

DRUG REHABILITATION (COURT DIVERSION) BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to facilitate a pilot “drug court” program to divert to intensive drug rehabilitation drug dependant offenders who would otherwise be facing imprisonment. The Bill, at clause 3, sets out four specific objectives, namely to reduce:

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

Reasons for the objectives and how they will be achieved

The reasons for the objectives are

- The rate of imprisonment for drug and property offences now exceeds the rate of population increases in Queensland.
- At 30 June 1998, Queensland had the highest imprisonment rate in Australia at more than 40 per cent above the national rate.
- Approximately 60 per cent of incoming prisoners have a drug dependency, therefore supporting anecdotal evidence that many property and other offences are committed to feed drug habits.
- There is no drug diversion scheme in operation in Queensland’s courts despite the theoretical possibility of making treatment a condition of:

- bail under the *Bail Act 1980*, or
- probation, community service and intensive correction orders under the *Penalties and Sentences Act 1992*, or
- orders for detention of drug offenders for treatment under part 4 of the *Health Act 1937*.

The Bill, at clause 3, sets out four specific ways that the objects are to be achieved, namely by establishing a pilot court diversion program to:

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

Also, the Bill is designed so that, if the proposed pilot program is successful, and if it is decided to implement the program in other courts, the provisions of this Bill would be able to be adapted for inclusion in the *Penalties and Sentences Act 1992* as a further sentencing option.

Administrative cost to Government of implementation

The pilot will incur significant costs. The areas of funding will include the planning and supervision of the intensive drug rehabilitation orders, frequent and random drug testing, assessment of individuals for suitability for rehabilitation, appointment of an additional magistrate, evaluation of the pilot and of the legislation, treatment programs, education and training. The Government is committed to this project and will fund it appropriately. While some funding has been settled, further submissions are under consideration.

Fundamental legislative principles

Potential FLP issues concerning the liberty of the individual arise because of the mandated treatment. However, the Bill requires that a defendant must state, and various stages re-state, his or her willingness to consent to orders and willingness to participate in the treatment programs.

In these circumstances interim orders affecting the liberty of the person or varying the treatment component of the order will not be subject to appeal. All final decisions will be subject to the normal appeal process. For example, if an intensive drug rehabilitation order is terminated for non-compliance that decision will not be appealable but the final sentence imposed will be. Similarly, an amendment to an intensive drug rehabilitation order, made with the offender's consent, including an order giving sanctions or rewards while the person continues a rehabilitation program, will not be appealable.

The limitation to rights of appeal discussed above do not affect judicial review of administrative decisions, nor the ability of a person to raise matters concerning the refused treatment in an appeal against sentence when the person's matter is finally determined.

Because the pilot program magistrate will only be able to make intensive drug rehabilitation orders if there are adequate resources and places to allocate to a person and because the appeal system should not be allowed to grind the pilot to a halt pending appeal decisions, the Bill also excludes appeals against a decision not to remand a person to appear before a pilot program magistrate and to assess the person's suitability for treatment or a refusal to make an intensive drug rehabilitation order in relation to a person. It is intended that these appeal rights will be revisited when the Act is reviewed.

Clause 37 provides that a person is not liable to be prosecuted for particular offences as a result of an admission made by that person for the purpose of deciding whether he or she is eligible for rehabilitation. Immunity is generally confined to lower level offences and may be seen as a necessary mechanism to promote candour about the extent of a person's drug addiction and to encourage offenders to take part in the pil

Consultation

Extensive consultation has occurred between government departments, community organisations and the legal profession. While some minds may differ as to the content of the detail there is sound and widespread support for the trialing of a 'drug court' program as can be facilitated by this Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the Act's short title as being the *Drug Rehabilitation (Court Diversion) Act 1999*.

Clause 2 states that the Act commences on a day to be fixed by proclamation.

Clause 3 sets out the objects of the Act, which 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 scarce resources in the court and prison sys

Subsection (2) states that the objects are to be achieved by establishing a pilot court diversion program to:

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

Clause 4 states that a pilot program magistrate must have regard to the sentencing principles specified in section 9 of the *Penalties and Sentences Act 1992*, and may exercise any of the powers and make any of the orders a magistrate may exercise or make under that Act.

PART 2—DEFINITIONS AND IMPORTANT TERMS

Clause 5 provides for a dictionary in the schedule to define particular words used in the Act.

Clause 6 provides that 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 dependant and that dependency contributed to the person committing the offence; and
- (c) it is likely that the person would, if convicted of the offence, be sentenced to imprisonment; and
- (d) the person satisfies any other criteria prescribed under a regulation.

The section also defines who is not an “eligible person”, that is:

- (a) if the person is actually serving a term of imprisonment (not including a term of imprisonment being served in the community under an intensive correction order under section 112 of the *Penalties and Sentences Act 1992*; or
- (b) while a charge for a disqualifying offence is pending in any court.

Clause 7 defines what is a “disqualifying offence”, namely an offence of a sexual nature or an offence involving violence against another person, other than an offence against the *Criminal Code*, section 335 (common assault), or 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) or section 340(b).

Clause 8 defines what are “relevant offences”, that is:

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

Further, a “relevant offence” does not include a disqualifying offence.

PART 3—PILOT PROGRAM COURTS AND PILOT PROGRAM MAGISTRATES

Clause 9 gives the Governor in Council the power to declare 1 or more Magistrates Courts to be pilot program courts. The clause also provides that a power of a pilot program magistrate may be exercised only in a pilot program court.

Clause 10 requires the Chief Stipendiary Magistrate to allocate the functions of a pilot program magistrate to 1 or more magistrates.

Clause 11 provides that a pilot program magistrate has the functions and additional jurisdiction (that is, jurisdiction over prescribed drug offences) given by the Act, and that a pilot program magistrate has power to do all things necessary or convenient to be done for the performance of the magistrate's functions. Further, the clause specifically requires that a pilot program magistrate must conduct proceedings quickly and in a way that avoids unnecessary technicalities and facilitates the fair and practical conduct of the proceedings. Consistent with the approach to sentencing in section 15 of the *Penalties and Sentences Act 1992*, the pilot program magistrate is not bound by the rules of evidence, but may inform himself or herself in any way he or she considers appropriate.

Clause 12 ensures that the Act does not affect the application of the *Stipendiary Magistrates Act 1991* to a pilot program magistrate. For example, this means that a pilot program magistrate, in addition to exercising functions as a pilot program magistrate, must exercise other functions as a magistrate and comply with reasonable directions given, or requirements made, by the Chief Stipendiary Magistrate.

PART 4—REFERRAL FOR ASSESSMENT

Clause 13 states that part 4 applies if a person who is charged with a relevant offence appears before a magistrate in a pilot program court and there is evidence that the person is drug dependant.

Clause 14 provides that 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, but may be exercised at any time before the court sentences the person or commits the person for trial or sentence for a relevant offence.

Clause 15 provides that the magistrate must decide whether the person appears to be an eligible person and, if so, whether to refer the person for assessment. The magistrate must be satisfied the person has pleaded guilty to the offence or has indicated that he or she intends to plead guilty to the offence and the person is willing to be assessed for suitability for rehabilitation and to be remanded to be dealt with for the offence by a pilot program magistrate.

Clause 16 provides the mechanisms for the magistrate to refer the person for assessment according to whether the magistrate remands the person in custody or releases the person on bail to appear before a pilot program magistrate. 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 pre-sentence report that contains an assessment of the person's suitability for rehabilitation and, if the person is suitable, a proposed rehabilitation program.

PART 5—INTENSIVE DRUG REHABILITATION ORDERS

Division 1—Preliminary

Clause 17 states that part 5 applies if a person appears before a pilot program magistrate. Also, the clause states that in deciding whether to make an intensive drug rehabilitation order under this part, it does not matter whether the offence was committed before or after the commencement of the Act.

Division 2—Making an order

Clause 18 states that a pilot program magistrate may make an intensive drug rehabilitation order (IDRO) only if the magistrate records a conviction. The structure and content of the provisions in this part are consistent with the structure and content of similar sentencing options in the various parts of the *Penalties and Sentences Act 1992*.

Clause 19 sets out the criteria that a pilot program magistrate must be satisfied about before the magistrate may make an IDRO, that is:

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

Clause 20 sets out the three component parts of an IDRO. The first component is an initial sentence (subject to reconsideration after the order ends) and an order suspending the whole of the term of imprisonment. Because of the need to get drug dependant offenders into rehabilitation quickly and due to the restrictions on appeal rights while a person is subject to an IDRO it is not possible to suspend a sentence in part only. The second component is the requirements of the order. The third is the rehabilitation program decided by the pilot program magistrate for the offender.

Clause 21 provides the pilot program magistrate, if satisfied that sufficient grounds exist, the power to direct that the commencement of the suspension of the sentence be delayed for not more than 14 days. An example is given where the magistrate is satisfied the offender requires detoxification but suitable facilities for detoxification are not immediately available.

Clause 22 lists the general requirements that must be stated in every IDRO. These are similar to the general requirements of probation orders and intensive correction orders. An important difference is the requirement that the offender must attend before a pilot program magistrate at the times stated in the order or as required by an authorised corrective services officer. This will enable the pilot program magistrate to monitor and review the offender's participation in the rehabilitation program when the magistrate sees fit.

Clause 23 provides for additional requirements that may also be contained in an IDRO, such as orders under the Act to make restitution, or pay compensation, or perform community service, or that the offender do another thing that a pilot program magistrate considers may help the offender's rehabilitation. Such additional requirements are not to be taken to be a sentence under the *Penalties and Sentences Act 1992*. The provisions of that Act will only come into play for these types of orders if they are made as part of a final sentence imposed after the rehabilitation program ends.

Clause 24 states that the IDRO 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 and the offender may be required to remain at a place, and for a time, specified in the program.

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

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 the committal is necessary to facilitate detoxification or assessment of the offender's participation in the program. However, the offender must not be committed to a prison for detoxification unless the pilot program magistrate is satisfied that no other suitable facilities are immediately available.

Clause 25 requires that before making an IDRO a pilot program magistrate must ensure the offender has explained to him or her (in language, or a way, likely to be readily understood by the offender) the IDRO, the purpose and effect of the order and what may happen if the offender does not comply with the order. The offender will also be told that the requirements of the IDRO or the rehabilitation program may be amended or a rehabilitation program terminated on a pilot program magistrate's own initiative or on application by the offender or an authorised corrective services officer or the commissioner of the police service or the director of public prosecutions.

Also, if the offence is a prescribed drug offence, the offender will be told that he or she would normally be dealt with in the Supreme Court, that the magistrate is conditionally assuming jurisdiction provided that the offender successfully completes his or her rehabilitation program and that if he or she fails the matter will revert to the Supreme Court.

Clause 26 states that a pilot program magistrate can make an IDRO, or amend the requirements of an IDRO or a rehabilitation program, only if the offender agrees to the making or amendment and if the offender agrees to comply with the order as made or amended.

Clause 27 requires the clerk of the court of the pilot program court to give the offender a copy of the IDRO and the offender to acknowledge receipt in writing before he or she can be released from custody.

Clause 28 provides that a pilot program magistrate may make more than one IDRO for an offender, in a single form of order, that is where another relevant offence comes before the court without being referred under part 4, but not if the total imprisonment imposed for all the offences is more than 3 years.

Division 3—Not making an order

Clause 29 provides that if a pilot program magistrate decides not to make an IDRO, the pilot program magistrate must exercise the jurisdiction of a Magistrates Court and deal with the person according to law. This means, for example, that the magistrate may convict and sentence the person if the offender has pleaded guilty to the offence. Alternatively, the magistrate could remand the person to be dealt with for the offence if the offender has not pleaded guilty or if the offence is a prescribed drug offence or if for another reason the magistrate considers it appropriate to remand the person.

Division 4—Rewards and sanctions

Clause 30 provides that a pilot program magistrate may give rewards or impose sanctions either on application by a corrective services officer or by the offender or on the magistrate's own initiative.

Clause 31 gives details of the kinds of rewards a pilot program magistrate may give to an offender if satisfied (on the balance of probabilities) that the offender is satisfactorily complying with the IDRO. They are:

- (a) specified privileges;
- (b) a decrease in the amount of any monetary penalty payable, but not yet paid, by the offender under the following clause;
- (c) a decrease in the frequency of drug testing of the offender;

- (d) a decrease in the level of supervision of the offender by a pilot program magistrate or someone else;
- (e) a change in the nature of the vocational education and employment courses the offender attends or in the nature of medical, psychiatric or psychological treatment that 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.

Clause 32 lists details of the kinds of sanctions a pilot program magistrate may impose on an offender if satisfied (on the balance of probabilities) that the offender is not satisfactorily complying with the IDRO. They are:

- (a) withdrawal of specified 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 the nature of the vocational education and employment courses the offender attends or in the nature of medical, psychiatric or psychological treatment that 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.

Division 5—Amending orders and terminating rehabilitation programs

Clause 33 provides that a pilot program magistrate may amend the requirements of an IDRO or a rehabilitation program on application as provided for in the division, or on the magistrate's own initiative. The magistrate must give reasons for making the amendm

Clause 34 provides that a pilot program magistrate may, on application under the division or on the magistrate's own initiative, terminate a rehabilitation program for an offender if—

- (a) the offender asks the magistrate to terminate the rehabilitation program; or
- (b) if the magistrate proposes to amend the order and the offender does not agree to the order being amended or to comply with it; or
- (c) the offender does not attend before a pilot program magistrate as required under the IDRO or otherwise; or
- (d) the offender has failed to comply with the IDRO; or
- (e) the magistrate is satisfied, on the balance of probabilities, that the offender's further participation in the rehabilitation program would serve no useful purp

The magistrate must give reasons for terminating the program. Also, if the offence in relation to which the IDRO was made is a prescribed drug offence, the pilot program magistrate must revoke the conviction recorded under clause 14, vacate the order and commit the offender to the Supreme Court for sentence.

Clause 35 provides the mechanism for making application to amend or terminate an order. The application may be made by the offender, an authorised corrective services officer, the commissioner of the police service or the director of public prosecutions. The application may be made without notice if the offender is before a pilot program magistrate. If not, a notice must be given, in the approved form, at least the day before the application is to be heard before the magistrate.

Clause 36 requires a pilot program magistrate to reconsider the offender's initial sentence, vacate the IDRO and impose a final sentence when either the offender's rehabilitation program is completed successfully for a prescribed drug offence or ends in any other case for any reason.

When reconsidering the initial sentence, the magistrate must consider the extent to which the offender participated in the rehabilitation program, including, for example, whether any rewards were given or sanctions imposed. If the offence is a prescribed drug offence the final sentence can be any sentence that a magistrate could impose for an offence that may be dealt with summarily under the *Drugs Misuse Act 1986*. For any other relevant offence, the final sentence may be any sentence that the magistrate could have imposed for the offence.

The conviction previously recorded with the initial sentence must also be revoked in circumstances where the Penalties and Sentences Act 1992 does not permit a particular sentence to be imposed if a conviction is recorded or if, in any other case, the magistrate has a discretion not to record a conviction and decides not to do so.

The clause also states that 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. This clause does not affect the length of any operational period that may be imposed under section 144 of the *Penalties and Sentences Act 1992* as part of a final sentence.

Division 6—General

Clause 37 provides limited ‘use derivative-use’ immunity from prosecution if a charge were to arise from an admission made by a person for the purposes of deciding whether the person is, or appears to be, an eligible person or is suitable for rehabilitation, or the admission is made to someone responsible for the person’s supervision or treatment. The limitation is that the immunity will not apply to a disqualifying offence or indictable offences that may not be dealt with summarily under section 552B of the *Criminal Code*.

Clause 38 provides that if a rehabilitation program includes a requirement that the offender must report for drug testing and states the frequency for the testing, an authorised corrective services officer may decide when and where the offender is to report and may require the offender to report for further random testing as directed by the officer.

Clause 39 imposes a duty on a prescribed person to promptly give the corrective services' chief executive, or to a pilot program magistrate, any information the prescribed person has about the offender's compliance with, or failure to comply with the requirements of an IDRO or rehabilitation program. The prescribed person is not liable, civilly (eg for defamation) or under an administrative process, if the information is given in good faith. A "prescribed person" is defined to mean 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.

Clause 40 provides for the issue of an arrest warrant by a pilot program magistrate if the magistrate reasonably suspects that an offender has failed to comply with his or her rehabilitation program or if the magistrate terminates the offender's rehabilitation program. The *Bail Act 1980* does not apply to an offender who is arrested on the authority of this warrant and the person will be required to be brought before a pilot program magistrate. While this restriction is workable in the confines and locality of the pilot, it may not be so if the program is rolled out to all courts in the State. Therefore, it is intended that the non-application of the *Bail Act* will be revisited when the Act is reviewed. See section 14(3) of the *Drug Court Act 1998* (NSW) for a similar provisi

Clause 41 provides for the issue of a warrant of commitment for the purposes of clause 17(2), (3) or 24(1)(g) so that the prison authorities will be able to receive the person if suspension of sentence is delayed or a sanction of imprisonment gi

Clause 42 provides that despite section 222 of the *Justices Act 1886* or chapter 67 of the *Criminal Code* an appeal does not lie against an initial sentence or a decision to do or not to do any of the following:

- remand a person to appear before a pilot program magistrate;
- make an intensive drug rehabilitation order in relation to a person;
- amend an intensive drug rehabilitation order or terminate a rehabilitation program for an offender; or
- give a reward to or impose a sanction on an offender.

PART 6—GENERAL

Clause 43 gives to the Governor in Council a regulation-making power.

Clause 44 gives the chief executive a power to approve forms for the Act.

Clause 45 requires the Minister to ensure the Act's operation is reviewed to determine whether the objects of the Act remain valid and to evaluate the effectiveness of the provisions of the Act for achieving the objects. The review is required to start as soon as practicable after the Act commences. A final report outlining the review must be prepared before the expiry of the Act and must be tabled in the Legislative Assembly within 14 days of the Minister receiving it.

Clause 46 requires the pilot program magistrate to also prepare a report on the Act's operation. The report may deal with any aspect of the Act's operation that the magistrate considers appropriate. A final report outlining the review must be prepared before the expiry of the Act. The magistrate must give a copy of the final report to the Minister who must table a copy of the final report in the Legislative Assembly within 14 days of receiving it.

Clause 47 expires the Act 30 months after it commences.

SCHEDULE

DICTIONARY

The dictionary contains further definitions of words and terms used in the Act.