

CLAUSE NOTES

Sentencing Amendment (Alcohol Treatment Order) Bill 2023

- Clause 1 **Short Title**
Specifies the name of the proposed Act.
- Clause 2 **Commencement**
Provides that the Act commences on a day to be Proclaimed.
- Clause 3 **Principal Act**
Provides that the Principal Act that is being amended is the *Sentencing Act 1997* (the Act).
- Clause 4 **Section 4 amended (Interpretation)**
Clause 4 makes two amendments to section 4 of the Act. The first clarifies that the existing definition of *drug treatment order* means an order as in force immediately before the commencement of the *Sentencing Amendment (Alcohol Treatment Order) Act 2023*. The second amendment inserts a definition of ***drug and alcohol treatment order***, to mean a drug and alcohol treatment order made under section 27B.

The intention is to clarify existing drug treatment orders and new drug and alcohol treatment orders created by the amending Act.
- Clause 5 **Section 7 amended (Sentencing orders)**
Updates 'drug treatment order' to 'drug and alcohol treatment order', to provide that a court constituted by a magistrate or the Supreme Court or the Court of Appeal may make a drug and alcohol treatment order.
- Clause 6 **Part 3A: Heading amended**
Clause 6 amends the heading of Part 3A of the Act, to provide for the name of the new order – Drug and alcohol treatment orders.
- Clause 7 **Section 27A amended (Interpretation of Part)**
Clause 7 makes amendments to section 27A of the Act, to update 'drug treatment order' references in the interpretation provision of Part 3A, to reflect the new order – 'drug and alcohol treatment order'. This includes omitting the definition of *drug treatment order assessment report* and substituting with a new definition: ***drug and alcohol treatment order assessment report*** or "***report***" means a report under section 27D.

- Clause 8** **Section 27AB amended (Court constituted by magistrate may refer sentencing to other magistrate)**
- Provides that the name of the order referenced is updated to 'drug and alcohol treatment order'.
- Clause 9** **Section 27B amended (Court may make drug and alcohol treatment order)**
- Clause 9 makes minor amendments to subsections 27B(1), (2) and (3) of the Act to provide that the name of the order referenced is 'drug and alcohol treatment order'.
- The intention is that a treatment order can also be made for offenders who present with a history of alcohol dependence, where the offending is linked to alcohol dependence (pursuant to the existing limitations in s27B of the Act).
- New subsection 27B(4) is inserted. New subsection 4 provides that if a court makes a drug and alcohol treatment order under section 27B 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 dependence of the offender.
- While acknowledging that an offender may have a history of illicit drug use and alcohol dependency, the intention is that the primary drug that contributed to the offending is clearly recorded. Specifying that the order is made in respect of illicit drug use or alcohol dependence will not preclude a court attaching conditions it considers necessary to achieve the purpose for which the order is made, which may relate to other substance abuse.
- Clause 10** **Section 27C amended (Purpose of drug and alcohol treatment order)**
- Provides that the name of the order referenced is updated to 'drug and alcohol treatment order', and that the order may relate to an offender with alcohol dependency.
- Clause 11** **Section 27D amended (Drug and alcohol treatment order assessment report)**
- Clause 11 amends subsections 27D(1), (2), (3) (7) and (9) of the Act to provide that the name of the order is 'drug and alcohol treatment order'. The clause also provides that a drug and alcohol treatment order assessment report may set out the defendant's alcohol dependency.
- Subsection 27D(5) is omitted and a new subsection (5) is substituted. The substitution largely reflects the omitted section but has been updated to include alcohol dependency. This means that the report is to advise on programs, courses and treatments that may be able to address the defendant's drug use or alcohol dependency; and other social needs.

- Clause 12** **Section 27E amended (Parts of drug and alcohol treatment order)**
Subsections 27E (1) and (5) of the Act are amended to provide that the name of the order is 'drug and alcohol treatment order'.
- Clause 13** **Section 27F amended (Custodial part of drug and alcohol treatment order and its activation)**
Three simple amendments are made to provide that the name of the order is 'drug and alcohol treatment order'.
- Clause 14** **Section 27G amended (Core conditions of drug and alcohol treatment order)**
The clause makes minor amendments to provide that the name of the order is 'drug and alcohol treatment order'.
Subparagraph 27G(1)(d) of the Act is amended to provide that the offender must undergo such treatment for the offender's illicit drug use problem or alcohol dependency as is specified in the order or from time to time specified by a court. This amendment reflects that a treatment order can be made on the basis of alcohol dependency.
- Clause 15** **Section 27H amended (Program conditions of drug and alcohol treatment order)**
Amendments are made to subsections (1), (2) and (3) to provide that the name of the order is 'drug and alcohol treatment order'.
Subsection 27H(1)(a) is amended to provide for testing for drug or alcohol use as specified in the order.
Clause 15 inserts a new discretionary program condition. A new paragraph is inserted after paragraph 27H(1)(e) to provide that the offender must not visit, or enter or remain at, locations or classes of locations specified in the order. This will enable the Court to make an order with a program condition that would prevent an offender from visiting licenced premises, in situations where the Court considers it necessary to achieve the purpose for which the order is made.
Subparagraph 27H(1)(g)(i) is amended to provide the offender must do or not do anything else that the court considers necessary or appropriate concerning the offender's illicit drug use or alcohol dependency.
- Clause 16** **Section 27I amended (Case conferences)**
An amendment is made to provide that the name of the order is 'drug and alcohol treatment order'.
- Clause 17** **Section 27J amended (Variation of drug and alcohol treatment order on assessment of progress)**

An amendment is made to provide that the name of the order is 'drug and alcohol treatment order'.

The subparagraph providing for frequency of testing is amended to provide for testing for drug or alcohol use.

Clause 18 Section 27K amended (Compliance reward)

The clause updates two references to the name of the order, to provide for 'drug and alcohol treatment order'.

Clause 19 Section 27L amended (Cancellation reward)

The clause updates two references to the name of the order, to provide for 'drug and alcohol treatment order'.

Clause 20 Section 27M amended (Contravention of order)

The clause updates five references to the name of the order, to provide for 'drug and alcohol treatment order'.

The subparagraph providing for the frequency of drug testing is amended to provide for testing for drug or alcohol use, to reflect that the treatment order may be made on the basis of alcohol dependency.

Clause 21 Section 27N amended (Imprisonment)

The clause updates three references to the name of the order, to provide for 'drug and alcohol treatment order'.

Clause 22 Section 27O amended (Commission of certain offences)

The clause updates eight references to the name of the order, to provide for 'drug and alcohol treatment order'.

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

The clause updates six references to the name of the order, to provide for 'drug and alcohol treatment order'.

Clause 24 Section 27Q amended (Cancellation)

The clause updates eight references to the name of the order, to provide for 'drug and alcohol treatment order'.

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

The clause updates two references to the name of the order, to provide for 'drug and alcohol treatment order'.

Clause 26 Section 27R amended (Second anniversary review)

The clause updates two references to the name of the order, to provide for 'drug and alcohol treatment order'.

- Clause 27** **Section 27S amended (Motions to review)**
- The clause updates ten references to the name of the order, to provide for 'drug and alcohol treatment order'.
- Clause 28** **Section 27T amended (Immunity from prosecution for certain drug offences)**
- The clause updates two references to the name of the order, to provide for a 'drug and alcohol treatment order'.
- Clause 29** **Section 27V amended (Random drug and alcohol testing)**
- The clause updates one reference to the name of the order to provide for a 'drug and alcohol treatment order'.
- The clause also omits the reference to 'drug testing' and substitutes 'testing for drug or alcohol use'. This reflects that the treatment order may be made on the basis of alcohol dependency and that management of orders requires appropriate testing.
- Clause 30** **Section 27W amended (Disclosure of compliance information)**
- The clause amends the definition of *compliance information* in section 27W of the Act, to refer to the name of the new order.
- Clause 31** **Section 104B inserted**
- Clause 31 inserts new section 104B into the Act, after section 104A in Part 12 of the Act.
- Section 104B provides for savings provisions on commencement of the *Sentencing Amendment (Alcohol Treatment Order) Act 2023*.
- New subsection 104B(1) provides definitions for relevant terms. In section 104B of the Act, *amending Act* means the *Sentencing Amendment (Alcohol Treatment Order) Act 2023*; *commencement day* means the day on which the amending Act commenced; and *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.
- New subsection 104B(2) provides that on the commencement day a drug treatment order in force immediately before the commencement day remains in effect on the same terms and conditions and the Act, as in force immediately before the commencement day, applies to the drug treatment order.
- The intention is that the amending Act does not affect existing drug treatment orders. This provides certainty for offender's subject to a drug treatment order and the courts.
- New subsection 104B(3) provides that on and after the commencement day, a contravention of, or failure to comply with, a drug treatment order

may be dealt with under the Act as if the amending Act had not been enacted.

This provides the court with discretion to manage a breach of an existing drug treatment order that was in force immediately before the commencement of the amending Act, either under the previous provisions or the new drug and alcohol treatment scheme.

New subsection 104B(4) provides that if, before the commencement day a court is imposing a sentence on an offender in relation to an offence; and a court has ordered a drug treatment order assessment report in respect of the offender; and the report has not been provided – the order of the court for a drug treatment order assessment report is taken, on commencement day, to be an order of a drug and alcohol treatment order assessment report.

The intention of this provision is to provide appropriate transition from the existing Act to the commencement of the amending Act. This means that an assessment report ordered by the court but not yet provided will be taken to be a drug and alcohol treatment order assessment report, and the report will then be considered under the drug and alcohol treatment order scheme.

New subsection 104B(5) provides that if, before the commencement day, a court is imposing a sentence on an offender in relation to an offence; and 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.

The intention of this provision is to provide appropriate transition from the existing Act to the commencement of the amending Act, so that there is no lag in adoption of the expanded order. This means that a court who has been provided with a drug treatment order assessment, can use that report to make a drug and alcohol treatment order, once the amending Act has commenced.

Clause 32

Repeal of Act

This automatically repeals the amending legislation after the first anniversary of this Act commencing. The provisions that the amending legislation inserts into the Principal Act still remain in force after the repeal of the Amending Act.