Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Bill 2017.

Policy objectives and the reasons for them

The primary policy objective of the Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Bill 2017 (the Bill) is to insert a new sentencing option into the *Penalties and Sentences Act 1992* (Penalties and Sentences Act) to respond to certain offenders whose criminal behaviour is linked to their severe drug or alcohol use. The Bill implements the Queensland Government's 2015 election commitment to reintroduce court diversionary processes and programs.

The Queensland Government commissioned the Drug and Specialist Courts Review (the Review) to develop options for a contemporary best-practice model for the reinstatement of a drug court in Queensland. In making its recommendations the Review relied on the best-practice principles and standards formulated in the Adult Drug Court Best Practice Standards (NADCP Standards) published by the United States National Association of Drug Court Professionals (NADCP) in 2013, which were informed by extensive research and evidence about the elements for success.

The principle of establishing a specific court sentencing order that can be utilised to address severe substance misuse recognises that drug and alcohol use are major contributors to criminal behaviour. Importantly it also recognises that drug and alcohol use has adverse health consequences that impact on the individual, the individual's family, the health system and the community. Therefore, the criminal justice system must be properly equipped to ensure it can respond to and directly address drug and alcohol use that contributes to offending behaviour while also appropriately punishing that offending behaviour.

The Review's Final Report (the Final Report), which was tabled in the Queensland Legislative Assembly on 13 June 2017, included **39 recommendations** and found that a drug court program should be enshrined in legislation, whether as a standalone Act or incorporated into other legislation. The Final Report found that a drug court program forms an integral part of a criminal justice system response to address high-risk and high-needs offenders, and concluded that this must form part of a broader justice system response to substance-fuelled crime.

A further objective of the Bill is to make miscellaneous criminal law amendments to the:

- *Criminal Law (Rehabilitation of Offenders) Act 1986* (CLROA) to clarify that the imposition of an overall sentence of more than 30 months imprisonment falls outside the scope of the CLROA scheme and must be disclosed;
- *Drugs Misuse Act 1986* (Drugs Misuse Act) to clarify the extended definition of dangerous drug in section 4;
- *Evidence Act 1977* (Evidence Act) to ensure that an alleged victim of an offence against section 315A (Choking, suffocation or strangulation in a domestic setting) of the Criminal Code is afforded appropriate protections in court proceedings;
- Penalties and Sentences Act to facilitate the use of technology and provide that compliance with a diversion assessment and referral program will not merely require physical attendance but extend to *participation* in a drug diversion assessment and referral program; and
- *Police Powers and Responsibilities Act 2000* (PPRA) to facilitate the use of technology and provide that compliance with a drug diversion program, and associated appointments, will extend to participation in the program or associated appointments.

Achievement of policy objectives

Amendments related to the establishment of a new sentencing order to address drug and alcohol use and offending behaviour

The Bill achieves the policy objective of establishing a post-conviction program based on best-practice principles that address high-risk, high-needs offenders by making amendments to the following Acts.

Penalties and Sentences Act 1992

– *Creation of a Drug and Alcohol Treatment Order*

The Bill will insert a new part 8A into the Penalties and Sentences Act to provide for the establishment, imposition and management of a new sentencing order in Queensland called a Drug and Alcohol Treatment Order (treatment order).

New part 8A of the Penalties and Sentences Act will provide for the making of a treatment order in order to facilitate the rehabilitation of offenders by providing a judicially-supervised, therapeutically-oriented and integrated treatment regime to reduce the offender's *severe substance use disorder*, reduce the level of criminal activity associated with the disorder and assist the offender's integration into the community.

– *Eligibility for a treatment order*

The Bill provides a treatment order may only be made for an offender if the offender has a severe substance use disorder and the disorder has contributed to the commission of an offence.

The term *severe substance use disorder* is defined as a disorder prescribed by Regulation, or if not prescribed, as a substance use disorder estimated to be severe under the Diagnostic and Statistical Manual of Mental Disorders 5th Edition, as published by the American Psychiatric Association in 2013. This ensures that the legislation will be able to adapt to any developments in the science surrounding the recognition and classification of disorders associated with the use of drugs or alcohol.

The Bill provides that the offences for which a treatment order may be imposed include a summary offence or an indictable offence that is dealt with summarily.

Offences involving violence can be subject to a treatment order, however, as the person will be released back into the community as part of the sentence, the court must not make a treatment order if it is satisfied that the offender would pose an unacceptable risk to the safety and welfare of community members.

Offenders who have been charged with sexual assault offences, who are subject to a parole order or who are serving a term of imprisonment are specifically excluded from being eligible for a treatment order.

A treatment order can only be imposed by a Magistrates Court prescribed by Regulation and only where:

- the offender (residing in the district of a prescribed court) has pleaded guilty to an offence that can be dealt with by the court, and agrees to the making of the treatment order; and
- the prescribed court has received a suitability assessment report, considers a treatment order appropriate and otherwise would have sentenced the offender to a term of imprisonment.

To assist the court in deciding whether or not it is appropriate to make the treatment order, the Bill provides that a suitability assessment report must be prepared and include an assessment of the offender's severe substance use disorder, the offender's suitability for release subject to a treatment order and include a proposed treatment program for the offender.

A treatment order comprises of two parts, a *custodial part* of a term of imprisonment of up to four years which is suspended for a designated period of up to five years (i.e. the operational period); and a *rehabilitation part* of at least two years that requires compliance with core conditions and completion of a treatment program.

The Bill provides that the court must explain to the offender the content of the treatment order, the nature and requirements of the treatment program and the consequences of non-compliance with the treatment order. This explanation ensures that the offender's consent to the making of the treatment order is informed consent and it establishes that the offender is committed to the purpose of the treatment order.

– *A multidisciplinary team assisting the court to manage treatment orders*

The Bill provides for the creation of a multidisciplinary review team that will assist the court to manage and administer each treatment order. The review team is comprised of

the court and representatives of the Queensland Police Service, Queensland Health, Queensland Corrective Services, the Department of Justice and Attorney-General and Legal Aid Queensland. The Bill provides that in making any order or taking any action in respect of the administration of the treatment order, the court must consult with the review team.

Members of the review team will assist the court by:

- being involved in preparatory assessments of an offender's eligibility to be sentenced to a treatment order;
- preparing the suitability assessment report to inform the court if the offender is suitable for the treatment order;
- preparing the treatment program that forms part of the treatment order;
- giving all reasonable directions to the offender to further the purpose of the treatment order; and
- making recommendations to the court about appropriate amendments to the treatment order.

– *Balancing punishment and rehabilitation – compliance with key conditions and a requirement to comply with a treatment program*

A treatment order comprises of integrated punitive and rehabilitative elements that are directed to an offender's criminal behaviour as well as an offender's severe substance use disorder.

An offender who is subject to a treatment order will be required to be subject to a treatment program supported by a range of conditions for a minimum of two years. This treatment program is an integral part of the treatment order and the Bill provides that an offender may be required to submit to medical, psychiatric or psychological treatment, alcohol or drug testing including wearing a device that detects alcohol or other drug usage.

The treatment order will also consist of core conditions that include requiring the offender to not commit another offence, appear before the court as directed and to report any change in residence or employment. Conditions also include an obligation to report to a review team member or an authorised corrective services officer as required and an obligation to comply with every reasonable direction given by the court, a review team member, or an authorised corrective services officer.

– *Consequence of non-compliance with a treatment order*

The Bill provides a framework for dealing with non-compliance of a treatment order. In making its decision as to how to address any non-compliance, the Bill provides that the court must have regard to a number of considerations, including the extent of the offender's general compliance, the nature and seriousness of the non-compliance and any other consideration that would make the particular order unjust in the circumstances.

Additionally, the Bill provides that in circumstances where the court is satisfied that the offender has demonstrated non-compliance with the rehabilitation part of the treatment

order the court may: impose further conditions to achieve the purpose of the treatment order; require the offender to perform community service; order the person serve a period of the suspended sentence of up to seven days; or revoke the rehabilitation part of the treatment order and order that the offender serve all or part of the suspended sentence.

In addition to the power to amend the treatment order, the Bill provides that the court may, on its own initiative, revoke the order if the court is satisfied that the offender can not, or does not want to, or is unlikely to, comply with the treatment order. The court may also revoke the treatment order upon an application by the offender, prosecutor or review team member.

If the treatment order is revoked and the offence for which the offender was placed on the order was an indictable offence specified in section 13A (Offences that may be dealt with summarily if treatment order is sought) of the Drugs Misuse Act, the Bill provides that the court must vacate the treatment order and commit the offender to the District Court for sentencing.

This enables the District Court to deal with the indictable offences in the normal course, as the offences would, other than for section 13A, have necessarily been committed to that court. As the person has already pleaded guilty to the offence, the Bill provides that in these circumstances, the court must commit the offender for sentence.

In taking any action to amend the rehabilitation part or any other action taken to address non-compliance, the Bill provides that the court must consider the views of the review team members and state the reasons for its decision.

- *Recognising compliance with a treatment order*

The Bill provides the court with the ability to recognise and respond to an offender's compliance with a treatment order.

The court will be able to cancel the whole or part of the rehabilitation part of the treatment order if the court considers that the offender has complied or substantially complied with the treatment program and that continuation of the rehabilitation part is not necessary to achieve the purpose of the treatment order. The Bill also provides that the court may amend the rehabilitation part by amending the conditions of the treatment order, including amending the type or frequency of alcohol or drug testing.

- *Related amendments to support the new part 8A*

Criminal Code

The Bill proposes amendments to section 552H (Maximum penalty for indictable offences dealt with summarily) of the Criminal Code to extend the jurisdiction of the Magistrates Court by allowing the Magistrates Court to impose a maximum penalty of up to four years imprisonment for an indictable offence that is dealt with summarily, but only in circumstances where the Magistrates Court is imposing a treatment order.

Ordinarily a Magistrate Court can only impose a maximum sentence of up to three years imprisonment when sentencing for an indictable offence that is dealt with summarily. This extension of jurisdiction will ensure that the treatment order is able to be applied to a wide cohort of offenders who will benefit from a sentencing order that addresses their substance misuse issues.

Drugs Misuse Act 1986

As with the amendments made to the Criminal Code to extend the jurisdiction of the Magistrates Court, the Bill amends sections 13 (Certain offences may be dealt with summarily) and 14 (Other offences that may be dealt with summarily if no commercial purpose alleged) of the Drugs Misuse Act, so that the court, when it is imposing a treatment order, will have the ability to impose a maximum penalty of four years imprisonment.

New section 13A (Offences that may be dealt with summarily if treatment order is sought) provides that in addition to those drug offences that can already be dealt with summarily, certain other offences may, if both the person and the prosecution consent, be dealt with summarily. These additional offences include, in certain circumstances, supplying a dangerous drug, producing a dangerous drug, publishing or possessing instructions for producing dangerous drugs and possessing a dangerous drug. These offences are of a type that would indicate a need for the support and monitoring that can be provided by a treatment order but they do not include any offence under the Drugs Misuse Act that attracts a maximum penalty of more than 20 years imprisonment.

Justice and Other Information Disclosure Act 2008 **(JOIDA)**

To support the administration of a treatment order, the Bill inserts a new part 2A (Disclosure of treatment order information) into the JOIDA to provide that the relevant agencies that form the review team or a service provider engaged by one of those relevant agencies (*sending agency*), can make *treatment order information* available to another relevant agency. As a consequence, the Bill amends the long title of the JOIDA to reflect the expanded application of that Act.

The term *treatment order information* includes information that is obtained by the agency or the service provider about a person subject to a treatment order. The specified *treatment order purposes* are limited to the information that will enable the relevant agency to assist the review team to manage the treatment order.

The Bill provides that a *sending agency* may only make *treatment order information* available for a *treatment order purpose*. However, a *sending agency* is not required to give *treatment order information* if the agency considers it would not be in the public interest to do so. Each agency will be able to consider when it is appropriate, in light of the public interest test, to release information and the Bill provides examples of when an agency need not release information.

The Bill also provides, by inserting new section 6D (Making treatment order information available for research purposes), that the chief executive may authorise a *qualified person* to access and use the *treatment order information* for research.

The new part also includes a provision, new section 6E (Chief executive may make guidelines), that provides guidelines may be made which are consistent with the provisions of the Act as well as the *Information Privacy Act 2009*.

Other miscellaneous criminal law amendments

Criminal Law (Rehabilitation of Offenders) Act 1986 (CLORA)

The Bill amends section 3 (Interpretation) of the CLORA to clarify that a relevant rehabilitation period which has passed and therefore, allows a person to lawfully deny those convictions ('spent convictions') will not extend to a conviction involving a head sentence of more than 30 months imprisonment. The amendment provides that a conviction which attracts a head sentence of more than 30 months imprisonment can never be 'spent' and must be disclosed. This clarification directly responds to concerns raised by the Court of Appeal in the decision of *Dupois* v *Queensland Television Ltd & Others* [2016] QCA 182 and clarifies the intended application of the spent conviction scheme prior to this decision.

Drugs Misuse Act 1986

The Bill amends the definition of *dangerous drug* contained in section 4 (Definitions) of the Drugs Misuse Act to omit the existing extended definition of dangerous drug which extends the definition to cover substances that, while not listed in the schedules of the *Drugs Misuse Regulation 1987*, are considered to be substantially similar to a listed dangerous drug. The extended definition will be replaced with the concept of a drug analogue, which provides an objective and scientific approach to this issue and eliminates the current subjective element of substantially similar.

Evidence Act 1977

The Bill amends section 21M (Meaning of *protected witness*) of the Evidence Act to include a reference to section 315A (Choking, suffocation or strangulation in a domestic setting) of the Criminal Code in the definition of *prescribed special offence*.

Part 2, Division 6 (Cross examination of protected witnesses) of the Evidence Act, regulates the manner of cross-examination of protected witnesses. Pursuant to this division, a self-represented accused is prohibited from cross-examining a *protected witness*. A *protected witness* includes an alleged victim in a proceeding for an offence defined as a *prescribed special offence*. Inclusion of the reference to section 315A will ensure that an alleged victim of this offence is afforded appropriate protections in court proceedings. This is consistent with the Government's commitment to ensuring the highest degree of protection for victims of domestic and family violence.

Penalties and Sentences Act 1992

The Bill amends section 15C (Meaning of *eligible drug offender*) and section 19 (Order of court) of the Penalties and Sentences Act to clarify that a person is required to 'participate in' rather than 'attend' a drug diversion assessment program. This will allow for a person to use electronic means to participate in the diversion assessment program and removes the need for the person to physically attend the program.

***Police Powers and Responsibilities Act 2000* (PPRA)**

The Bill amends section 379 (Additional case when arrest for minor drugs offence may be discontinued) of the PPRA to replace the requirement to 'attend' a drug assessment and education session, and associated appointments with a requirement to 'participate in' a program and appointments. This amendment allows the person to use electronic means to participate in the session.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than through legislative amendment. The development of the treatment order, its management and administration draws upon features from each of the various drug court models considered by the Review. The model proposed in the Bill most closely aligns to the Victorian approach to best deliver the policy objective in the Queensland context.

Estimated cost for government implementation

As part of the 2017–18 State Budget, new funding of $22.7 million over four years was publicly announced in support of the Drug Court's establishment in Brisbane and for court referral and support services. This funding is in addition to the funding previously committed to the Department of Justice and Attorney-General for the Drug Court's reinstatement ($1.59 million in 2017–18 and $1.189 million in 2018–19).

Consistency with fundamental legislative principles

The Bill is generally consistent with the fundamental legislative principles (FLP) set out in the *Legislative Standards Act 1992* (LSA). Potential breaches of the FLPs are addressed below.

Amendments to the Criminal Code

Retrospective application of potential sentencing option

Clause 6 of the Bill inserts new part 9, chapter 99 (Transitional Provision for Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017) into the Criminal Code to provide that the court may impose a penalty under the inserted subsection (1)(a) of section 552H (Maximum penalty for indictable offences dealt with summarily) for an offence committed before commencement. Subsection (1)(a) provides that when a court is imposing a treatment order, the court can impose a penalty of 100 penalty units or four years imprisonment. The maximum penalty that would otherwise be available to a Magistrate Court is a penalty of 100 penalty units or three years imprisonment.

This amendment could be seen as potentially adversely affecting the rights and liberties retrospectively (section 4(3)(g) of the LSA). The retrospectivity in this instance is justified on that basis that the amendment is simply taking into account the creation of another sentencing option that is available to the court and that the treatment order itself can only be made if the person agrees to it being made and has had the purpose and effect of the order explained to them prior to the order being made.

Amendments to the *Criminal Law (Rehabilitation of Offenders) Act 1986* (CLORA)

Clause 8 of the Bill amends section 3(2) of the CLROA to clarify the types of convictions that are capable of becoming 'spent' to accord with the intended application of the spent conviction scheme prior to the decision of *Dupois v Queensland Television Ltd & Ors* [2016] QCA 182. Clause 9 of the Bill provides that this amendment applies to convictions whether recorded before or after commencement.

Legislation should not ordinarily adversely affect rights retrospectively (section 4(3)(g) of the LSA). However, in this instance the approach is justified on the basis that the amendment clarifies the intended application of the spent conviction scheme prior to the decision in *Dupois v Queensland Television Ltd & Ors*.

Amendments to the *Evidence Act 1977*

Clause 18 of the Bill amends section 21M (Meaning of *protected witness*) of the Evidence Act to include a reference to section 315A (Choking, suffocation or strangulation in a domestic setting) of the Criminal Code in the definition of *prescribed special offence*. The amendment will provide that a self-represented accused is prohibited from directly cross-examining a *protected witness*.

This amendment could be seen as removing an existing right and therefore, impacts on the rights and liberties of individuals (section 4(a) of the LSA). However, this potential breach is justified as it does not remove the ability for the witness to be cross-examined. The existing section 21O (Procedure for cross-examination of protected witness if person charged has no legal representative) provides that the court will arrange for the person charged to be given free legal assistance unless the person arranges for legal representation or does not want the *protected witness* to be cross-examined. In addition, as the purpose of the amendment is to protect a vulnerable witness it is considered that any potential breach is justified.

Amendments to the *Justice and Other Information Disclosure Act 2008* (JOIDA)

Sharing of personal information

Part 6 of the Bill introduces amendments to the JOIDA to enable the exchange of information between certain agencies (defined as *treatment order agencies*), if that information is for a specified *treatment order purpose.* Also, the ability to exchange information extends to service providers who are engaged to provide support services to a person who is subject to a treatment order.

Additionally, the Bill provides that the chief executive can authorise a qualified person to use the information for research approved by the chief executive. It could be argued that this exchange of information, which will include personal information, may adversely impact on an offender's rights and liberties and therefore breach section 4(a) of the LSA.

The potential breach can be justified as the sharing of the information between agencies is proportionate in the circumstances. That is, information that can be shared must be limited to treatment order purposes that are listed in the Bill.

Further, clause 35 of the Bill (see proposed new sections 151I and 151J of the Penalties and Sentences Act) provides that a treatment order can only be imposed with the consent of the offender and only after the court has explained the potential impacts on the offender's rights to privacy that may be necessary to give effect to the order. In addition, the Bill provides that if the chief executive (justice) authorises a *qualified person* to access the *treatment order information* for research, the information must be used for the research in a way that could not reasonably be expected to result in the identification of any of the individuals to whom the research relates.

Conferring immunity from prosecution

The Bill provides for amendments to the JOIDA which confer immunity from prosecution for relevant agencies who exchange information for a treatment order purpose. Section 4(3)(h) of the LSA provides that legislation should not confer immunity from proceedings or prosecution without adequate justification.

The conferring of the protection from liability is justified in these circumstances because it is considered critical that agencies are able to exchange this information in order to properly support the court in the management and administration of the treatment order. Further, the immunity provided is only available when a person acting honestly exchanges the information in accordance with the other requirements proposed in part 6 of the Bill, namely proposed new section 6C (Making treatment order information available to treatment order agencies for treatment order purpose) and proposed new section 6D (Making treatment order information available for research purposes) and the requirement that information must only be exchanged for a *treatment order purpose* (see proposed new section 6B of the JOIDA in clause 22 of the Bill).

Amendments to the *Penalties and Sentences Act 1992*

Intensive and potentially intrusive requirements of a treatment program

Clause 35 of the Bill inserts new section 151S (Treatment program) into the Penalties and Sentences Act providing that a person who is subject to a treatment order must comply with a treatment program. The requirements contained in the treatment program will impact on the rights and liberties of individuals who are subject to the order (section 4(a) of the LSA). In particular proposed new section 151S provides that an offender may be required to wear a device that detects alcohol or drugs, or have monitoring devices installed at their place of residence.

The potential FLP breaches are justified because the treatment program is consistent with the main objectives of the treatment order, that is, assisting an offender to address their severe substance use disorder to aid their general health and rehabilitation which will in turn reduce criminal activity. Further, clause 35 of the Bill (see proposed new sections 151I and 151J of the Penalties and Sentences Act) provides that a treatment order can only be imposed with the consent of the offender and only after the court has explained the terms of the treatment order to the offender.

Conferring immunity from prosecution

Clause 35 of the Bill inserts new section 151ZA (Immunity from prosecution) into the Penalties and Sentences Act to provide that a person who is subject to a treatment order will not be liable for prosecution for a *relevant drug offence* if the person makes an admission about that offence during the preparation of a suitability assessment report or in the administration of the treatment order (section 4(3)(h) of the LSA).

This FLP breach is justified because the definition of *relevant drug offence* in proposed new section 151ZA(4) is limited to objectively less serious offences under the Drugs Misuse Act that are capable of being dealt with summarily, such as offences related to possession of drugs and things to facilitate personal drug use.

The provision ensures that persons who are subject to treatment orders will be able to provide a full and honest account of their drug and alcohol use in both the period leading up to the order being made as well as throughout the currency of the treatment order. This is necessary to design and maintain an appropriate treatment program for a person with severe substance use disorder.

Finally, the immunity that is proposed is limited to the admission made by the person who is the subject of the treatment order. Nothing in the Bill prohibits the prosecution for a *relevant drug offence* on the basis of evidence other than an admission made in the specific context provided by proposed new section 151ZA.

Exclusion of appeal rights

Clause 35 of the Bill inserts new section 151ZD (No appeal against particular decisions) into the Penalties and Sentences Act to exclude appeals from the decisions listed in that section. The Bill provides that despite the *Justices Act 1886*, section 222 (Appeal to a single judge) and the Criminal Code, chapter 67 (Appeal-pardon) an appeal does not lie against a decision of the court not to make a treatment order; to revoke a treatment order; that an offender has failed to comply with a treatment order; or to amend, cancel or revoke the rehabilitation part of the treatment order. This could arguably breach the FLPs regarding the provision of natural justice and procedural fairness (section 3(b) of the LSA) and making rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a) of the LSA).

The potential FLP breaches are justified because removal of appeal rights for these decisions is necessary to enable the effective administration of treatment orders, and ensure appropriate action can be taken if an order is not suitable for an offender.

The decision not to impose a treatment order is subject to a variety of factors including eligibility and the development of a *suitability assessment report*, and is ultimately an order of the court after consideration of all relevant factors and submissions. As such, it is considered that an appeal should not lie against a decision *not* to make an order.

The Bill restricts appeal rights with respect to decisions that relate to a person's failure to comply with a treatment order or the amendment of a treatment order because these

decisions deal with the administration of the treatment order and are necessary for the efficient administration of the treatment order by the court.

Further, clause 35 of the Bill (see proposed new sections 151I and 151J of the Penalties and Sentences Act) provides that the treatment order can only be imposed with the consent of the offender and only after the court has explained the terms of the treatment order to the offender, including when and how the treatment order can be revoked or amended.

If the court did revoke a treatment order the person would be sentenced for their original offending behaviour in the usual way, having regard to the extent to which they have already been punished under the treatment order. Any such sentence would be subject to the usual appeal avenues.

Consultation

Amendments relating to the establishment of a Drug and Alcohol Treatment Order

The preparation of the Review Report involved extensive consultation. Throughout the development of the Report, meetings and workshops were held with representatives from the drug and alcohol service sector and senior representatives from the Department of Justice and Attorney-General including Queensland Courts, Queensland Corrective Services and Youth Justice; the Queensland Police Service, Department of Health, Department of Housing and Public Works, Department of Education and Training, Department of the Premier and Cabinet, Queensland Treasury and Department of Communities, Child Safety and Disability Services.

In addition, interviews and workshops were held with a number of representatives from non-Government organisations including people involved with the former Drug Court and with knowledge and/or experience of other specialist courts and court interventions.

Representatives from Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Services, Queensland Law Society and the Bar Association of Queensland also attended a number of meetings and workshops.

The Chief Magistrate, the Magistrates' Therapeutic Jurisprudence Committee and magistrates involved with the former Drug Court and other specialist courts and diversionary programs were also consulted in the development of the Review Report.

The consultants preparing the Review Report also met with representatives from the Queensland Parole System Review and the evaluators of the Southport Domestic and Family Violence Specialist Court.

The Office of the Information Commissioner was consulted about those parts of the Bill dealing with information sharing under the amendments to the JOIDA.

Legal Aid Queensland, the Chief Magistrate and the Deputy Chief Magistrate were consulted on the Bill in relation to the amendments about the treatment order. Their feedback has been used to inform the drafting process.

Other miscellaneous criminal law amendments

Consultation on the amendments to the Drugs Misuse Act to clarify the extended definition of dangerous drug occurred with representatives from the Queensland Police Service, the Office of the Director of Public Prosecutions and the Department of Health.

Consistency with legislation of other jurisdictions

Victoria and New South Wales have legislative provisions that establish a 'drug court' model. However, the Bill is specific to the State of Queensland and does not seek to be uniform with, or complementary to, legislation of the Commonwealth or another State.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017*.

Clause 2 states that parts 2, sections 14 to 16, part 6 and sections 32 and 35 of the Bill are to commence on a day to be fixed by proclamation. The remainder of the Bill will commence on assent.

Part 2 Amendment of the Criminal Code

Clause 3 states that this part amends the Criminal Code.

Clause 4 amends section 227C *(Persons who are not criminally responsible for offences against ss 227A and 227B)* to include reference to a treatment order in the definition of *supervision order* in order to exempt a person from criminal liability for an offence against sections 227A(1) or (2) or 227B(1) in certain circumstances.

Clause 5 amends section 552H *(Maximum penalty for indictable offences dealt with summarily)* to omit existing paragraphs (a) and (b) and insert new paragraphs (a) to (c).

New subsection (a) provides that a Magistrates Court imposing a treatment order under the Penalties and Sentences Act, part 8A can impose a penalty of 100 penalty units or four years imprisonment. Subsections (b) and (c) replicate the former law providing the sentencing jurisdiction of the Magistrates Court.

Clause 6 inserts new part 9, chapter 99 *Transitional provision for Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017*.

New section 741 *(Application of s 552H)* provides that a court may impose a penalty mentioned in section 552H(1)(a) in relation to a treatment order under the Penalties and Sentences Act for an offence committed before the commencement of the section 552H(1)(a).

Part 3 Amendment of the *Criminal Law (Rehabilitation of Offenders) Act 1986*

Clause 7 provides that this part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986.*

Clause 8 clarifies the types of convictions for which a rehabilitation period can apply to.

Subclause (1) amends section 3 *(Interpretation)* to insert a definition of 'term of imprisonment' in accordance with the definition provided in section 4 of the Penalties and Sentences Act.

Subclause (2) replaces the existing section 3(2) to insert a new section 3(2) to clarify that a rehabilitation period applies in relation to a conviction for an offence only if an offender was not sentenced to imprisonment or an offender was sentenced to a term of imprisonment of not more than 30 months overall (i.e. the head sentence).

New subsection (2A) provides if an offender is sentenced to a term of imprisonment of not more than 30 months, it does not matter whether the offender was actually required to serve any of the term of imprisonment in actual custody.

Clause 9 inserts new section 15 *Transitional provision for Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017* to clarify that the amendments to section 3 apply to convictions recorded whether before or after commencement, that is, the provision has retrospective effect.

Subsection (2) clarifies the intended application of the law prior to the decision *Dupois* v *Queensland Television Ltd & Others* [2016] QCA 182 to ensure that an offender who was sentenced to more than 30 months imprisonment prior to the amendment does not obtain the benefit of the spent conviction scheme and the conviction is not 'spent' and must be disclosed.

Part 4 Amendment of the *Drugs Misuse Act 1986*

Clause 10 provides that this part amends the *Drugs Misuse Act 1986.*

Clause 11 amends section 4 (*Definitions*).

Subclause (1) inserts a definition for *analogue* to refer to proposed new section 4A and to provide for the definition of *treatment order* to refer to a treatment order under the Penalties and Sentences Act, part 8A.

Subclause (2) inserts a definition of *dangerous drug* to clarify the types of things that fall within this definition.

Clause 12 inserts a replacement for section 4A *(Salts, derivatives and stereo-isomers).*

New section 4A *(Meaning of analogue)* provides a definition for the term *analogue*.

New section 4AA *(Salts, derivatives and stereo-isomers of particular dangerous drugs)* provides a salt, derivative or stereo-isomer of the drug, and a salt of a derivative or stereo-isomer of the drug, are included as dangerous drug as stated in the *Drugs Misuse Regulation 1987*, schedules 3, 4 or 5.

Clause 13 amends section 4BA *(Provision about s 4, definition of dangerous drug, paragraph (c)(iii))* to replace the internal references so that the section will now refer to the proposed new paragraph (f) of the definition of dangerous drug and reflect the amendments included in that paragraph.

Clause 14 amends section 13 (*Certain offences may be dealt with summarily*) to provide that if a treatment order is made for the person, the person is liable on conviction to not more than four years imprisonment.

Clause 15 inserts a new section 13A (*Offences that may be dealt with summarily if treatment order is sought*).

New section 13A, subsection (1) provides that if a person is charged with the commission of an offence mentioned in subsection (3), or an attempt to commit the offence, the proceedings for the charge may be taken summarily.

Subsection (2) provides that the proceedings for the offence may be taken summarily only if both the defendant and the prosecution agree to a treatment order being made under the Penalties and Sentences Act, part 8A.

Subsection (3) provides that for subsection (1) the offences are:

- an offence defined in section 6(1), if the person is liable on conviction to not more than the maximum penalty mentioned in paragraph (c) of that section; or
- an offence defined in section 8(1), if the person is liable on conviction to not more than the maximum penalty mentioned in paragraph (b)(i), (c) or (d) of that section; or
- an offence defined in section 9(1), if the person is liable on conviction to not more than the maximum penalty mentioned in paragraph (b)(i), or (c) of that section and the offence can not be dealt with summarily under section 14.

Subsection (4) provides that despite subsection (1), proceedings may not be taken summarily in relation to a charge of an offence mentioned in subsection (3) if the prosecution alleges the offence was committed with the circumstances of aggravation stated in the Penalties and Sentences Act, section 161Q.

Subsection (5) provides that a person against whom proceedings are taken summarily under this section is liable on conviction to not more than four years imprisonment.

Clause 16 amends section 14 (*Other offences that may be dealt with summarily if no commercial purpose alleged*) to provide that if a treatment order is made for the person, the person is liable on conviction to not more than four years imprisonment.

Part 5 Amendment of the *Evidence Act 1977*

Clause 17 provides this part amends the *Evidence Act 1977*.

Clause 18 amends section 21M *(Meaning of protected witness)* to include the offence of section 315A (Choking, suffocation or strangulation in a domestic setting) of the Criminal Code.

Part 6 Amendment of the *Justice and Other Information Disclosure Act 2008*

Clause 19 provides that this part amends the *Justice and Other Information Disclosure Act 2008.*

Clause 20 amends the long title to include treatment order information and refer to particular entities.

Clause 21 amends section 3 (*Purpose of Act) to* provide that the purpose of the Act includes reference to treatment order information and public sector agencies.

Clause 22 inserts a new part 2A (*Disclosure of treatment order information*).

New section 6A *(What is treatment order information)* provides that information about a person who is on a treatment order is treatment order information if:

- it is obtained by a treatment order agency in the performance of the agency's functions under any Act or law or in the performance by a person employed or engaged by the agency of a function under any Act or law; or
- it is obtained by a service provider in the performance of the service provider's functions under any agreement entered into between the service provider and the State or in the performance by a person employed or engaged by the agency of a function under the agreement; and
- it is relevant to the purpose mentioned in new section 6B.

New section 6B (*What is a treatment order purpose*) provides that treatment order information is made available by a sending agency or a service provider for a *treatment order purpose* if the information is made available:

- to enable the receiving agency to prepare for a review team meeting relating to the person's treatment order;
- to enable the receiving agency to attend, or arrange the attendance of, the person or someone else at a review team meeting for the person's treatment order;
- to enable the receiving agency to record and give effect to a court decision made in a review team meeting relating to the person's treatment order;
- to enable the receiving agency to use the criminal history of the person to the extent the receiving agency is authorised to use the criminal history of the person;
- to enable the receiving agency to administer, or assist in administering, the treatment order;
- to enable the receiving agency to provide for the effective supervision of the person while the person is subject to the treatment order;
- to enable the receiving agency to provide for the safety and welfare of the person; and
- to enable the receiving agency to provide for, or consider whether it needs to provide for:
    - the safety and welfare of an individual employed or engaged by the receiving agency who may be in contact with the person; or

- an individual whose safety or welfare may be at risk because of an association with the person or someone else.

New section 6C (*Making treatment order information available to treatment order agencies for treatment order purpose*) provides the chief executive of a treatment order agency or a service provider may make treatment order information about a person to whom a treatment order applies available to the chief executive of another treatment order agency for a treatment order purpose.

Subsection (2) provides that a sending agency is not required to give treatment order information if the agency reasonably considers it would not be in the public interest to give the information. A number of examples are provided as to when this might occur and include where giving the information may prejudice an investigation into a contravention of a law or where it might endanger a person's life or physical safety.

New section 6D *(Making treatment order information available for research purposes)* provides the chief executive (justice) may authorise a qualified person to use treatment order information that would otherwise be confidential, for research purposes.

Subsection (2) provides that if treatment order information is provided, such information can only be used by the qualified person in such a way that it would not disclose the identification of the individual to whom the information relates.

Subsection (3) provides the definition of 'qualified person' for new section 6D.

New section 6E (*Chief executive may make guidelines*) provides that the chief executive (justice) may make guidelines consistent with the Act, the *Information Privacy Act 2009* and the *Public Records Act 2002* for sharing and dealing with information under the part.

Subsection (2) provides that the purpose of the guidelines are to ensure:

- treatment order information is shared under the part for proper purposes;
- to the greatest extent possible, the privacy of individuals is respected when information is shared under this part, while ensuring each receiving agency has sufficient information to enable the agency to administer, or assist in administering, a treatment order effectively; and
- information shared under this part is properly used, stored, retained and disposed of.

Subsection (3) provides that the chief executive (justice) must publish the guidelines on the department's website.

Clause 23 amends section 10 (*Sending agency may make information available to information technology service provider*) consequential to new section 6C (*Making treatment order information available to treatment order agencies for treatment order purpose*) and new section 6E (*Chief executive may make guidelines*).

Subclause (1) amends section 10(1) to insert a new paragraph (ab) to refer to a treatment order agency (also the sending agency) that makes treatment order information available to a receiving agency under new section 6C.

Subclause (2) amends section 10(1) to renumber to paragraphs to account for the inclusion of paragraph (ab) in subclause (1).

Subclause (3) amends section 10(2)(a) and (b) to replace the reference to 'under arrangements' with reference to 'under a guideline mentioned in section 6E, or an arrangement mentioned in section 13'.

Clause 24 replaces section 11 (*Use of information permitted despite other Act)* to provide that despite any other Act, a person may use information provided to the person under new sections 6C or 6D, or under an arrangement mentioned in section 13. This is consequential to the insertion of new section 6C.

Clause 25 amends section 12 (*Information not to be disclosed under this Act*) consequential to the insertion of new section 6C.

Clause 26 amends section 13 (*Form of arrangements for giving and receiving information*) to provide that information provided under new part 2A of the Act does not require a written arrangement to be entered into between chief executives.

Clause 27 amends section 14 (*Disposal of information by receiving agenc*y) consequential to the insertion of new section 6C.

Clause 28 amends section 15 (*Misuse of information made available under this Act*) to include reference to 'service provider'.

Clause 29 amends section 16 (*Protection from liability)* consequential to the insertion of new section 6C.

Clause 30 amends the schedule *(Dictionary)* to insert new definitions and amend existing definitions.

Subclause (1) amends the schedule to insert new terms relevant to the introduction of new part 2A.

Subclause (2) amends the definition of *chief executive,* of a child protection agency.

Subclause (3) amends the definition of *receiving agency*.

Subclause (4) amends the definition of *sending agency*.

Part 7 Amendment of the *Penalties and Sentences Act 1986*

Clause 31 provides that this part amends the *Penalties and Sentences Act 1992.*

Clause 32 amends section 4 *(Definitions)* to amend existing definitions and provide new definitions to support and clarify the operation of new part 8A *(Drug and alcohol treatment orders).*

Subclause (1) omits the definition of 'operational period' and a new definition is provided in subclause (2).
Subclause (2) inserts a range of new definitions to support and clarify the operation of part 8A.

Subclause (3) omits the definition of 'court' and inserts a new definition.

Clause 33 amends section 15C *(Meaning of eligible drug offender)* to change reference in subsection (4)(a)(ii) from 'attend' to 'participate in' a drug assessment and education session in recognition of different methods of service delivery of the assessment program.

Clause 34 amends section 19 *(Order of court)* to change the reference in subsection (2A) from 'attend' and 'attending' to 'participate in' and 'participating in' respectively, in recognition of different methods of service delivery of the drug assessment and education session.

Clause 35 inserts a new part 8A *(Drug and alcohol treatment orders)* to provide for the making and administration of a treatment order.

Division 1 Preliminary

New section 151B *(Definitions for part)* inserts definitions that apply to the making and administration of a treatment order.

New section 151C *(Purpose of part and treatment orders)* describes the purposes for making a treatment order to:

- facilitate the rehabilitation of an offender by providing a judicially supervised, therapeutically orientated, integrated treatment regime;
- reduce the offender's severe substance use disorder;
- reduce the level of criminal activity associated with the offender's severe substance use disorder;
- reduce the health risks to the offender that are associated with the offender's severe substance use disorder; and
- assist with the offender's integration into the community.

Division 2 When treatment orders may be made

New section 151D *(Court may make treatment order only if it records conviction)* provides that a court can only make a treatment order if it records a conviction against the offender.

New section 151E *(When treatment order may be made)* lists the requirements that must be satisfied before the court can make a treatment order for an offender. It is in the court's discretion whether or not to make a treatment order.

Subsections (1)(a) and (b) lists the matters that a court must be satisfied of before it can sentence the offender to a treatment order:

- the offender must plead guilty to an eligible offence. An eligible offence is defined in new section 151B;
- the offender must reside in the court district of the court. Subsection (3) defines *court district* with reference to the *Justices Act 1886*, section 22B; and
- the court would, other than for the ability to make a treatment order, sentence the offender to serve an actual term of imprisonment;
- the court has received a suitability assessment report for the offender. A suitability assessment report is defined in new section 151B to mean a report given the court under new section 151K;
- the offender has a severe substance use disorder. A severe substance use disorder is defined in new section 151B to mean either a disorder prescribed by Regulation that relates to the use of alcohol or other drugs, or if no disorder is prescribed under the Regulation, a substance use disorder estimated as being severe under the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association in 2013;
- the offender's severe substance use disorder contributed to the commission of the eligible offence, for example, the offender committed the offence to support their severe substance use disorder or the offender was under the influence of the substance (i.e. alcohol or other drug) during the commission of the offence; and
- the court considers it appropriate in all the circumstances to make the treatment order for the offender.

Subsection (2) provides that when the court is considering whether or not it is appropriate to make a treatment order and the offender is subject to an existing sentencing order of the Supreme Court or District Court, the court must have regard to any existing order in force. To remove any uncertainty, an existing sentencing order of the Supreme Court or District Court that is in force does not prohibit the court making a treatment order.

New section 151F *(When treatment order can not be made)* lists the circumstances which prohibit a court from making a treatment order. This section applies despite new section 151E.

Subsection (1)(a) to (c) provides a treatment order can not be made if the offender is:

- incarcerated in a correctional services facility serving a term of imprisonment; or
- subject to a parole order. Subsection (2) defines parole older with reference to schedule 4 in the *Corrective Services Act 2006*; or
- serving, or is required to serve, the unexpired portion of a period of imprisonment for another offence in Queensland or elsewhere because a parole order, or an order similar to a parole order under a Commonwealth or other State law, has been cancelled.

Subsection (1)(d) provides a treatment order can not be made if the offender has been charged with a sexual assault offence. Subsection (2) defines sexual assault offence to mean an offence against the Criminal Code chapter 22 (other than an offence against sections 224, 225 or 226), or an offence against chapter 32.

New section 151G *(Particular matters for offences involving violence against another person)* provides the matters a court must consider in deciding whether or not to make a treatment order if the offender is charged with an offence involving violence against another person.

Subsection (1)(a) to (d) sets out the matters the court must have regard to (but is not limited to):

- the nature and seriousness of the offence and any previous offences involving violence committed by the offender;
- whether or not the offence resulted in bodily harm to another person. Bodily harm is considered in accordance with the meaning in section 1 of the Criminal Code;
- any relevant medical, psychiatric or other information available to the court about the offender;
- if the offence committed by the offender was a domestic violence offence – the risk of further domestic violence or associated domestic violence under the *Domestic and Family Violence Protection Act 2012* being committed by the offender.

Subsection (2) provides the court must not make a treatment order if the court is satisfied that, if the order were made, the offender would pose an unacceptable risk to the safety and welfare of:

- a person who is in a domestic relationship with the offender (with domestic relationship defined in subsection (3) to mean a relevant relationship under the *Domestic and Family Violence Protection Act 2012*)*;* or
- a review team member; or
- a person employed or engaged by a treatment order agency; or
- a member of the community.

New section 151H *(Multiple offences)* provides a court can make more than one treatment order for an offender convicted of more than one eligible offence subject to the qualifications provided in section 151H.

Subsection (2) provides if the court makes two or more treatment orders, the total term of imprisonment imposed on the offender pursuant to the custodial part of all treatment orders made can not exceed four years.

Subsection (3) provides multiple treatment orders may be condensed into one order, which states each offence for which a treatment order is made.

Subsection (4) provides that a court must not impose a penalty for any of the offences that would otherwise interfere with the person's ability to comply with a treatment order.

Division 3 Making treatment orders

Subdivision 1 Preliminary steps

New section 151I *(Explaining treatment order)* requires the court to explain, or cause to be explained, to the offender, the purpose and effect of the treatment order. The explanation must be made in a language or in a way likely to be readily understood by the offender.

New section 151J *(Offender to agree to making of order)* requires the offender to agree to the making of, and to comply with, a treatment order.

New section 151K *(Adjournment for obtaining suitability assessment report)* provides if the court considers a treatment order may be suitable for the offender, and the offender has agreed to an order being made and to comply with the order, the court must make an order requiring an appropriately qualified review team member to prepare a suitability assessment report.

The suitability assessment report must be provided to the court within a certain timeframe, either 28 days after the order is made, or a longer period if the court has ordered.

Subsection (2) requires the suitability assessment report be provided to the prosecutor, the offender's legal representative, the review team and, if the court orders, to the offender.

New section 151L *(Requirements for suitability assessment report)* identifies the matters that a suitability report must address including:

- as assessment of whether the offender has a severe substance use disorder; and
- an assessment of the suitability of the offender for release under a treatment order; and
- a proposed treatment program, if the report states the offender is suitable for release under a treatment order.

Subdivision 2 Content of treatment orders

New section 151M *(Content)* provides that in imposing a treatment order the court must record a conviction and include two parts, namely a custodial part and a rehabilitation part.

The custodial part and the rehabilitation part of the order, both commence on the day the treatment order is made.

Subdivision 3 Custodial part

New section 151N *(Custodial part of treatment order)* outlines the custodial part of a treatment order. The court must sentence the offender to imprisonment for four years or less, order that the period of imprisonment is suspended wholly and state an operational period for the order.

The requirements for the operational period are provided in subsection (3). The operational period must be for a minimum of two years but not longer than five years. The two year minimum period accords with the minimum period of the rehabilitation part of the treatment order. The operational period must also be equal to or longer than the sentence of imprisonment imposed.

Subsection (5) provides the offender is only required to serve the sentence of imprisonment suspended under the custodial part of the order if ordered to do so under part 8A.

New section 151O *(Orders if offender commits offence for which imprisonment may be imposed)* provides the powers of the court to deal with an offender if the offender has not complied with the treatment order by being convicted (in Queensland or elsewhere) of a further offence for which imprisonment may be imposed and the offence was committed during the operational period of the order.

Having regard to the matters stated in new section 151P, the court's powers are provided in subsection (2).

New section 151P *(Considerations for taking action under s 151O)* provides the matters the court must have regard to when making an order under new section 151O.

Subdivision 4 Rehabilitation part

New section 151Q *(Rehabilitation part of treatment order)* outlines the rehabilitation part of a treatment order, which comprises of core conditions and a treatment program.

The treatment program must comply with new section 151S.

The rehabilitation part of the treatment order starts when the order is made and must be in force for two years, unless it is cancelled or extended under new division 4.

New section 151R *(Core conditions)* provides the core conditions which are contained in the rehabilitation part of the treatment order that the offender must comply with.

Subsection (2) specifies the core conditions to be included in the treatment order.

New section 151S *(Treatment program)* provides the requirements of a treatment program that an offender must comply with as part of the rehabilitation part of the treatment order. A treatment program is administered by the review team in accordance with new division 4.

Subsection (1) requires a treatment program must state the period, of up to two years, within which the offender must complete the treatment program.

Subsection (2) provides guidance in the matters that may be included as part of the treatment program. The list is not exhaustive.

Division 4 Administering treatment orders

New section 151T *(Review team obligations and requirement for court to consult)* provides for the establishment of a review team who must assist the court in administering the treatment order. The review team may give a direction to the offender that is reasonably necessary to achieve the purposes of the treatment order.

New section 151U *(Court may cancel rehabilitation part of treatment order on early completion of treatment program)* provides power to the court to cancel the whole or part of the rehabilitation part of the treatment order if the court is satisfied the offender has complied with, or substantially complied with, the treatment program and continuation of the rehabilitation part, or part of the rehabilitation part, is not necessary to achieve the purposes of the treatment order.

New section 151V *(Court may amend rehabilitation part of treatment order)* provides the court may amend the rehabilitation part of the treatment order either on its own initiative, or on the application of the offender, the prosecutor or a review team member.

Subsection (1) allows the court when amending the treatment order, to impose or remove conditions in the treatment program; extend the rehabilitation part of the treatment order; or amend existing conditions.

If extending the rehabilitation part of the treatment order, the court must consult with the offender's review team and have regard to the offender's overall compliance with the treatment order.

Subsection (4) provides the rehabilitation part of the treatment order can not be extended beyond the date that the custodial part ends (that is, the final day of the operational period).

Subsection (5) requires the court to give reasons for any decision to amend the treatment order under this section.

New section 151W *(Failure to comply with rehabilitation part of treatment order)* provides that the court may take action where satisfied that an offender has failed to comply with the rehabilitation part of their treatment order without reasonable excuse.

Subsection (1) provides that the court may do any of the following:

- impose a condition on the treatment order that the court considers necessary to achieve the purposes of the order; or
- at any one hearing under new section 151W, order the offender to perform up to 40 hours of community service (but the total number of community service hours imposed on the offender can not exceed 240 hours); or
- at any one hearing under new section 151W, order the offender to serve up to seven consecutive days of the term of imprisonment suspended under the custodial part of the treatment order; or
- revoke the rehabilitation part of the order and order that the offender serve either the whole or part of the term of imprisonment under the custodial part of the

treatment order (reduced by the period of imprisonment served by the offender under the order); or
- amend the rehabilitation part of the treatment order under new section 151V.

Subsection (2) makes it clear that any order for community service under subsection (1)(b) is not a community service order. Subsection (2) also provides that the court may impose a condition or make an order under subsections (1)(a), (b) or (c) more than once for the same offender.

Subsection (3) requires the court to have regard to the extent to which the offender has otherwise complied with the treatment order.

Subsection (4) requires the court to give reasons for any decision to take an action under new section 151W.

Division 5 Ending treatment orders

New section 151X *(Court may revoke treatment order)* provides the court with the power to revoke a treatment order.

Subsection (1)(a) provides for the court to revoke the treatment order on its own initiative, if satisfied that the purpose of the order can no longer be achieved because, for example:

- the offender is no longer capable of complying with the order because of a physical or psychiatric disability; or
- the offender is sentenced to a term of imprisonment for another offence; or
- the offender has failed to comply with the treatment order in a material way; or
- the offender is no longer willing to comply with the treatment order, or is unlikely to comply with the order for another reason.

Subsection (1)(b) provides that the court can also revoke the treatment order on application by the offender, prosecutor or a review team member.

Subsection (2) requires the court, before revoking the treatment order, to consult with the offender's review team about whether the revocation is appropriate and have regard to the extent to which the offender has otherwise complied with the order.

New section 151Y *(Requirements for revocation)* sets out the requirements of the court if the treatment order is revoked.

If the treatment order was made for the offender in relation to an offence dealt with summarily under section 13A of the Drugs Misuse Act, subsection (1)(a) requires the court to:

- order that the record of the conviction for the offence be revoked;
- vacate the offender's treatment order; and

- commit the offender to the District Court for sentence under section 113 of the *Justices Act 1886*, even though section 104(2)(b) of that Act has not been complied with.

If the treatment order was made for the offender in relation to an offence not mentioned in subsection (1)(a), subsection (1)(b) provides the court with the power to (upon revocation of the treatment order), deal with the offender as if the offender had just been convicted of the eligible offence for which the treatment order was made.

In imposing a term of imprisonment on an offender under subsection (1), subsection (2) requires the court to:

(a) reduce the term of imprisonment by any period of imprisonment served by the offender under the custodial part of the order;
(b) not impose a term of imprisonment that, together with any imprisonment served under the order, would exceed the sentence of imprisonment imposed under the custodial part of the order; and
(c) have regard to the extent to which the offender has otherwise complied with the order.

New section 151Z *(Termination of treatment orders)* provides that a treatment order made for an offender is terminated if it is revoked under section 151X or if the operational period of the custodial part of the treatment order expires.

Division 6 Miscellaneous

New section 151ZA *(Immunity from prosecution)* provides that a person is not liable to prosecution for a relevant drug offence resulting from any admission made by the person for the purposes of preparing a suitability assessment report for the person or administering a treatment order for the person.

Subsection (2) provides that any admission, and any evidence obtained because of any admission, is not admissible against the person in a prosecution for the relevant drug offence.

Subsection (3) provides that this section does not prevent the person from being prosecuted for the relevant drug offence if evidence of the offence (other than the admission made by the person or evidence obtained because of the admission) exists.

Relevant drug offence is defined in subsection (4) as meaning an offence mentioned under sections 9, 9A or 10 of the Drugs Misuse Act or an offence that may be dealt with summarily under sections 13, 13A or 14 of *that Act*.

New section 151ZB *(Arrest warrants)* allows a court to issue a warrant for an offender's arrest if the court reasonably suspects the offender has failed to comply with the offender's treatment order or revokes the offender's treatment order.

Subsection (2) provides that the arrest warrant authorises any police officer to arrest the offender and to bring the offender before the court.

New section 151ZC *(Court may remand offender in custody)* provides that, where a warrant is issued under new section 151ZB(1)(a), the court may remand the offender in custody to appear before the court if the court decides to reserve making a decision about revoking the order or rehabilitation part of the order; or revoke the order or rehabilitation part of the order.

Subsection (2) sets out the period for which an offender may be remanded in custody.

Subsection (2)(a) provides that the initial period of custody can not be more than 30 days. Subsection (2)(b) provides that a further period (or periods) of custody can not be more than eight days.

Subsection (3) provides that, if the court remands the offender in custody, the chief executive of corrective services must ensure the person appears before the court to be dealt with as required.

New section 151ZD *(No appeal against particular decisions)* provides that there can be no appeal against a decision of the court:

- not to make a treatment order; or
- that an offender has failed to comply with a treatment order; or
- cancel the rehabilitation part of the treatment order; or
- to amend the rehabilitation part of a treatment order; or
- to revoke the rehabilitation part of a treatment order; or
- to revoke a treatment order.

Subsection (2) makes it clear that new section 151ZD(1) applies despite section 222 of the *Justices Act 1886* and chapter 67 of the Criminal Code.

Part 8 Amendment of *Police Powers and Responsibilities Act 2000*

Clause 36 provides that this part amends the *Police Powers and Responsibilities Act 2000.*

Clause 37 amends section 379 (*Additional case when arrest for minor drugs offence may be discontinued*) to replace the requirement to *attend* a drug diversion assessment program with the requirement to *participate in* the program. Similarly the requirement to *attend and complete* or *attend or complete* is replaced with the requirement to *participate in and complete* or *participate in or complete*.