

Magistrates Courts

Practice Direction No. 1 of 2018 (amended)

Issued: 25 January 2018
Amended: 20 March 2019
Amended: 27 February 2020

Referral to the Drug and Alcohol Court – Drug and Alcohol Treatment Order (Treatment Order)

DEFINITIONS

- 1) The following definitions apply in this Practice Direction unless otherwise stated:
 - a) *Review Team Member* is a representative from Queensland Courts Service, Queensland Police Service, Legal Aid Queensland, Queensland Health or Queensland Corrective Services.
 - b) *Referrer* is the person requesting the referral to the Drug and Alcohol Court who completes Form 1 Referral Form.
 - c) *Sexual Assault Offence* means an offence against the Criminal Code, chapter 32 or chapter 22 (other than an offence against section 224, 225 or 226).
 - d) *Treatment Order* is a Drug and Alcohol Treatment Order under part 8A *Penalties and Sentences Act 1992*.
- 2) This Practice Direction sets out those procedures identified as best practice to support the referral and assessment of eligible and suitable participants in the Drug and Alcohol Court so that a Treatment Order may be made.
- 3) Nothing in this Practice Direction is to be taken as removing or limiting the discretion of the Court.

NATURE AND PURPOSE

- 4) Adopting a therapeutic justice approach and reflecting best practice, the Drug and Alcohol Court is responsible for providing for the supervision of offenders with severe substance use linked to their offending by sentencing them to a Drug and Alcohol Treatment Order.

- 5) The Drug and Alcohol Court seeks to enhance community safety through the rehabilitation of offenders with entrenched drug and/or alcohol use issues and will include access to drug and alcohol treatment services, regular court hearings to monitor participants' progress, regular and random drug and alcohol testing, and intensive supervision of participants.

COMMENCEMENT

- 6) This Practice Direction applies to all matters heard after the commencement of Part 8A *Penalties and Sentences Act 1992* (the Act) on 29 January 2018.

IDENTIFICATION OF DEFENDANTS FOR REFERRAL

- 7) Referrals to the Drug and Alcohol Court may only be made with the defendant's consent and may come from sources including, but not limited to:
 - a) the defendant;
 - b) the defendant's legal representative;
 - c) Mental Health Liaison Officer;
 - d) the Queensland Police Service;
 - e) a Queensland Integrated Court Referrals facilitator;
 - f) a Court Link Case Manager;
 - g) family members or friends of the defendant;
 - h) treatment or support service providers, including government and non-government organisations; and
 - i) a presiding magistrate.
- 8) Although referrals can be made at any time, early identification of potential participants is encouraged to allow quick resolution of the matter and commencement of treatment.

ELIGIBILITY CRITERIA

- 9) To be eligible to be referred to the Drug and Alcohol Court the defendant must meet the following criteria:
 - a) is an adult who can be sentenced under the *Penalties and Sentences Act 1992*;
 - b) intend to plead guilty or have entered a plea of guilty;
 - c) be charged with a summary offence or indictable offence that may be dealt with summarily including pursuant to section 13A *Drugs Misuse Act 1986*;
 - d) resides or intends to reside within the District of the Brisbane Magistrates Court (including all Divisions);

- e) disclose they have serious drug or alcohol issues which has contributed to their offending behaviour;
- f) is likely to be sentenced to a period of imprisonment of up to four years;
- g) is not serving a term of imprisonment in a corrective services facility;
- h) is not subject to a parole order;
- i) is not subject to a cancelled parole order and required to serve an unexpired period of imprisonment; and
- j) is not charged with a sexual assault offence.

GENERAL PROCEDURE

Preliminary Eligibility Screening

- 10) The Referrer must conduct a preliminary eligibility screening by completing the *Referral Form* (Form 1) and provide it to the defendant's legal representation, prosecution and the Court.
- 11) Although the Drug and Alcohol Court is located in the Brisbane Magistrates Court, a magistrate presiding in any Magistrates Court in Queensland may refer a defendant to the Drug and Alcohol Court in Brisbane if the Court considers the defendant may be eligible.
 - a) If the Court considers the defendant may be eligible, the magistrate is to complete the Referral Form (Form 1) and adjourn the matter to the Drug and Alcohol Court in the Brisbane Magistrates Court for an eligibility mention at the Queensland Drug and Alcohol Court on a date booked by the BMC registry (Listings).
- 12) If the Court is not satisfied the defendant is eligible to be referred to the Drug and Alcohol Court, consideration should be given as to whether a referral to Court Link is appropriate.
- 13) To maintain program capacity a controlled referral process has been introduced. The controlled referral process allows for 4 referrals per week to be set down for eligibility mention.

Legal Representation

- 14) Once a participant is sentenced to a Drug and Alcohol Treatment Order, they will be represented by lawyers from Legal Aid Queensland.

Eligibility Screen by Review Team Members

- 15) Members of the Review Team will conduct an eligibility screening to ensure a Treatment Order may be made for the defendant pursuant to s151E of the Act.
- 16) The Review Team will complete the Eligibility Screening Form (Form 2) and provide it to the Court for consideration.

Eligibility Hearing

- 17) The Court will consider the eligibility screen conducted by the Review Team and all other relevant facts and circumstances, along with any submissions made by the parties, before deciding whether the person is eligible to receive a Drug and Alcohol Treatment Order.
- 18) Where the Court is satisfied a defendant may be eligible to be sentenced to a Treatment Order, the magistrate is to complete the Eligibility Screening Form (Form 2) and adjourn the matter for a suitability hearing on the next available date, but no less than five (5) weeks from the adjournment.
- 19) The court will also order that appropriately qualified Review Team Members prepare and submit to the Drug and Alcohol Court on or before a specified date within 28 days or otherwise, a suitability assessment report.
- 20) Where the Court is not satisfied a Treatment Order may be made for the defendant, the magistrate is to sentence the defendant according to law or adjourn the matter back to a Magistrates Court to be further dealt with.

Suitability Assessment

- 21) Members of the Review Team will conduct a suitability assessment and complete a *Suitability Assessment Report* (Form 3) to assist the Court in determining whether a defendant is suitable to be sentenced to a Treatment Order.
- 22) The Suitability Assessment Report is to be provided to the Court, prosecutor, offender's legal representative and if the Court orders, the defendant within 28 days after the order has been made or another date as ordered by the Court.

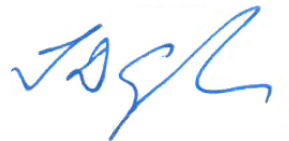
Sentence Hearing

- 23) The Court will consider the suitability assessment and all other relevant facts and circumstances, along with any submissions made by the parties, before deciding whether the person is suitable to receive a Drug and Alcohol Treatment Order.
- 24) Where the Court is not satisfied a Treatment Order may be made for the defendant, the Court may:
 - a) adjourn the matter back to a Magistrates Court to be further dealt with;
 - b) sentence the defendant according to law; or
 - c) commit the defendant to the District Court for sentence if the defendant has been charged with an offence that may have been dealt with summarily under section 13A *Drugs Misuse Act 1986*.

- 25) Where the Court is satisfied a Treatment Order may be made for the defendant and the defendant consents to the order being made, the Court may sentence the defendant to a Treatment Order under Part 8A of the Act.
- 26) Where the defendant is on a Treatment Order and has further charges which might breach the Treatment Order, and they appear before the Court, the matters should be adjourned to the Queensland Drug and Alcohol Court.
- 27) Where a participant is arrested on a warrant issued under section 151ZB of the Act, they should be remanded in custody (in accordance with section 151ZC of the Act) to appear on the next QDAC sitting day with no provision for bail.

Suspension of referrals

- 28) Referrals to QDAC will be suspended when the program reaches its program cap.
- 29) During a suspension of referrals, the Court Coordinator may provide advice to referrers about the availability of future eligibility mention dates, referring to the QDAC court diary and in compliance with the controlled referral process.



Judge Terry Gardiner

Chief Magistrate

Date: 27 February 2020