



New South Wales

## Drug Court Regulation 2005

under the

Drug Court Act 1998

### Explanatory note

This Regulation replaces the *Drug Court Regulation 1999* which is repealed on 1 September 2005 under section 10 (2) of the *Subordinate Legislation Act 1989* and is remade without any changes in substance.

The object of this Regulation is to make provisions with respect to the operation of the *Drug Court Act 1998*. The Regulation deals with the following matters:

- (a) the criteria to be satisfied before a person is eligible to be considered for a Drug Court program (clause 4),
- (b) the courts and proceedings from which a person may be referred to the Drug Court for consideration for a Drug Court program (clause 5),
- (c) the guidelines to be observed in determining the availability and allocation of facilities in connection with Drug Court programs (clause 6),
- (d) the modification of section 265 of the *Criminal Procedure Act 1986* so as to enable certain obligations under that section to be suspended for the purpose of expediting proceedings before the Drug Court (clause 7),
- (e) the persons to be required to furnish information to the Drug Court in relation to the administration of Drug Court programs (clause 8),
- (f) the forms to be used for the purposes of the Act (clause 9),
- (g) the fees to be charged for the purposes of the Act (clause 10),
- (h) the manner and form of referrals of persons to and from the Drug Court (clauses 11 and 12),
- (i) other formal matters (clauses 1–3 and 13).

This Regulation is made under the *Drug Court Act 1998*, including section 32 (the general regulation-making power) and sections 5, 6, 7, 18 and 31.

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# Public consultation draft

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Drug Court Regulation 2005

Explanatory note

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Drug Court Regulation 2005

Clause 1

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## Drug Court Regulation 2005

under the

Drug Court Act 1998

### 1 Name of Regulation

This Regulation is the *Drug Court Regulation 2005*.

### 2 Commencement

This Regulation commences on 1 September 2005.

**Note.** This Regulation replaces the *Drug Court Regulation 1999*, which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**facsimile** means facsimile transmission, the internet or any other means of electronic transmission of information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

**the Act** means the *Drug Court Act 1998*.

(2) Notes included in the text of this Regulation do not form part of this Regulation.

### 4 Eligible persons: section 5

For the purposes of section 5 (1) (e) of the Act, the following criteria are prescribed as criteria that a person must satisfy in order to be an eligible person within the meaning of the Act:

- (a) the person's usual place of residence must be within one of the following local government areas, namely, Auburn, Bankstown, Baulkham Hills, Blacktown, Campbelltown, Fairfield, Hawkesbury, Holroyd, Liverpool, Parramatta or Penrith,
- (b) the person must not be suffering from any mental condition that could prevent or restrict the person's active participation in a program under the Act,
- (c) the person must be of or above the age of 18 years,

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- (d) criminal proceedings against the person for the offence with which the person is charged must not be criminal proceedings that are within the Children's Court's jurisdiction to hear and determine.

## **5 Referring courts: sections 6 and 8AA**

The following courts and proceedings are prescribed for the purposes of sections 6 (1) and 8AA (1) of the Act:

- (a) the District Court, in respect of all criminal proceedings brought before it in its sittings at Campbelltown, Liverpool, Parramatta or Penrith,
- (b) the Local Courts at Bankstown, Blacktown, Burwood, Campbelltown, Fairfield, Liverpool, Parramatta, Penrith, Richmond, Ryde and Windsor, in respect of all criminal proceedings brought before them.

## **6 Guidelines for facilities for the supervision and control of persons participating in Drug Court programs: sections 7 and 8AB**

- (1) For the purposes of sections 7 (2) (c) and 8AB (2) (d) of the Act, the following guidelines are to be observed in determining the availability and allocation of facilities for the supervision and control of a referred person's participation in a program under the Act:
  - (a) facilities are taken to be available in relation to a referred person:
    - (i) if the person or body providing those facilities is willing to accept the referred person, and
    - (ii) if it is reasonably likely that those facilities will be available to the referred person when they are needed, and
    - (iii) if the registrar has received advice as to the treatment proposed to be provided to the referred person by means of those facilities,
  - (b) facilities are to be allocated to referred persons in accordance with policies determined from time to time by the Drug Court.
- (2) In subclause (1), *referred person* means a person who has been referred to the Drug Court under section 6 of the Act.

## **7 Application of Criminal Procedure Act 1986: section 18**

- (1) The provisions of section 265 (1) and (2) of the *Criminal Procedure Act 1986* are modified so as to provide that, in proceedings before the Drug Court under section 7, 8AB or 8AC of the Act, the obligations of the Drug Court and the prosecutor under those provisions are suspended in relation to a person charged if the person charged consents to their suspension.

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- (2) The suspension of those obligations ceases to have effect:
  - (a) on the person withdrawing consent under subclause (1), or
  - (b) on the person consenting to being dealt with by the Drug Court under section 8 of the Act, or
  - (c) on the Drug Court referring the person back to the referring court under section 8 of the Act, or
  - (d) on the person being dealt with by the Drug Court under section 8AD of the Act.

## **8 Provision of information to Drug Court: section 31**

- (1) For the purposes of section 31 (1) of the Act, the following persons are prescribed, but only if they are involved in the administration of, or provide services in connection with, a drug offender's program:
  - (a) persons acting for or on behalf of the South Western Sydney, Wentworth or Western Sydney Area Health Service,
  - (b) persons acting for or on behalf of the toxicology unit of Pacific Laboratory Medicine Services (an administrative unit of the Northern Sydney Area Health Service),
  - (c) persons acting for or on behalf of Access Correctional Services (an administrative unit of the Department of Education and Training),
  - (d) persons acting for or on behalf of an organisation providing treatment to a drug offender in connection with the drug offender's program.
- (2) An organisation is referred to in subclause (1) by the name under which it is incorporated (in the case of a body corporate), the name under which it is constituted (in the case of an unincorporated body) or the name under which it trades (in either case).
- (3) For the purposes of section 31 (2) of the Act:
  - (a) information may be provided to the registrar:
    - (i) personally, or
    - (ii) by letter sent by post to the registrar or delivered to the offices of the registrar, or
    - (iii) by letter sent to the registrar by means of document exchange facilities, or
    - (iv) by message sent by facsimile or other electronic transmission, and
  - (b) information provided to the registrar otherwise than in writing must be confirmed in writing within 24 hours unless the registrar indicates otherwise.

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Clause 9

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## 9 Forms

- (1) Any form that may be used in respect of criminal proceedings before the District Court may also be used in respect of criminal proceedings before the Drug Court in its exercise of the criminal jurisdiction of the District Court.
- (2) Any form that may be used in respect of criminal proceedings before a Local Court may also be used in respect of criminal proceedings before the Drug Court in its exercise of the criminal jurisdiction of a Local Court.

## 10 Fees

- (1) Any fee that may be charged in respect of criminal proceedings before the District Court may also be charged in respect of criminal proceedings before the Drug Court in its exercise of the criminal jurisdiction of the District Court.
- (2) Any fee that may be charged in respect of criminal proceedings before a Local Court may also be charged in respect of criminal proceedings before the Drug Court in its exercise of the criminal jurisdiction of a Local Court.
- (3) The Drug Court may postpone, waive or remit any fee that may be charged under the Act, either unconditionally or subject to conditions.
- (4) The Drug Court's function under subclause (3) may be exercised by the registrar.

## 11 Referrals to Drug Court

A referral under section 6 or 8AA of the Act to the Drug Court by another court may be made by notifying the registrar by telephone or in writing or by facsimile of the other court's decision to so refer the matter.

## 12 Referral back by Drug Court

- (1) An order under section 8 of the Act referring a matter back to the referring court may be made by a Judge of the Drug Court in the absence of the public and without any attendance by or on behalf of any person.
- (2) The registrar may, by telephone or facsimile, notify a court of an order by the Drug Court to refer a person back to the referring court.

## 13 Savings

Any act, matter or thing that, immediately before the repeal of the *Drug Court Regulation 1999*, had effect under that Regulation continues to have effect under this Regulation.