DRUG REHABILITATION (NORTH QUEENSLAND COURT DIVERSION INITIATIVE) AMENDMENT BILL 2002

EXPLANATORY NOTES

General Outline

Objectives of the Legislation

This Bill amends the *Drug Rehabilitation (Court Diversion) Act 2002* to include, for prescribed courts, a new requirement to determine eligibility to participate in the Drug Court pilot program. Persons appearing before a court prescribed by subordinate legislation will not be eligible to participate in the Drug Court pilot program if they have previously served a term of imprisonment of more than six months.

The Bill also inserts a further consideration for a magistrate when he or she is deciding whether to make an intensive drug rehabilitation order, changes the test that a magistrate applies when terminating a rehabilitation program made under an intensive drug rehabilitation order and clarifies the eligibility of offenders with sentencing orders imposed in another State or the Commonwealth to participate in the Drug Court pilot program.

Reasons for the objectives and how they will be achieved

The *Drug Rehabilitation (Court Diversion) Act 2000* commenced on 13 June 2000. Drug Court pilot program courts currently operate at Beenleigh, Ipswich and Southport Magistrates Courts.

Drug Courts are an innovative and constructive approach to stemming property crime motivated by the need for offenders to feed their drug addiction. Rates of property and violent crime have steadily increased since the 1970s. Popular belief and empirical research ties the increase in crime to the increase in drug use. The objects of the *Drug Rehabilitation (Court Diversion) Act 2000* are to reduce –

(a) the level of drug dependency in the community; and

(b) the level of criminal activity associated with drug dependency;

(c) health risks to the community associated with drug dependency; and

(d) pressure on resources in the court and prisons system.

These objects are to be achieved by establishing a pilot court diversion program –

(a) to identify drug dependent persons who are suitable to receive intensive drug rehabilitation;

(b) to improve their ability to function as law abiding citizens; and

(c) to improve their employability; and

(d) to improve their health.

It was a Government election commitment to expand the Drug Court pilot program trial to North Queensland. It is planned to establish Drug Court pilot program courts at Cairns and Townsville Magistrates Courts in late 2002.

The expansion of the Drug Court trial to North Queensland provides the Government with the opportunity to redefine the type of offender who is eligible to participate in the North Queensland Drug Courts. Offenders will be eligible to participate in North Queensland Drug Courts if they have not previously been ordered to serve a term of imprisonment of more than six months. No such restriction is in place for Drug Courts conducted in South-East Queensland.

For offenders in this category the support and intensive treatment regime available through the Drug Court may successfully turn them away from a life of crime and consequent incarceration in gaol.

The *Drug Rehabilitation (Court Diversion) Act 2000* requires that the Act be evaluated to ensure that the objects of the Act remain valid and to evaluate the effectiveness of the provisions of the Act to achieving the objects. Rigorous evaluation of the Drug Court pilot programs running in South-East Queensland and North Queensland will enable evidence-based decisions to be made as to whether Drug Courts should be expanded throughout Queensland and, if they are, what would be the most successful model to be implemented.

Administrative cost to Government of implementation

The expansion of Drug Courts to North Queensland 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 in North Queensland, evaluation of the pilot, treatment programs, education and training. The Government is committed to this project and will fund it appropriately.

Consistency with Fundamental Legislative Principles

The Bill is consistent with Fundamental Legislative Principles.

CONSULTATION

Government

The Drug Court pilot program is a whole-of-Government initiative that requires the cooperation and collaboration of a range of Government Departments and agencies including the Departments of Corrective Services, Families, Housing, Justice and Attorney-General, Health, the Premier and Cabinet, the Queensland Police Service and Legal Aid Queensland. These Departments and agencies have been consulted as to the change of eligibility criteria for participants in North Queensland Drug Courts.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the Act's short title as the *Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Act 2002.*

Clause 2 provides for the Act to commence upon proclamation.

Clause 3 provides that the Act amends the *Drug Rehabilitation (Court Diversion) Act 2000.*

Clause 4 inserts a new section 4A that provides that a note in the text is part of the Act.

Clause 5 amends section 6 (Who is an eligible person) by renumbering the section and inserting new sub-sections (2) to (5).

The scheme of the *Drug Rehabilitation (Court Diversion) Act 2000* permits a pilot program magistrate to refer a person for assessment (section 15) to determine a person's suitability for rehabilitation and a proposed rehabilitation program. Section 19 permits a pilot program magistrate to make an intensive drug rehabilitation order ("IDRO). A prerequisite to both referring a person for assessment and the making of an order is that the person is an "eligible person". The term "eligible person" is defined in section 6 to mean a person is a "eligible person" if –

(a) the person is not a person who must be dealt with as a child under the *Juvenile Justice Act 1992*; and

(b) the person is drug dependent and the 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.

Section 6 (3) previously provided that for the purposes of section 6(1)(d) a further prescribed criteria is that the person reside within a stated locality. This section has now been renumbered section 6 (2).

Section 6(3) (previously section 6 (2)) now provides that a person is not an eligible person if –

(a) the person is serving a term of imprisonment other than a community term of imprisonment; or

(b) a charge against the person for a disqualifying offence is pending in a court.[1]

"Community term of imprisonment" is defined in the new section 7B.

1 The term "disqualifying offence" is defined in section 7 of the Act.

A note has been added to section 6 (3) to refer the reader to section 153[2] of the Corrective Services Act 2000 to assist in determining whether a person on post-prison based community release is still taken to be serving a term of imprisonment.

Sub-section (4) has been inserted to clarify the eligibility of offenders, from another jurisdiction, who are serving a term of imprisonment, to participate in the Drug Court pilot program. The section applies the Queensland law to offenders in this position. That is, a person on post-prison community based release, or the equivalent order from another jurisdiction, is taken to be serving a term of imprisonment and is consequently ineligible to participate in the Drug Court.

Section 6 (5) has been inserted and provides that a person is not an eligible person, in respect only to persons appearing before a court prescribed by regulation, if the person has, at any previous time, been ordered to serve a disqualifying term of imprisonment. The term 'disqualifying term of imprisonment' is defined in the new section 7A.

Clause 6 amends section 7 (2) (What is a "disqualifying offence") by correcting the reference following the amendments to section 6.

Clause 7 inserts new sections 7A (What is a "disqualifying term of imprisonment"), 7B (What is a "community term of imprisonment"), 7C (What is a "suspended term of imprisonment") and 7D (What is a "rehabilitated term of imprisonment").

The term disqualifying term of imprisonment is defined as a single term of imprisonment of more than 6 months.

New section 7A(2) and (3) sets out those terms of imprisonment that are not terms of imprisonment for the purpose of section 7A. These are:

(a) a community term of imprisonment

(b) a suspended term of imprisonment

(c) a rehabilitated term of imprisonment

(d) a period of detention under the *Juvenile Justice Act 1992*

The terms 'community term of imprisonment', 'suspended term of imprisonment' and a 'rehabilitated term of imprisonment' are defined in sections 7B, 7C and 7D of the Bill.

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2 Section 153 (Prisoner on release still serving sentence).

New section 7B defines 'community term of imprisonment' to mean a term of imprisonment to be served by way of intensive correction order except where the intensive correction order is revoked and the person committed to prison. Orders from other jurisdictions are to be treated in a similar manner.

New section 7C defines a 'suspended term of imprisonment' as a term of imprisonment suspended under section 144(1) of the *Penalties and Sentences Act 1992* except where the offender is ordered to serve the whole or part of the imprisonment under section 147 (1) of the *Penalties and Sentences Act 1992*.

Section 7D defines the term 'rehabilitated period of imprisonment' to mean a term of imprisonment a person is ordered to serve in relation to a rehabilitated conviction. Rehabilitated conviction is defined in section 7D(2) to mean a conviction where the rehabilitation period has expired and not revived under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

The relevant periods in the *Criminal Law (Rehabilitation of Offenders) Act 1986* for summary offences is 5 years and for indictable offences is 10 years. This Act will only have application where the term of imprisonment ordered to be served was less than 30 months.

Clause 8 amends section 19 (Making of order) by inserting a new requirement in section 19(i) that, before a magistrate may make an order, they must be satisfied there are reasonable prospects the offender would satisfactorily comply with an intensive drug rehabilitation order and that it is otherwise appropriate for an intensive drug rehabilitation order to be made having regard to all the relevant matters including, for example –

(i) the report mentioned in section 16(2); and

(ii) whether a charge for an offence that can not be dealt with under this Act (other than a disqualifying offence) is pending in a court against the offender, and if so, the nature and seriousness of the offence and when the charge is likely to be dealt with.

Section 19 already provides that a pilot program magistrate may make an order if satisfied -

(a) the offence is a relevant offence (see section 8);

(b) the offender is an eligible person (see section 6);

(c) the offender has pleaded guilty to the offence;

(d) the magistrate would, apart from this Act, sentence the offender to a term of imprisonment;

(e) the offence is a prescribed drug offence or an offence against the *Drugs Misuse Act 1986* that may be prosecuted summarily, for which the offender may be adequately punished with imprisonment of not more than 2 years or another offence for which the offender may be adequately punished with imprisonment of not more than 3 years;

(f) the offender is not suffering from any mental condition that could prevent the offender's active participation in a rehabilitation program;

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

(h) the facilities to supervise and control the offender's participation in a rehabilitation program are available for allocation to the offender under guidelines prescribed under a regulation.

Clause 9 amends section 34 (Terminating rehabilitation programs) by omitting the present section 34(1)(e) and inserting a new section 34(1)(e). The amendment requires that a magistrate may terminate a rehabilitation program if satisfied on the balance of probabilities that the there are not reasonable prospects of the offender satisfactorily complying with the offender's intensive drug rehabilitation order.

One of the requirements of an order is an offender not commit an offence, in or outside Queensland, during the period of the order (see section 22 (a) of the Act).

Clause 10 inserts a new section 46A (Transitional provision for Drug Rehabilitation (Court Diversion North Queensland) Amendment Act 2002.

New section 46A(1) provides that the new sections 6 and 19 will operate in relation to IDROs made after the commencement of the Act.

New section 46A(2) provides transitional arrangements following correction of references in the Act necessitated by the passing of the *Corrective Services Act 2000*. The *Corrective Services Act 2000* replaced the term community corrections officer with a more generic term of corrective services officer. This change of terminology is accommodated in this Bill. As some existing orders will require a report to be made to community corrections officers the transitional provision is necessary to provide for continuation of these orders.

SCHEDULE

MINOR AMENDMENTS

This schedule makes discrete technical amendments to a number of provisions in the Act.

Amendments one and two correct references to old legislation.

Amendment three replaces the term 'community correctional office' with the term corrective services office. This is necessary as the *Corrective Services Act 2000* no longer refers to the term community correctional officer.

Amendment four replaces the term 'community correctional officer' with the term 'corrective services officer'. This is necessary as the *Corrective Services Act 2000* includes only the term 'corrective services officer' rather than community correctional officer and custodial corrections officer.

Amendment five removes the term 'community correctional officer' from the dictionary in the schedule of the Act.

Amendment six inserts a number of terms and definitions in the dictionary in the schedule.

Amendment seven amends the definition of 'community service' by updating the reference to the *Corrective Services Act 1988* to the *Corrective Services Act 2000* and including a further reference to the *Penalties and Sentences Act 1992*. This further reference conforms to the definition of 'community service' in section 194 of the *Corrective Services Act 2000*.

Amendment eight corrects definitions by updating the reference of the *Corrective Services Act 1988* to the *Corrective Services Act 2000.*