a pilot program court is, on the commencement, taken to be a drug court.

‘50 Transitional provision for magistrates

‘A magistrate who, immediately before the commencement, had been allocated the functions of a pilot program magistrate is, on the commencement, taken to have been allocated the functions of a drug court magistrate.

‘51 Transitional provision for proceedings

‘If proceedings before a pilot program court had been started but not finished before the commencement, the proceedings

may continue as if they had been started after the commencement.’.

57 Amendment of sch (Dictionary)

(1) Schedule, definitions *corrective services’ chief executive*, *corrective services office*, *disqualifying term of imprisonment*, *pilot program court*, *pilot program magistrate*, *rehabilitated term of imprisonment* and *suspended term of imprisonment*—
omit.

(2) Schedule—

insert—

appropriately qualified, for a health professional, means having the qualifications or experience to carry out an indicative assessment or assessment of a person.

assessment, of a person, means an assessment of the following to help decide the person’s capacity to undertake treatment—

- (a) the person’s physical and mental health;
- (b) the person’s past and present drug dependency and drug use;
- (c) the treatment options appropriate for the person.

assessment report see section 16(3).

chief executive (health) means the chief executive of the department in which the *Health Services Act 1991* is administered.

core condition, of an intensive drug rehabilitation order, means a condition mentioned in section 22.

drug court means a Magistrates Court declared to be a drug court under section 9.

drug court magistrate means a magistrate to whom functions are allocated under section 10(1).

health professional has the meaning given by the *Health Services Act 1991*, section 60.

health service facility means a place at which a health service, within the meaning of the Health Services Act 1991, section 3, is provided.

indicative assessment, of a person, means an assessment as to whether the person is drug dependent.

indicative assessment report see section 12B.

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

- (3) Schedule, definition *community term of imprisonment*, ‘7B’—
omit, insert—
‘7A’.

Part 3 **Amendment of Drugs Misuse Act 1986**

58 **Act amended in pt 3**

This part amends the *Drugs Misuse Act 1986*.

59 **Amendment of s 4 (Definitions)**

Section 4—

insert—

‘**challenge notice** means a written notice that informs the prosecution that a person intends to challenge a claim intended to be made by the prosecution and of which the person has been informed in a prosecution information notice.

prosecution information notice means a written notice that informs a person that—

- (a) the prosecution intends to claim that—
- (i) for an offence to which section 130 applies—a substance was a prescribed substance; or

- (ii) for an offence to which section 131 applies—specified equipment was used in the production of a relevant dangerous drug; or
 - (iii) for an offence to which section 131A applies—a substance was a medicine or poison or veterinary chemical product; and
- (b) if the person wants to challenge the claim, the defendant must give a challenge notice to—
- (i) if the proceedings have been brought by a police officer—the commissioner of the police service; or
 - (ii) if the proceedings have been brought by an environmental health officer—the chief executive for health; and
- (c) a challenge notice must be given within 28 days after the prosecution information notice is served on the person.’.

60 Insertion of new s 9A

After section 9—

insert—

‘9A Possessing relevant substances or things

‘(1) A person who unlawfully possesses a relevant substance or thing commits a crime.

Maximum penalty—15 years imprisonment.

‘(2) In this section—

relevant substance or thing means—

- (a) a substance that is, or contains, a controlled substance and the gross weight of the relevant substance is of, or exceeds, the gross weight specified in the *Drugs Misuse Regulation 1987*, schedule 8A in respect of the relevant substance; or
- (b) substances that together are, or contain, a controlled substance and the total gross weight of the relevant substances is of, or exceeds, the total of the gross

weights specified in the *Drugs Misuse Regulation 1987*, schedule 8A in respect of the relevant substances; or

- (c) a thing specified in the *Drugs Misuse Regulation 1987*, schedule 8B.’

61 Insertion of new s 10B

After section 10A—

insert—

‘10B Possession of a prohibited combination of items

- ‘(1) A person who unlawfully possesses a prohibited combination of items commits a crime.

Maximum penalty—25 years imprisonment.

- ‘(2) To remove any doubt, it is declared that a person who unlawfully possesses a prohibited combination of items commits an offence against subsection (1) even if the items are separate or at different places.

Example for subsection (2)—

A combination of chemical A, chemical B and chemical C is a prohibited combination of items. John Smith unlawfully possesses chemical A, chemical B and chemical C. John Smith commits a crime under subsection (1) even though chemical A is in his garage, chemical B is in his storage shed and chemical C is in his utility room.

- ‘(3) In this section—

prohibited combination of items means a combination of items that is prescribed under the *Drugs Misuse Regulation 1987*, schedule 8C.’

62 Amendment of s 13 (Certain offences may be dealt with summarily)

- (1) Section 13, after ‘9,’—

insert—

‘9A,’.

- (2) Section 13(4), ‘2’—
omit, insert—
‘3’.

63 Amendment of s 128 (Analyst’s certificate)

- (1) Section 128(1), after ‘evidence of’—
insert—
‘any of the following stated in the certificate’
- (2) Section 128(1)(a), ‘and quantity’—
omit.
- (3) Section 128(1)(b), ‘stated in the certificate’—
omit.
- (4) Section 128(1)(b)—
renumber as section 128(1)(c).
- (5) Section 128(1)—
insert—
‘(b) the quantity of the thing;’.

64 Amendment of s 130 (Evidence of prescribed substance by label)

- (1) Section 130(2)—
insert—
‘(ba) the defendant was served with a prosecution information notice specifying the prescribed substance; and’.
- (2) Section 130(2)(c), ‘written notice mentioned in section 131(4)’—
omit, insert—
‘a challenge notice’.
- (3) Section 130(2)(c)(ii), after ‘environmental health’—
insert—

‘officer’.

- (4) Section 130(2)(ba) to (e)—
renumber as section 130(c) to (f).

65 Replacement of s 131 (Evidence of prescribed substance—notice of challenge required)

Section 131—

omit, insert—

‘131 Evidence of equipment being used to produce particular dangerous drugs

- ‘(1) This section applies if, in a proceeding for an offence against this Act, it is relevant to prove that particular equipment was used in the production of a relevant dangerous drug.
- ‘(2) In the absence of proof to the contrary, the equipment is proved to have been used in the production of the relevant dangerous drug if—
- (a) a police officer gives evidence that the police officer believes the equipment was used in the production of the relevant dangerous drug; and
 - (b) the court considers that belief to be reasonably held by the police officer; and
 - (c) the defendant was served with a prosecution information notice specifying the equipment; and
 - (d) the defendant has not given the commissioner of police a challenge notice.

- ‘(3) In this section—

equipment includes apparatus, items and other things.

relevant dangerous drug means a dangerous drug specified in the *Drugs Misuse Regulation 1987*, schedule 8D.

‘131A Evidence of medicine or poison or veterinary chemical product by container

‘(1) This section applies if, in a proceeding for an offence against this Act, it is relevant to prove that a substance owned or supplied by, or in the possession of, a person was—

- (a) a medicine or poison; or
- (b) a veterinary chemical product.

‘(2) In the absence of proof to the contrary, the substance is proved to have been the medicine or poison or veterinary chemical product shown on the label of the container in which it is contained if—

- (a) there is evidence that the container containing the substance was a sealed medicine or poison container; and
- (b) a police officer or environmental health officer gives evidence that the police officer or environmental health officer believes the sealed medicine or poison container contained a medicine or poison or veterinary chemical product; and
- (c) the court considers that belief to be reasonably held by the police officer or environmental health officer; and
- (d) the defendant was served with a prosecution information notice specifying the medicine or poison or veterinary chemical product; and
- (e) the defendant has not given a challenge notice to—
 - (i) if the proceedings have been brought by a police officer—the commissioner of the police service; or
 - (ii) if the proceedings have been brought by an environmental health officer—the chief executive for health.

‘(3) In this section—

medicine or poison means a medicine or poison that is registered or exempt under the *Therapeutic Goods Act 1989* (Cwlth).

sealed medicine or poison container is a container—

- (a) that appears to contain—
 - (i) a medicine or poison; or
 - (ii) a veterinary chemical product; and
- (b) that has a label indicating that the substance is a medicine or poison or a veterinary chemical product; and
- (c) that has an indicator or barrier to entry—
 - (i) that can reasonably be expected to provide visible or audible evidence to consumers that tampering may have occurred; and
 - (ii) that is not breached or missing.

veterinary chemical product means a veterinary chemical product within the meaning of the code set out in the schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cwlth).

‘131B Evidence for ss 130, 131 and 131A—notice of challenge

- ‘(1) This section applies if an originating step for a proceeding for an offence to which section 130, 131 or 131A applies is taken.
- ‘(2) Within 28 days after the originating step is taken, the defendant in the proceeding may be served with a prosecution information notice.
- ‘(3) The prosecution information notice may be served on the defendant, and the service may be proved, in the same way as a summons under the *Justices Act 1886*, section 56.¹
- ‘(4) If the defendant wants to challenge a claim of which notice has been given in the prosecution information notice, the defendant must, within 28 days after the prosecution information notice is served on the defendant, give a challenge notice to—
 - (a) if the proceedings have been brought by a police officer—the commissioner of the police service; or

¹ *Justices Act 1886*, section 56 (Service of summonses)

- (b) if the proceedings have been brought by an environmental health officer—the chief executive for health.
- ‘(5) A magistrates court may extend the 28 day period mentioned in subsection (4) if the court considers it appropriate.
- ‘(6) In this section—
- originating step*, for a proceeding, means—
- (a) the arrest of the defendant in the proceeding; or
- (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
- (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 214.’.

66 Amendment of s 134 (Regulation-making power)

- (1) Section 134(2)(g)—
- renumber* as section 134(2)(k).
- (2) Section 134(2)—
- insert*—
- ‘(g) prescribing in the *Drugs Misuse Regulation 1987*, schedule 8A, quantities of substances mentioned in the *Drugs Misuse Regulation 1987*, schedule 6 that are unlawful for this Act;
- (h) prescribing in the *Drugs Misuse Regulation 1987*, schedule 8B, things that are unlawful for this Act;
- (i) prescribing in the *Drugs Misuse Regulation 1987*, schedule 8C, a combination of items that is a prohibited combination of items for this Act;
- (j) prescribing in the *Drugs Misuse Regulation 1987*, schedule 8D, the dangerous drugs to which section 131 applies.’.

67 Insertion of new pt 7, hdg and div 1 hdg

After section 134—

*insert—***‘Part 7 Transitional provisions****‘Division 1 Provision for Drugs Misuse
Amendment Act 1996 No. 49’.****68 Insertion of new pt 7, div 2, hdg**

After section 135—

*insert—***‘Division 2 Provision for Drugs Misuse
Amendment Act 2002 No. 35’.****69 Insertion of new pt 7, div 3**

After section 136—

*insert—***‘Division 3 Provision for Drug Legislation
Amendment Act 2006****‘137 Transitional provision for ss 130–131B****‘(1) This section applies if—**

- (a) before the commencement an originating step for a proceeding for an offence to which section 130, 131 or 131A applies was taken; and
- (b) before the commencement, a committal hearing or summary hearing had not been held in relation to the defendant for the proceeding for the offence; and
- (c) the committal hearing or summary hearing is not listed for hearing during the relevant period.

‘(2) On the commencement—

- (a) section 130, 131 or 131A applies to a proceeding against the defendant for the offence; and
 - (b) section 131B applies to the defendant, subject to subsection (3).
- ‘(3) For applying section 131B(2) to a proceeding against the defendant, the originating step for the proceeding is taken to have been taken on the commencement and a prosecution information notice may be served on the defendant within 28 days after the commencement.
- ‘(4) In this section—
- commencement* means the commencement of this section.
- relevant period* means the period—
- (a) starting on the day this section commences; and
 - (b) ending on the day that is 56 days later.’.

Part 4 Consequential amendment of Criminal Code

70 **Amendment of Criminal Code**

This part amends the Criminal Code.

71 **Amendment of s 552H (Maximum penalty for indictable offences dealt with summarily)**

- (1) Section 552H(1)(a), after ‘magistrate’—
insert—
‘, other than a magistrate performing functions as a drug court magistrate under the *Drug Court Act 2000*’.
- (2) Section 552H(1)(b)—
renumber as section 552H(1)(c).
- (3) Section 552H(1)—

insert—

- ‘(b) if the Magistrates Court is constituted by a magistrate performing functions as a drug court magistrate under the *Drug Court Act 2000*—
- (i) if the consent mentioned in section 20(2) of that Act has been obtained—100 penalty units or 4 years imprisonment; or
 - (ii) otherwise—100 penalty units or 3 years imprisonment.’.

Part 5 **Amendment of Judicial Review Act 1991**

72 Act amended in pt 5

This part amends the *Judicial Review Act 1991*.

73 Replacement of pt 7 (Transitional provision)

Part 7—

omit, insert—

‘Part 7 Declarations

‘58 Small Claims Tribunals Act 1973 reference

- ‘(1) This section applies to the following item that was in schedule 1, part 1, immediately before the commencement of the *Statute Law (Miscellaneous Provisions) Act 2000*, schedule, amendments of the *Judicial Review Act 1991*, amendment 4 (the *amendment*)—
7. *Small Claims Tribunals Act 1973*, section 19
- ‘(2) It is declared that the amendment never had any effect to omit the item and the item has been listed in schedule 1, part 1, at all times after the amendment.

- ‘(3) It is further declared that the declaration in section 58, repealed by the *Drug Legislation Amendment Act 2006*, section 73, never had any effect.’.

74 Amendment of sch 1 (Operation of other laws)

- (1) Schedule 1, part 1, item 6AA—
omit.
- (2) Schedule 1, part 1, item numbering—
omit.