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Reforms to increase accessibility of NSW Drug Court program in early 2023

Her Honour Judge Jane Mottley AM*

In early 2023, two key reforms will increase the accessibility of the Drug Court program as a diversion for eligible drug-dependent offenders.

The first reform is an amendment to the *Drug Court Regulation 2020* (the Regulation) which will permit all Local Courts and District Courts in NSW to make referrals to the Drug Court. The second is the expansion of the Drug Court to Dubbo and a further amendment to the Regulation to permit referral of eligible persons residing in the Dubbo Regional Council area. Both changes come into effect on 12 January 2023. On same date, the ballot will open for referrals to Dubbo Drug Court, ahead of the court's first sitting in Dubbo on 20 February 2023.

Amendment to permit referrals from all Local Courts and District Courts

From 12 January 2023, the power to make referrals to the Drug Court will be extended to all Local Courts and District Courts in NSW.

This is a significant change to the current approach, which restricts referrals to specified courts sitting in and around the catchment areas for existing Drug Court locations at Parramatta, Sydney and the Hunter. An amendment to cl 6 of the Regulation will omit this list of specified courts, instead permitting referrals to be made by any Local Court and District Court. In doing so, an historical barrier to program accessibility will be removed. An eligible person will have access to the therapeutic benefits of the Drug Court program regardless of where they committed and are charged for an eligible offence.

It is important to note the existing eligibility criteria will continue to apply despite this change, including residence requirements. The effect being any Local Court or District Court will be permitted to refer an eligible person to the Drug Court, so long as the person resides within one of the specified Local Government Areas falling within the Drug Court's catchment.

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In seeking this change, the Drug Court's intention was to ensure its program is available as a therapeutic intervention in *communities* characterised by high levels of drug dependency and associated offending behaviour. If a person resides in and belongs to one of these communities, then they should have access to the program, regardless of where the offending behaviour occurs.

Expansion to Dubbo aside, it should also be noted the number of available program places at existing locations will be maintained for the immediate future.¹ Each Drug Court location is funded for a specified number of participants to undertake the program at any one time.²

How does the change to referring courts affect the judiciary?

The extension of the referral power means judicial officers at all Local Courts and District Courts will be subject to the statutory duty to make relevant enquiries and refer matters to the Drug Court. To discharge this duty, judicial officers at these courts must ascertain whether the person appears to be an eligible person, and if so, whether they are willing to be referred to the Drug Court to be dealt with for the offence. If after these enquiries, the person appears to be eligible and willing, the court *must* refer the person to the Drug Court.³

The enquiry into eligibility is informed by the criteria in the *Drug Court Act 1998*, which provides an eligible person must:⁴

- have pleaded guilty or indicated a plea of guilty to an eligible offence (includes all State offences, except those involving violent conduct, sexual assault or strictly indictable drug offences)
- be highly likely to be sentenced to full-time imprisonment
- be dependent on the use of illicit drugs
- be 18 years of age or over
- have the mental capacity to actively participate
- be willing to participate in a program
- reside in one of the following Local Government Areas:

Canterbury-Bankstown, City of Blacktown, City of Campbelltown, City of Cessnock, City of Fairfield, City of Hawkesbury, City of Lake Macquarie, City of Liverpool, City of Maitland, City of Newcastle, City of Parramatta, City of Penrith, City of Sydney, Cumberland, Dubbo Regional, Port Stephens or Hills Shire.

When conducting enquiries into eligibility, the court is likely to be informed as to most matters, including drug dependency, by the defendant or their legal representative. It may be of assistance for the court to focus on the threshold issue of whether the offender meets the residence requirement. If so, then proceed to consider whether the offence is eligible and whether the person is highly likely to be sentenced to a term of full-time imprisonment.

Importantly, a referral may be made on apparent eligibility only; the referring court need not be satisfied each of the above criteria is met. In the event of doubt, it may be of assistance to know the Drug Court will further scrutinise each person referred to determine among other things, whether having regard to their antecedents, it would be appropriate for the person to participate in a program.

Expansion of Drug Court to Dubbo and program accessibility for a regional community

On 20 February 2023, the Drug Court will commence sitting in Dubbo, marking the expansion of an historically metropolitan-based program to its first regional location in NSW.

The expansion forms part of the NSW Government response to the Special Commission of Inquiry into the drug "ice" (the Ice Inquiry). The Ice Inquiry recognised the proven effectiveness of the Drug Court and recommended the NSW Government "progressively expand the Court to priority regional areas, together with appropriate support for local services".⁵ The NSW Government responded in part to this recommendation in June 2021, announcing \$27.9 million funding over 4 years to expand the Drug Court to Dubbo and committing further additional funding for ongoing operations. The funding provided will permit the court to sit two days per week in Dubbo, creating an opportunity for up to 80 eligible persons to undertake the program at any one time.

Like many other regional communities in NSW, Dubbo has suffered the devastating criminal, social and health impacts of wide-spread illicit drug use, particularly methamphetamines. It's no surprise the local community has long advocated for the expansion of the Drug Court to Dubbo, with the support of former Senior Judge, his Honour Roger Dive. Once the court commences sitting in Dubbo in February 2023, this community will at last have access to the intensive, community-based rehabilitation the court provides to drug-dependent offenders.

The change to the *Drug Court Regulation* to permit all courts to refer will complement the expansion, as it accounts for the movements of the offending population in and around the Central West region. Any Local Court or District Court will be permitted to refer an eligible person to Dubbo Drug Court, so long as the person's usual place of residence is within Dubbo Regional Council. This means such a person will have access to the benefits of the program, regardless of where their offending behaviour occurred.

An intensive program, requiring significant and ongoing commitment

The Drug Court is by no means a "soft option". Participants undergo an intensive, multi-disciplinary program, aimed at addressing the root causes of their drug dependency and related offending and reintegrating them back into the community.

All participants successfully referred to the Drug Court must complete mandatory detoxification and assessment in custody. While in custody, a treatment plan is developed. Where a highly suitable treatment plan is available, an initial sentence of imprisonment is imposed and the sentence is suspended to allow for the person's release to the community to undertake their program. Once released on program, the court works closely with an interagency team to monitor and supervise participants and has power to impose broad conditions, issue sanctions and confer rewards.

While participants may not be subjected to the loss of liberty associated with full-time imprisonment, the program requires a significant and ongoing commitment. It's not uncommon for participants to be referred to the Drug Court thinking it's an easy way to avoid custody. They quickly realise the commitment and ongoing effort required after commencing on their program.

There are three program phases to be completed over a minimum 12-month period, each with distinct goals which must be achieved in order to progress to the next phase. During the first phase of the program, the participants' commitments are such their program becomes akin to a full-time job. They're reporting to court up to twice per week and attending for supervised urine drug testing up to three times per week. They have regular contact with their supervising officer at Community Corrections and are subject to curfew checks and home visits.

Participants are also required to undertake counselling to identify and address the underlying causes of their dependency and offending behaviour. It's not uncommon for participants to confront significant past trauma on the program, and anecdotally, many reveal they have experienced domestic and sexual abuse. The honesty, self-reflection and emotional investment required to undertake this process alone is significant. All while trying to cease drug use and grapple with the many and varied health and social impacts such use has had on their lives.

As participants stabilise and progress from the initial phase, additional program goals around their social and domestic lives are introduced. This includes undertaking various courses and training, working towards gaining employment (where possible) or undertaking other pro-social activities such as volunteering or caring for their children.

Regardless of the program phase, when participants appear before the Drug Court to report their progress, the judge is approaching these interactions from an informed position. This is because the judge will have been provided with updates regarding the participant's progress by the interagency team at a pre-court meeting in the participant's absence. This includes information on drug use, progress of treatment, and compliance with supervision, as well as contact with NSW Police or other behaviour which may affect the participant's program. When the participant appears, their discussion with the judge is informed by these

matters. Depending on the matters raised, the judge may vary the participant's treatment plan and program conditions, impose sanctions for non-compliance or confer rewards for sustained compliance.

A participant's Drug Court commitments continue until they have completed the three program phases or alternatively, where their program is terminated. Ideally, a participant's program is completed in circumstances where they have substantially complied. However, a program may also be terminated where the participant is unlikely to progress any further, poses an unacceptable risk to the community by remaining on their program, or chooses to exit the program.

At program completion or termination, the court reconsiders the initial sentence and determines the final sentence. The participant's initial sentence can be confirmed or set aside and another sentence imposed, but it cannot be increased. Participants who do not comply with their program are likely to be returned to custody to serve their final sentence. A participant who successfully completes their program will receive a community-based sentence.

What happens if there are program breaches?

Changing habits is hard. Every participant is encouraged to take responsibility for their own recovery. Their successes and failures are theirs alone. The Drug Court is an honesty-based program and participants are encouraged to make admissions regarding their drug use. Any drug use or failures to comply with program requirements may result in sanctions being imposed. Any unadmitted drug use will result in more severe sanctions being imposed. Sanctions equate to days in custody. Once a threshold is reached, the participant is returned to custody to serve their sanctions.

Not all participants are returned to custody to serve sanctions. Sustained program compliance can see sanctions waived. While many participants accrue sanctions, most work on program compliance so only a few are returned to custody to serve sanctions.

If there is any "on program" offending, the Crown is likely to seek the termination of the participant's program on the basis of there being an unacceptable risk to the community. Following any hearing to determine the issue, it may be decided that, while there is a risk to the community, this risk may be mitigated by placing additional conditions on the participant. If the risk is unacceptable, the program is terminated and a final sentence is imposed. In such circumstances, it is likely the participant will return to custody to serve their final sentence.

On occasion it may be necessary to review the effectiveness of a participant's treatment plan. If it becomes apparent the participant is unable to meet their program goals, the court can conduct a hearing to determine if the participant has a prospect of progressing on their program. If found to have no

prospects of progression, the program is terminated and a final sentence is imposed. This is an extreme measure, however on occasions, a participant may not be suitable for the program.

What are the benefits and potential outcomes?

The Drug Court program has been evaluated on numerous occasions and has been proven to be more effective at reducing reoffending than full-time imprisonment.⁶ It has also been found to cost less and produce better outcomes, saving "considerable resource use as a result of reduced incarceration".⁷

While these evaluations serve as evidence of the effectiveness of the program, often a case example can best illustrate the real, human impact: see Ivan's story below.

Conclusion

The Drug Court is by no means the panacea to the significant and complex social and health problems arising from illicit drug use. But its success as a criminal intervention aimed at reducing reoffending has been proven.

It is not a soft option for offenders. It requires commitment, determination and perseverance. Importantly it requires a willingness to change. Even if the participant does not successfully complete their program, their time in rehabilitation gives them and the community some respite from the ravages of addiction.

If nothing else, the Drug Court provides opportunities for eligible, drug-dependent offenders to address their addiction and offending behaviour, improve their overall health and wellbeing and also benefits the communities impacted by their addiction. It's a matter for the offenders themselves whether they grasp these opportunities and take responsibility for changing their lives for the better. If they do, the Drug Court and the interagency team can and will support them to do so.

Endnotes

* Senior Judge, Drug Court of NSW.

- 1 In September 2022, the NSW Government announced funding to expand Sydney Drug Court from one to five days per week, which will in turn increase available program places from 40 to 160 at any one time. Consideration is currently being given to a timeframe for these changes to commence.
- 2 Available program places by location are as follows: Hunter (80), Sydney (40), Parramatta (160) and Dubbo (80).
- 3 *Drug Court Act 1998*, s 6.
- 4 *Drug Court Act*, s 5; *Drug Court Regulation 2020*, cl 4.
- 5 D Howard, *Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Report, Vol 1 (of 4), 2020, p lx.
- 6 D Weatherburn, et al, "The long-term effect of the NSW Drug Court on recidivism" (2020) 232 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research.
- 7 S Goodall, et al, "The costs of NSW Drug Court" (2008) 122 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, 1, 14.
- 8 The example provided is a matter dealt with by Parramatta Drug Court; names have been anonymised.

Ivan's story⁸

"Ivan" a 44-year-old man received his Initial Sentence of 21 months imprisonment in the Drug Court in August 2021. He had been referred by the District Court following a severity appeal in relation to offences of dishonestly obtaining property by deception, driving while disqualified, and possessing a false document to obtain a financial advantage.

At the time of his referral Ivan had separated from his wife and two children (ages 10 and 12) due to his addiction issues. His drug chronology was cannabis use starting at aged 15 (on and off for 15 years), ice use daily (approx 1 gram) commencing at age 40, and occasional cocaine use. Ivan has a history of depression and anxiety. Ivan completed high school and holds a diploma in accounting.

Following the suspension of his sentence he was released to commence his Drug Court program at Adele House in Coffs Harbour (a residential rehabilitation facility). In early November 2021, he transitioned from there to live with his aunt and uncle at an approved address in Sydney. In December 2021, he progressed to Phase 2 of his program.

While on Phase 2 of his program, Ivan began to actively seek employment. He attended to outstanding community service hours ordered as part of an Intensive Correction Order. He also undertook a Work and Development Order to address his outstanding fines.

Due to his program compliance he progressed to Phase 3 of his program in April 2022. Ivan attended all his counselling appointments, home visits and drug testing. Shortly after progressing to Phase 3, Ivan secured full-time employment working in finance (with his employment and income verified by Community Corrections). Around the same time, Ivan returned to live with his wife and two children. Ivan attended the Drug Court for drug testing on 116 occasions with nil drug use detected. He successfully completed his program in September 2022 without incurring any sanctions. Rather than a sentence of imprisonment, his sentence was favourably redetermined, taking into account his pre-sentence custody (159 days), his time in residential rehabilitation and participation on his program. He was sentenced to Community Correction Orders.