

## TASMANIA

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# SENTENCING AMENDMENT (ALCOHOL TREATMENT ORDER) BILL 2024

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# SENTENCING AMENDMENT (ALCOHOL TREATMENT ORDER) BILL 2024

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

LAURA ROSS, *Clerk of the House*  
23 May 2024

*(Brought in by the Minister for Justice, the Honourable Guy  
Barnett)*

## A BILL FOR

### An Act to amend the *Sentencing Act 1997*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### 1. Short title

This Act may be cited as the *Sentencing Amendment (Alcohol Treatment Order) Act 2024*.

#### 2. Commencement

This Act commences on a day to be proclaimed.

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**3. Principal Act**

In this Act, the *Sentencing Act 1997*\* is referred to as the Principal Act.

**4. Section 4 amended (Interpretation)**

Section 4 of the Principal Act is amended as follows:

- (a) by inserting “as in force immediately before the commencement of the *Sentencing Amendment (Alcohol Treatment Order) Act 2024*” after “section 27B” in the definition of *drug treatment order*;
- (b) by inserting the following definition after the definition of *drug treatment order*:

***drug and alcohol treatment order***  
means a drug and alcohol  
treatment order made under  
section 27B;

**5. Section 7 amended (Sentencing orders)**

Section 7(ab) of the Principal Act is amended by inserting “and alcohol” after “drug”.

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\*No. 59 of 1997

**6. Part 3A: Heading amended**

Part 3A of the Principal Act is amended by inserting in the heading to that Part “**AND ALCOHOL**” after “**DRUG**”.

**7. Section 27A amended (Interpretation of Part)**

Section 27A of the Principal Act is amended as follows:

- (a) by inserting “and alcohol” after “drug” in the definition of *core conditions*;
- (b) by inserting “and alcohol” after “drug” in the definition of *custodial part*;
- (c) by omitting the definition of *drug treatment order assessment report* and substituting the following definition:

***drug and alcohol treatment order assessment report*** or “**report**”  
means a report under section 27D;

- (d) by inserting “and alcohol” after “drug” in the definition of *program conditions*;
- (e) by inserting “and alcohol” after “drug” in the definition of *treatment and supervision part*.

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**8. Section 27AB amended (Court constituted by magistrate may refer sentencing to other magistrate)**

Section 27AB of the Principal Act is amended by inserting “and alcohol” after “drug”.

**9. Section 27B amended (Court may make drug and alcohol treatment order)**

Section 27B of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “make a drug”;
- (b) by inserting in subsection (1)(b)(i) “or alcohol dependency” after “use”;
- (c) by inserting in subsection (1)(b)(ii) “or alcohol dependency” after “use”;
- (d) by inserting in subsection (1)(c) “and alcohol” after “drug”;
- (e) by inserting in subsection (1)(d) “and alcohol” after “drug”;
- (f) by inserting in subsection (1)(e)(iii) “or a drug and alcohol treatment order” after “order”;
- (g) by inserting in subsection (2) “and alcohol” after “the drug”;
- (h) by inserting in subsection (2)(a) “or alcohol dependency” after “use”;

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- (i) by inserting in subsection (3) “and alcohol” after “drug”;
- (j) by inserting the following subsection after subsection (3):
  - (4) If a court makes a drug and alcohol treatment order under this section in respect of an offender, the court is to specify whether the order is being made in respect of the illicit drug use or alcohol dependency of the offender.

**10. Section 27C amended (Purpose of drug and alcohol treatment order)**

Section 27C of the Principal Act is amended as follows:

- (a) by inserting “and alcohol” after “A drug”;
- (b) by inserting “or alcohol dependency” after “use”.

**11. Section 27D amended (Drug and alcohol treatment order assessment report)**

Section 27D of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “making a drug”;

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- (b) by inserting in subsection (1)(a) “and alcohol” after “drug”;
- (c) by inserting in subsection (2) “and alcohol” after “drug”;
- (d) by inserting in subsection (3)(c) “or alcohol dependency” after “use”;
- (e) by omitting subsection (5) and substituting the following subsection:
  - (5) Also, if the authors of the report consider that the defendant may be a suitable subject for a drug and alcohol treatment order, the report is to advise on programs, courses and treatments that may be able to address the defendant’s –
    - (a) drug use or alcohol dependency; and
    - (b) other social needs.
- (f) by inserting in subsection (7) “and alcohol” after “drug”;
- (g) by inserting in subsection (9) “and alcohol” after “drug”.

**12. Section 27E amended (Parts of drug and alcohol treatment order)**

Section 27E of the Principal Act is amended as follows:



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- (a) by inserting in subsection (1) “and alcohol” after “drug”;
- (b) by inserting in subsection (5) “and alcohol” after “drug”.

**13. Section 27F amended (Custodial part of drug and alcohol treatment order and its activation)**

Section 27F of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “drug”;
- (b) by inserting in subsection (2) “and alcohol” after “drug”;
- (c) by inserting in subsection (3) “and alcohol” after “drug”.

**14. Section 27G amended (Core conditions of drug and alcohol treatment order)**

Section 27G of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “a drug”;
- (b) by inserting in subsection (1)(d) “or alcohol dependency” after “problem”;
- (c) by inserting in subsection (2) “and alcohol” after “drug”;

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- (d) by inserting in subsection (3) “and alcohol” after “drug”;
- (e) by inserting in subsection (4) “and alcohol” after “drug”.

**15. Section 27H amended (Program conditions of drug and alcohol treatment order)**

Section 27H of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “a drug”;
- (b) by omitting from subsection (1)(a) “drug testing” and substituting “testing for drug or alcohol use”;
- (c) by inserting the following paragraph after paragraph (e) in subsection (1):
  - (ea) the offender must not visit, or enter or remain at, locations or classes of locations specified in the order;
- (d) by inserting in subsection (1)(g)(i) “or alcohol dependency” after “use”;
- (e) by inserting in subsection (2) “and alcohol” after “drug”;
- (f) by inserting in subsection (3) “and alcohol” after “drug”.

**16. Section 27I amended (Case conferences)**

Section 27I(1) of the Principal Act is amended by inserting “and alcohol” after “drug”.

**17. Section 27J amended (Variation of drug and alcohol treatment order on assessment of progress)**

Section 27J of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “drug”;
- (b) by omitting from subsection (4)(b)(iii) “drug testing” and substituting “testing for drug or alcohol use”.

**18. Section 27K amended (Compliance reward)**

Section 27K of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “a drug”;
- (b) by inserting in subsection (1)(c) “and alcohol” after “drug”;
- (c) by omitting from subsection (2)(b)(iii) “drug testing” and substituting “testing for drug or alcohol use”.

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**19. Section 27L amended (Cancellation reward)**

Section 27L of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “drug”;
- (b) by inserting in subsection (2) “and alcohol” after “drug”.

**20. Section 27M amended (Contravention of order)**

Section 27M of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “a drug”;
- (b) by inserting in subsection (1)(a) “and alcohol” after “drug”;
- (c) by inserting in subsection (1)(b) “and alcohol” after “drug”;
- (d) by inserting in subsection (1)(d) “and alcohol” after “drug”;
- (e) by inserting in subsection (2) “and alcohol” after “drug”;
- (f) by omitting from subsection (5)(b)(iii) “drug testing” and substituting “testing for drug or alcohol use”.

**21. Section 27N amended (Imprisonment)**

Section 27N of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “and alcohol” after “drug”;
- (b) by inserting “and alcohol” after “drug” in the definition of *custodial period* in subsection (3);
- (c) by inserting “and alcohol” after “drug” in the definition of *de-activated part* in subsection (3).

**22. Section 27O amended (Commission of certain offences)**

Section 27O of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “a drug”;
- (b) by inserting in subsection (1)(b)(i) “and alcohol” after “drug”;
- (c) by inserting in subsection (1)(b)(ii) “and alcohol” after “of the drug”;
- (d) by inserting in subsection (1)(b)(ii) “and alcohol” after “which the drug”;
- (e) by inserting in subsection (2A) “and alcohol” after “drug”;

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- (f) by inserting in subsection (3) “and alcohol” after “drug”;
- (g) by inserting in subsection (4) “and alcohol” after “or custodial part of the drug”;
- (h) by inserting in subsection (4) “and alcohol” after “the custodial part of the drug”.

**23. Section 27P amended (Hearing and determining certain offences)**

Section 27P of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “to a drug”;
- (b) by inserting in subsection (1)(d) “and alcohol” after “drug”;
- (c) by inserting in subsection (1)(e) “and alcohol” after “drug”;
- (d) by inserting in subsection (2) “and alcohol” after “drug”;
- (e) by inserting in subsection (3) “and alcohol” after “drug”;
- (f) by inserting in subsection (4) “and alcohol” after “drug”.

**24. Section 27Q amended (Cancellation)**

Section 27Q of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “a drug”;
- (b) by inserting in subsection (1)(a) “and alcohol” after “drug”;
- (c) by inserting in subsection (2)(a) “and alcohol” after “drug”;
- (d) by inserting in subsection (2)(b) “and alcohol” after “of the drug”;
- (e) by inserting in subsection (2)(b) “and alcohol” after “which the drug”;
- (f) by inserting in subsection (4) “and alcohol” after “drug”;
- (g) by inserting in subsection (7) “and alcohol” after “or custodial part of the drug”;
- (h) by inserting in subsection (7) “and alcohol” after “the custodial part of the drug”.

**25. Section 27QA amended (Referral of matters to other courts)**

Section 27QA of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1) “and alcohol” after “drug”;
- (b) by inserting in subsection (2) “and alcohol” after “drug”.

**26. Section 27R amended (Second anniversary review)**

Section 27R of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “drug”;
- (b) by inserting in subsection (4) “and alcohol” after “drug”.

**27. Section 27S amended (Motions to review)**

Section 27S of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and alcohol” after “drug”;
- (b) by inserting in subsection (2)(a)(i) “and alcohol” after “drug”;
- (c) by inserting in subsection (2)(a)(ii) “and alcohol” after “drug”;
- (d) by inserting in subsection (2)(a)(iii) “and alcohol” after “drug”;
- (e) by inserting in subsection (2)(a)(iv) “and alcohol” after “drug”;



- (f) by inserting in subsection (2)(b) “and alcohol” after “drug”;
- (g) by inserting in subsection (3) “and alcohol” after “drug”;
- (h) by inserting in subsection (4) “and alcohol” after “drug”;
- (i) by inserting in subsection (5) “and alcohol” after “drug”;
- (j) by inserting in subsection (6) “and alcohol” after “drug”.

**28. Section 27T amended (Immunity from prosecution for certain drug offences)**

Section 27T(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “and alcohol” after “drug”;
- (b) by inserting in paragraph (b) “and alcohol” after “drug”.

**29. Section 27V amended (Random drug and alcohol testing)**

Section 27V of the Principal Act is amended as follows:

- (a) by inserting “and alcohol” after “a drug”;

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- (b) by omitting “drug testing” and substituting “testing for drug or alcohol use”.

**30. Section 27W amended (Disclosure of compliance information)**

Section 27W(4) of the Principal Act is amended by inserting “and alcohol” after “drug” in the definition of *compliance information*.

**31. Section 103A inserted**

After section 103 of the Principal Act, the following section is inserted in Part 12:

**103A. Review of Court Mandated Diversion Program**

- (1) The Minister is to commission a person, who in the opinion of the Minister is suitably qualified, to undertake an independent review of the Court Mandated Diversion Program no later than the day three years after the day on which the *Sentencing Amendment (Alcohol Treatment Order) Act 2024* commenced.
- (2) The reviewer appointed under subsection (1) is to have regard to, and make recommendations on, the following matters:
  - (a) the operation of Part 3A of this Act;

- (b) the operation of the Court Mandated Diversion Program;
  - (c) barriers to eligible participants accessing the program, including but not limited to –
    - (i) caps on program participants; and
    - (ii) government funding; and
    - (iii) the availability of treatment services;
  - (d) any other matters the reviewer sees fit.
- (3) The Minister is to cause a copy of the report of the review to be laid before each House of Parliament, as soon as practicable after receiving the report.

**32. Section 104B inserted**

After section 104A of the Principal Act, the following section is inserted in Part 12:

**104B. Savings on commencement of *Sentencing Amendment (Alcohol Treatment Order) Act 2024***

- (1) In this section –

*amending Act* means the *Sentencing Amendment (Alcohol Treatment Order) Act 2024*;

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***commencement day*** means the day on which the amending Act commenced;

***drug treatment order assessment report*** means a drug treatment order assessment report, made under section 27D of the Act, as in force immediately before the commencement day.

- (2) On the commencement day –
  - (a) a drug treatment order in force immediately before the commencement day remains in effect on the same terms and conditions; and
  - (b) this Act, as in force immediately before the commencement day, applies to the drug treatment order.
- (3) On and after the commencement day, a contravention of, or failure to comply with, a drug treatment order may be dealt with under this Act as if the amending Act had not been enacted.
- (4) If, before the commencement day –
  - (a) a court is imposing a sentence on an offender in relation to an offence; and

(b) a court has ordered a drug treatment order assessment report in respect of the offender; and

(c) the report has not been provided –

the order of the court for a drug treatment order assessment report is taken, on the commencement day, to be an order for a drug and alcohol treatment order assessment report.

(5) If, before the commencement day –

(a) a court is imposing a sentence on an offender in relation to an offence; and

(b) the court has ordered, and been provided with, a drug treatment order assessment report in respect of the offender –

on and after the commencement day, the court may use the drug treatment order assessment report as the basis for imposing a drug and alcohol treatment order on the offender.

### **33. Repeal of Act**

This Act is repealed on the first anniversary of the day on which it commenced.