

# Magistrates Courts

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## Practice Direction No. 25 of 2010 - Repealed on 26 June 2017

### Special Circumstances Court Diversion Program

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#### NATURE AND PURPOSE

1. Special Circumstances Court Diversion Program (“the Program”) is a pre-sentence bail based and post-sentencing court based rehabilitation program for defendants experiencing homelessness or with impaired decision making capacity and who meet the eligibility criteria in paragraph 4. The Program is administered in the Magistrates Court at Brisbane by magistrates sitting to deal with the Special Circumstances List (“the Special Circumstances Court”).
2. The Program directs participants to available treatment, rehabilitation and support services with the focus on reduction of their criminal offending behaviour.

#### IDENTIFICATION OF PARTICIPANTS

3. Identification of potential participants in the Program may come from any of a variety of sources, including:
  - police;
  - defendants;
  - defendants’ legal representatives (including Duty Lawyers);
  - community organisations;
  - State Government agencies; and
  - Magistrates.

#### ELIGIBILITY CRITERIA

4. To be eligible to participate in the Program the defendant must meet the following criteria:
  - (a.) the defendant was an adult (i.e. a person to whom the *Youth Justice Act 1992* does not apply) at the time the alleged offence/s were committed;
  - (b.) the defendant is homeless or has impaired decision making capacity;
  - (c.) the offence/s charged arise in circumstances that are connected to the defendant’s homelessness and/or impaired decision making capacity;
  - (d.) the offence/s charged are alleged to have been committed in the Brisbane Central Division of the Magistrates Court; or
    - (i.) they are fresh charges for further offences alleged to have been committed outside the Brisbane Central Division and the defendant is before the Special Circumstances Court on charges alleged to have been committed in the Brisbane Central Division, and

- (ii.) the prosecution and defendant consent to the defendant's acceptance into the Program;
  - (e.) The offence/s charged:
    - (i.) are able to be dealt with summarily (by right or election);
    - (ii.) do not involve allegations of serious personal violence as defined in paragraph 9 or of a sexual nature as defined in paragraph 11; and
    - (iii.) are not serious offences as defined in paragraph 12.
  - (f.) the defendant must not have charges pending before a court for offences involving allegations described in subparagraph (e)(ii) or for serious offences under subparagraph (e)(iii);
  - (g.) the defendant must not have previously been convicted for offences of a sexual nature as defined in paragraph 11, unless the prosecution and defendant consent to the defendant's acceptance into the Program; and
  - (h.) the defendant must not be serving a term of imprisonment other than by way of court ordered parole (not cancelled), post prison parole or a suspended sentence.
5. A defendant who meets the eligibility criteria must also satisfy the following requirements in order to be considered by the Court for acceptance into the Program:
- (a.) the defendant must give informed written consent to participate in the Program;
  - (b.) the defendant must give informed written consent to the exchange of information relating to the defendant between the court and any relevant agencies or persons involved in the Program;
  - (c.) the defendant must be assessed for participation in the Program by a Court Case Coordinator; and
  - (d.) the defendant must either enter a plea of guilty or indicate an intention to plead guilty to the offence/s charged.
6. A defendant shall not participate in the Program unless accepted into the Program by the Special Circumstances Court.
7. The term "homeless" in paragraph 4(b) refers to persons falling within any one of three categories: primary homeless ("sleeping rough") – people without conventional accommodation; secondary homeless ("stop-gap housing") – people who move from one temporary shelter to another; and tertiary homeless ("boarding house residents"); and includes persons at imminent risk of being homeless.
8. The phrase "impaired decision making capacity" in paragraph 4(b) refers to a person who has a disability that is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and results in (i) a reduction of the person's capacity for communication, social interaction or learning; and (ii) the person needing support.
9. Subject to paragraph 10, an offence involving allegations of serious personal violence is an offence that involves any allegation of serious personal violence whether as an element of the offence or as an act of violence associated with the offence.

10. An offence involving allegations of serious personal violence does not include an offence charged under any of the following provisions:
- Section 335 *Criminal Code* (common assault);
  - Section 340 *Criminal Code* (serious assault);
  - the *Police Powers and Responsibilities Act 2000*
- or an offence which the prosecution and defendant consent to being dealt with under the Program.
11. An offence of a sexual nature does not include an offence by a prostitute providing prostitution or accepting an offer to provide prostitution.
12. A “serious offence” for the purpose of paragraph 4(e)(iii) is any offence which carries a maximum penalty of more than 7 years, unless it is:
- (a.) an offence that is to be dealt with summarily under s13 *Drugs Misuse Act 1986* and there is no allegation by the prosecution that the conduct the subject of the charge was for a commercial purpose; or
  - (b.) an offence that the prosecution and defendant consent to being dealt with summarily under the Program.
13. The Magistrates Court retains the discretion to refuse entry to the Program, or to exclude a defendant from the Program, after having regard to:
- (a.) the nature of the offence/s charged;
  - (b.) the background of the defendant, including the defendant’s criminal history;
  - (c.) the circumstances of the defendant, including whether the defendant may benefit or continue to benefit by participating in the Program;
  - (d.) the availability of places on the Program; and
  - (e.) the public interest.

#### **GENERAL PROCEDURE**

14. Identification of a defendant as a potential participant in the Program may be raised before a magistrate in any court where the defendant appears.
15. A person identifying the defendant as a potential participant may propose that the magistrate initiate an assessment of the defendant’s eligibility and suitability to participate in the Program.
16. Where a defendant is identified to the Court as a potential participant or a defendant requests to be assessed for entry to the program, the magistrate may, with the agreement of the defendant, order that a Court Case Coordinator interview the defendant to conduct an assessment against the eligibility criteria set out in paragraphs 4(a) – 4(h) inclusive and report to the court. The matter will either be stood down or adjourned for a short period in the initial court for this to occur.
17. The Court Case Coordinator is to then assess the defendant against the eligibility criteria set out in paragraphs 4(a) – 4(h) inclusive, using the checklist (Annexure A to this Practice Direction), and make a recommendation as to whether or not the defendant meets the eligibility criteria.

18. The Court Case Coordinator's report to the court will at least comprise the completed and signed checklist. The Court Case Coordinator will disclose the report to the prosecution and defence before supplying it to a magistrate in the initial court.
19. The court will consider the checklist and all other relevant facts and circumstances and hear any submissions by the parties before making a determination as to whether the defendant's matter will be adjourned to the Special Circumstances Court.
20. If the Court does not consider the defendant eligible or suitable to participate in the Program, the matter will proceed in the normal way before the Magistrates Court.
21. If the Court is satisfied that the defendant meets the eligibility criteria set out in paragraphs 4(a) – 4(h) inclusive, before adjourning the matter to the Special Circumstances Court the magistrate will ensure that the defendant has either entered a plea of guilty or indicated an intention to plead guilty to the offence/s to be adjourned to the Special Circumstances Court.
22. The Court may then adjourn the matter to the Special Circumstances Court and grant bail to the defendant in accordance with the *Bail Act 1980* and, unless formal assessment has already been completed, order that a report for the court be prepared by the Court Case Coordinator and impose as a condition of bail that the defendant attends a formal assessment interview on a stated date prior to the date of appearance in the Special Circumstances Court.
23. The defendant must attend a formal assessment interview before his/her acceptance into the Program can be considered by the Special Circumstances Court.
24. A formal assessment interview is to be conducted by the Court Case Coordinator at the time and place ordered by the magistrate in the initial court or at a further time and place as varied by the Court Case Coordinator at the request of the defendant.
25. If the defendant advises the Court Case Coordinator that he/she does not consent to the assessment interview the matter is to be referred to another court to be dealt with in the normal way.
26. If the defendant advises the Court Case Coordinator that he/she consents to being assessed, the Court Case Coordinator is to proceed as set out in paragraph 27.
27. The Court Case Coordinator is to assess:
  - (a.) the nature of the defendant's homelessness and/or impaired decision making capacity; and
  - (b.) the defendant's suitability for treatment, rehabilitation and other support services.

28. The Court Case Coordinator is to prepare a written report for the court recommending:
  - (a.) whether or not the defendant is eligible and suitable for participation in the Program;
  - (b.) the type of treatment, rehabilitation and support options that may be appropriate under the Program; and, if applicable,
  - (c.) available and relevant support that can be provided under the Program.
29. The Court Case Coordinator is to also obtain the informed written consent of the defendant to:
  - (a.) participation in the Program; and
  - (b.) exchange of information about the defendant obtained during the eligibility and assessment processes and throughout the defendant's participation in the Program (Annexure B to this Practice Direction).
30. The Court Case Coordinator is to provide the written report of the formal assessment and the written consent referred to in paragraph 28 to the Special Circumstances Court magistrate in time for the defendant's first appearance before that court.
31. The Court Case Coordinator is to also provide a copy of the written report to the prosecution and the defendant and/or his/her legal representative before providing the report to the magistrate.
32. The Court will consider the report and all other relevant facts and circumstances and hear any submissions by the parties before making a determination as to whether the defendant will be accepted into the Program.
33. A Court may only accept a defendant into the Program who meets the eligibility criteria in paragraph 4(a) – 4(h) inclusive, has satisfied the requirements in paragraph 4(i) – 4(l) inclusive and is considered by the Court to be suitable for participation in the Program having regard to the matters in paragraph 13(a) – (e) inclusive.
34. If the Court does not accept the defendant into the Program the matter is to be referred to another court to be dealt with in the normal way.
35. If the Court accepts the defendant into the Program, the magistrate may adjourn the matter to a further date in the Special Circumstances Court and grant bail or vary/extend the grant of bail to the defendant in accordance with the *Bail Act 1980*, and where appropriate impose a condition under section 11(9) of the *Bail Act* that the defendant participate in the Program, including by way of the defendant attending at or reporting to the Special Circumstances Court and/or participating in a specified treatment or rehabilitation program.
36. Once the Court adjourns the matter in accordance with paragraph 35 the defendant is deemed to have been accepted into the Program.
37. The defendant may withdraw consent at any stage of the process. If this occurs the defendant may plead guilty and be sentenced in the Special Circumstances Court or be referred to another court to be sentenced or otherwise dealt with in the normal way.

38. Any breach of a condition of bail, including breach of a condition imposed under section 11(9) of the *Bail Act*, or breach of any other order made by the Special Circumstances Court may result in the defendant's participation in the Program ceasing. If this occurs the defendant may plead guilty and be sentenced in the Special Circumstances Court or be referred to another court to be sentenced or otherwise dealt with in the normal way.
39. The expectation is that a defendant will not be maintained on bail for a period longer than 24 weeks from acceptance into the Program.
40. The Court may, at any time it considers appropriate, including following any period of bail ordered by the Court, call upon the defendant to enter a plea and proceed to sentence the defendant in accordance with the *Penalties and Sentences Act 1992* and, where appropriate, impose as part of the sentence a condition requiring the defendant to attend at or report to the Special Circumstances Court and/or participate in a specified treatment or rehabilitation program.
41. A defendant will be taken to have completed the Program upon being sentenced by the Court, other than by way of a sentence imposing a condition requiring the person attend at or report to the Court. In the case of a sentence imposing such a condition the person will be taken to have completed the Program upon cessation of all conditions requiring attendance at or reporting to the Court.
42. This Practice Direction does not apply to any matter where a defendant's first appearance before the Special Circumstances Court on the matter occurred prior to the date of issue of the Direction.

**Judge Brendan Butler  
Chief Magistrate  
24 December 2010**