
Public consultation draft



New South Wales

Drug Court Regulation 2010

under the

Drug Court Act 1998

[*The following enacting formula will be included if the Regulation is made:*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Drug Court Act 1998*.

Attorney General

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Drug Court Regulation 2005*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the eligibility criteria for acceptance into a Drug Court program,
- (b) the courts and proceedings from which a person may be referred to the Drug Court,
- (c) the guidelines to be observed in determining the availability and allocation of facilities in connection with Drug Court programs,
- (d) the modification of the application of section 265 of the *Criminal Procedure Act 1986* for the purpose of expediting proceedings before the Drug Court,
- (e) the persons required to furnish information to the Drug Court in relation to the administration of Drug Court programs,
- (f) the forms to be used in respect of criminal proceedings before the Drug Court,
- (g) the fees to be charged,
- (h) the manner and form of referrals of persons to and from the Drug Court,
- (i) savings and formal matters.

This Regulation is made under the *Drug Court Act 1998*, including sections 5 (1) (e), 5A (1) (f), 6 (1), 7 (1) (b), 7A (2) (d), 7B (2) (d), 18 (2), 18B (1), 31 (1) and (2) (b) and 32 (the general regulation-making power).

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Clause 1

Drug Court Regulation 2010

under the

Drug Court Act 1998

1 Name of Regulation

This Regulation is the *Drug Court Regulation 2010*.

2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Drug Court Regulation 2005*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.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 this Regulation do not form part of this Regulation.

4 Eligible persons

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:

Auburn, Bankstown City, Blacktown City, Campbelltown City, Fairfield City, Hawkesbury City, Holroyd City, Liverpool City, Parramatta City, Penrith City, The Hills Shire,

(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,

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- (c) the person must be of or above the age of 18 years,
- (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 Eligible convicted offenders

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

- (a) the person's usual place of residence must be within one of the following local government areas:
Ashfield, Auburn, Bankstown City, Blacktown City, Botany Bay City, Burwood, Camden, Campbelltown City, Canada Bay, Canterbury City, Fairfield City, Hawkesbury City, Holroyd City, Hornsby, Hunter's Hill, Hurstville City, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool City, Manly, Marrickville, Mosman, North Sydney, Parramatta City, Penrith City, Pittwater, Randwick City, Rockdale City, Ryde City, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Warringah, Waverley, Willoughby City, Woollahra,
- (b) the person must be of or above the age of 18 years,
- (c) the criminal proceedings against the person for the offence for which the person was convicted must not be criminal proceedings within the Children's Court's jurisdiction to hear or determine,
- (d) the person must be male.

6 Referring courts—referral during proceedings

For the purposes of sections 6 (1) and 7 (1) (b) of the Act, the following courts and proceedings are prescribed:

- (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 Court, in respect of all criminal proceedings brought before it in its sittings at Bankstown, Blacktown, Burwood, Campbelltown, Fairfield, Hornsby, Liverpool, Mount Druitt, Parramatta, Penrith, Richmond, Ryde or Windsor.

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7 Guidelines to determine availability and allocation of facilities

- (1) For the purposes of sections 7A (2) (d) and 7B (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 this clause, *referred person* means a person who has been referred to the Drug Court under section 6 or 7 of the Act.

8 Application of Criminal Procedure Act 1986

- (1) For the purposes of section 18 (2) of the Act, 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 7A, 7B or 7C 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.
- (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 7D of the Act, or
 - (c) on the Drug Court referring the person back to the referring court under section 7D of the Act, or
 - (d) on the person being dealt with by the Drug Court under section 7E of the Act.

9 Referring courts—eligible convicted offenders

For the purposes of section 18B (1) of the Act, the following courts and proceedings are prescribed:

- (a) the District Court, in respect of all criminal proceedings brought before it in its sittings at Campbelltown, Liverpool, Parramatta, Penrith or Sydney,

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- (b) the Local Court, in respect of all criminal proceedings brought before it in its sittings at Balmain, Bankstown, Blacktown, Burwood, Camden, Campbelltown, Central, the Downing Centre, Fairfield, Hornsby, Kogarah, Liverpool, Manly, Mount Druitt, Newtown, North Sydney, Parramatta, Penrith, Richmond, Ryde, St James, Sutherland, Waverley or Windsor,
- (c) the Drug Court in relation to sentences imposed or determined under sections 7D (3) and 12 (3) of the Act,
- (d) the Court of Criminal Appeal but only in relation to appeals from the courts, and regarding the proceedings, referred to in paragraphs (a)–(c).

10 Provision of information to Drug Court

- (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 Sydney South West or Sydney West Area Health Services,
 - (b) persons acting for or on behalf of the toxicology unit of Pacific Laboratory Medicine Services (an administrative unit of the Northern Sydney and Central Coast 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) (b) 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, and

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- (b) information provided to the registrar otherwise than in writing must be confirmed in writing within 24 hours unless the registrar indicates otherwise.

11 Forms

Any form that may be used in respect of criminal proceedings before the District Court or the Local Court may also be used in respect of criminal proceedings before the Drug Court in its exercise of the criminal jurisdiction of the respective court.

12 Fees

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

13 Referrals to Drug Court

A referral under section 6, 7 or 18B of the Act to the Drug Court by another court may be made by notifying the registrar by telephone, in writing or by facsimile of the other court's decision to so refer the matter.

14 Referral back by Drug Court

- (1) An order under section 7D of the Act referring a matter back to the referring court may be made by the Drug Court in the absence of the person to whom the order relates.
- (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.

15 Savings

Any act, matter or thing that, immediately before the repeal of the *Drug Court Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.