

# NORTHERN TERRITORY OF AUSTRALIA

## ALCOHOL REFORM (SUBSTANCE MISUSE ASSESSMENT AND REFERRAL FOR TREATMENT COURT) ACT 2011

As in force at 2 July 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 2 July 2011. Any amendments that commence after that date are not included.

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## ALCOHOL REFORM (SUBSTANCE MISUSE ASSESSMENT AND REFERRAL FOR TREATMENT COURT) ACT 2011

An Act to establish the SMART Court with power to make particular orders for eligible offenders who are seriously misusing alcohol or drugs, and for related purposes

### Part 1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011*.

#### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

#### 3 Object of Act

The object of this Act is to establish a court with enhanced powers to make orders for people with a history of serious substance misuse who have been found guilty of committing certain offences:

- (a) to reduce their criminal activity associated with the misuse of alcohol or drugs; and
- (b) to provide increased opportunity for their rehabilitation; and
- (c) to reduce risks and harm associated with their misuse of alcohol or drugs.

#### 4 Definitions

In this Act:

***action plan***, for an offender, means the action plan recommended in the assessment report about the offender.

***assessment report*** means an assessment report about an offender, as mentioned in section 34.

***Court*** means the SMART Court.

***court clinician*** means a person holding an appointment as a SMART Court clinician under section 32.

***CSJ*** means court of summary jurisdiction.

***eligible offender***, see section 17(1).

***imprisonment***, in relation to the sentencing of a youth under Part 4 or 5, includes detention.

***licensed premises***, see section 4(1) of the *Liquor Act*.

***offender*** means a person who has been referred to the Court under section 15.

***proceeding*** means a proceeding before the Court.

***prosecutor*** includes the person holding or occupying the office of Director of Public Prosecutions under the *Director of Public Prosecutions Act*.

***relevant offence***, see section 16.

***reward*** means a reward mentioned in section 25(1).

***sanction*** means a sanction mentioned in section 25(2).

***SMART Court*** means the Substance Misuse Assessment and Referral for Treatment Court established by section 7.

***SMART order*** means an order, made under section 20 or 21, that includes conditions mentioned in section 22.

***substance*** means alcohol or a drug, but does not include a volatile substance as defined in section 4 of the *Volatile Substance Abuse Prevention Act*.

***treatment***, for substance misuse, includes counselling and other interventions.

***YJC*** means the Youth Justice Court mentioned in section 45 of the *Youth Justice Act*.

***youth***, see section 6 of the *Youth Justice Act*.

## 5 Principles

The following are general principles that must be applied by anyone exercising a power or performing a function under this Act or in relation to a SMART order:

- (a) persons who may be eligible for referral to the Court by the CSJ or YJC are to be identified as early as possible and, if eligible, should be referred promptly to the Court;
- (b) the process and participation in the Court is to be collaborative and non-adversarial;
- (c) the Court is to:
  - (i) monitor the progress of offenders who are subject to SMART orders; and
  - (ii) apply a system of rewards and sanctions for the offenders in relation to their progress;
- (d) to assist in the rehabilitation of offenders subject to SMART orders, the offenders are to be given access to a range of programs and services such as the following:
  - (i) treatment and supervision programs for the offender's substance misuse;
  - (ii) if appropriate and available – other programs or services to address the offender's criminogenic needs (for example, programs relating to education, employment, anger management or family violence);
  - (iii) if appropriate and available – welfare-related services (for example, services relating to housing or primary health care).

## 6 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 6*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## Part 2 SMART Court

### 7 Establishment

- (1) The Substance Misuse Assessment and Referral for Treatment Court (the ***SMART Court***) is established.
- (2) The Court is constituted of the Chief Magistrate and any other magistrates appointed by the Chief Magistrate.
- (3) The Court is a court of record and has a seal that must be affixed to all process issued out of the Court.

### 8 Jurisdiction

- (1) The jurisdiction of the Court is exercisable by a magistrate sitting alone.
- (2) The Court has the following jurisdiction:
  - (a) to conduct proceedings, take guilty pleas and make findings of guilt in relation to offenders;
  - (b) to make SMART orders for offenders;
  - (c) to sentence offenders under the *Sentencing Act* or *Youth Justice Act* to the extent that Act applies in relation to a proceeding;
  - (d) to defer sentencing offenders or defer the execution of sentences imposed on offenders;
  - (e) to make any other orders necessary or convenient to be made by the Court, including orders under the *Bail Act*, *Justices Act*, *Sentencing Act* and *Youth Justice Act* to the extent that Act applies in relation to a proceeding;
  - (f) to issue process and receive oral or documentary evidence.
- (3) The Court has the powers necessary to enable it to exercise its jurisdiction, including the powers of a magistrate under the *Bail Act*, *Justices Act*, *Sentencing Act* and *Youth Justice Act*.

### 9 Registrar

- (1) A Registrar of the Local Court is a Registrar of the Court.

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- (2) If the Court is required to perform its functions at a place outside the Territory, the Minister may appoint as a Registrar of the Court at the place:
    - (a) a person who holds office as a registrar or deputy registrar of a court of the jurisdiction in which the place is located; or
    - (b) another appropriately qualified person.
  - (3) The conditions of service (including as to remuneration) of the appointed person are those that the person is entitled to under the law of the other jurisdiction.
  - (4) A person appointed under subsection (2)(a) ceases to hold office if the person ceases to hold office as a registrar or deputy registrar of a court of the other jurisdiction.
  - (5) With the approval of the Minister, a Registrar of the Court may concurrently hold office as a registrar or deputy registrar of a court of another jurisdiction.
  - (6) In this section:

*remuneration* includes salary, allowances, fees, emoluments and benefits (whether in money or otherwise).

## **10 Where Court may sit**

The Court may sit in the locations (including a place outside the Territory) the Minister directs and in any building approved by the Minister for the holding of the Court.

## **11 When court must or may be closed**

- (1) A proceeding in relation to an offender who is a youth must be conducted in a closed court unless the Court considers there are special circumstances to justify conducting the proceeding in open court.
- (2) A proceeding in relation to an offender who is an adult may be conducted in a closed court if the Court considers it is justified as being in the best interests of the offender.
- (3) Subsections (1) and (2) do not authorise the Court to exclude from the proceeding the following persons:
  - (a) the offender;
  - (b) if the offender is a youth – a responsible adult in relation to the youth;

- (c) a legal practitioner representing the offender;
  - (d) the prosecutor.
- (4) If the court is closed under subsection (1) or (2), a person must not, without the Court's permission:
- (a) remain in or enter a room in which the proceeding is being conducted; or
  - (b) remain within the hearing of the court.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (5) In this section:

*responsible adult*, in relation to a youth, see section 5(1) of the *Youth Justice Act*.

## **12 Procedure**

Subject to this Act and any rules or practice directions made or issued under section 13, the Court may:

- (a) regulate its own procedure; and
- (b) apply or use (with the necessary changes) a relevant procedure or form applicable or in use under the *Bail Act*, *Justices Act*, *Sentencing Act* or *Youth Justice Act*.

## **13 Rules and practice directions**

- (1) The Chief Magistrate may make rules, not inconsistent with this Act, for the practice and procedure of the Court.
- (2) The Chief Magistrate may issue practice directions, not inconsistent with this Act or any rules made under subsection (1), for the practice and procedure of the Court.

## **14 Right of appeal to Supreme Court**

- (1) A party to a proceeding may appeal to the Supreme Court against a finding of guilt, conviction, order or adjudication made by the Court.
- (2) However, a party cannot appeal against the following decisions of the Court:
  - (a) a refusal under section 19(3) to make a SMART order;



- (b) a variation or revocation of a SMART order, or a condition of a SMART order, under Part 5.
- (3) The provisions of the *Justices Act* relating to appeals from the CSJ apply with the necessary changes to an appeal under subsection (1).
- (4) The appeal must be:
  - (a) made in accordance with the *Supreme Court Rules*; and
  - (b) heard by a single Judge.

## **Part 3                      Referral of offenders to SMART Court**

### **15                      Referral by CSJ or YJC**

- (1) This section applies in relation to a person in a proceeding before the CSJ or YJC who:
  - (a) is charged with a relevant offence; and
  - (b) has pleaded guilty to the offence, or indicated an intention to do so, or been found guilty of the relevant offence; and
  - (c) has not been sentenced for the offence.
- (2) The CSJ or YJC may refer the person to the Court if satisfied the person is an eligible offender.
- (3) The referral may be:
  - (a) on the initiative of the CSJ or YJC or on application by a prosecutor, a police officer or the eligible offender; and
  - (b) at any time during the proceeding.
- (4) If the person is charged with more than one relevant offence, the CSJ or YJC may refer the person to the Court in relation to all of the offences if the CSJ or YJC considers it to be appropriate.

### **16                      Relevant offence**

- (1) A ***relevant offence*** is an offence the CSJ or YJC has jurisdiction to hear and determine summarily.
- (2) However, a regulation may declare that a particular offence is not a relevant offence.

**17 Eligible offender**

- (1) A person is an *eligible offender* if the person:
  - (a) appears, on information available to the CSJ or YJC, to have a history of serious substance misuse; and
  - (b) satisfies any criteria prescribed by regulation; and
  - (c) is not excluded under subsection (2) from the application of section 15.
- (2) A person is not an eligible offender if:
  - (a) the person is subject to:
    - (i) a parole order under the *Parole of Prisoners Act*, or
    - (ii) an order under section 44 of the *Sentencing Act*, or
  - (b) a regulation mentioned in subsection (3) applies in relation to the person.
- (3) A regulation may exclude a person from eligibility for referral to the Court by reference to the nature of the offence with which the person is charged or for any other reason prescribed by regulation.

**18 Immunity from prosecution**

- (1) A person is not liable to prosecution for any offence involving the unlawful possession or use of a substance that is commenced as a result of an admission (*the relevant admission*):
  - (a) made in relation to the referral of the person to the Court (except an admission of facts in relation to the relevant offence); or
  - (b) if the person is referred to the Court – made in satisfying the Court that a SMART order should be made for the person; or
  - (c) if a SMART order is made for the person – made in connection with the Court's monitoring of the person's progress under the order.
- (2) The relevant admission must not be admitted as evidence in proceedings for any offence involving the unlawful possession or use of a substance that is commenced as a result of that admission.

## **Part 4                    SMART orders and other orders**

### **19                    Criteria for making SMART order**

- (1) Before the Court may make a SMART order for an offender under section 20 or 21:
  - (a) the offender must state in writing that a court clinician may be given:
    - (i) information about the charges and facts relating to the relevant offence and the offender's antecedents; and
    - (ii) any other relevant information about the offender that may assist the clinician in making an assessment report; and
  - (b) the Court must:
    - (i) order the offender to attend for a clinical assessment by a court clinician; and
    - (ii) order that the court clinician making the assessment give the Court an assessment report about the offender; and
    - (iii) give the parties to the proceeding a copy of the assessment report; and
    - (iv) give the parties an opportunity to be heard in relation to the assessment report; and
    - (v) take into account the information in the assessment report and recommendations for an action plan.
- (2) The Court may make the SMART order if all of the following criteria apply:
  - (a) the offender has been found guilty of the relevant offence by:
    - (i) the Court; or
    - (ii) the CSJ or YJC before being referred to the Court;
  - (b) the offender has not been sentenced for the offence;

- (c) the offender has stated in writing that the offender is willing to comply with a SMART order if made;
- (d) the Court is satisfied:
  - (i) the offender has a history of serious substance misuse; and
  - (ii) the offender's serious substance misuse contributed to the commission of the relevant offence; and
  - (iii) it is appropriate to make a SMART order for the offender.
- (3) If one or more of the criteria mentioned in subsection (2) have not been met, the Court must refuse to make a SMART order for the offender and do one of the following:
  - (a) sentence the offender for the relevant offence;
  - (b) refer the offender to the CSJ or YJC for sentencing for the relevant offence.

## **20 Deferring sentencing and making SMART order**

- (1) The Court may defer sentencing the offender for a period of not less than 6 months and not more than 12 months and make a SMART order for the offender.
- (2) The Court must then grant the offender bail for the period of deferral on condition that the offender must:
  - (a) comply with the conditions of bail imposed by the Court; and
  - (b) comply with the SMART order; and
  - (c) as ordered from time to time by the Court while the SMART order is in force – appear before the Court for a review of the offender's progress under the SMART order; and
  - (d) on the date specified in the order – appear before the Court to be sentenced for the relevant offence.
- (3) To avoid doubt, this section does not prevent the Court from making additional orders under another Act, as mentioned in section 8(2)(e).

**21 Suspending execution of sentence and making SMART order**

- (1) The Court may:
  - (a) sentence the offender for the relevant offence, in accordance with the *Sentencing Act* or *Youth Justice Act*, to a period of imprisonment; and
  - (b) make a SMART order for the offender.
- (2) The Court must then order that the execution of the sentence is suspended for a period of not less than 6 months and not more than 12 months on condition that the offender must:
  - (a) comply with the SMART order during the period of suspension; and
  - (b) as ordered from time to time by the Court while the SMART order is in force – appear before the Court for a review of the offender's progress under the SMART order; and
  - (c) on the date specified in the order – appear before the Court for reconsideration of the sentence.

**22 Conditions of SMART order**

- (1) A SMART order includes the conditions the Court considers appropriate, including conditions relating to any of the following matters:
  - (a) the conduct of the offender;
  - (b) actions to be taken by the offender as recommended in the action plan;
  - (c) the consumption, use, purchase or possession of a substance specified in the order;
  - (d) supervision of the offender;
  - (e) surveillance of the offender under Part 27, Division 4 of the *Prisons (Correctional Services) Act*;
  - (f) the testing of the offender, at stated intervals, for the consumption or use of a substance (including by testing a sample of the offender's breath, urine or blood);
  - (g) the place where the offender must reside;
  - (h) the curfew to which the offender is subject;

- (i) programs, courses or activities in which the offender must participate.
- (2) The order may also:
  - (a) prohibit the offender from entering or remaining on licensed premises; and
  - (b) include directions to the Director of Licensing relating to the notice to be given under section 122 of the *Liquor Act*.
- (3) Without limiting subsection (2)(b), the Court may include directions about the following matters:
  - (a) the licensees of specified licensed premises who must be given the notice;
  - (b) the area within which licensees of licensed premises must be given the notice.

## **23 Copies of SMART order to be given**

The Court must give a copy of a SMART order to:

- (a) a court clinician; and
- (b) if the order includes a condition relating to surveillance under Part 27, Division 4 of the *Prisons (Correctional Services) Act* – the Director of Correctional Services; and
- (c) if the order includes a direction relating to the notice to be given under section 122 of the *Liquor Act* – the Director of Licensing; and
- (d) any other person or entity providing the offender with:
  - (i) treatment; or
  - (ii) a program, course or service.

## **Part 5                      Monitoring progress under SMART order and imposing final sentence**

### **24                      Monitoring progress, conferring rewards or imposing sanctions**

- (1) At any time during the period a SMART order is in force for an offender, the Court may confer rewards or impose sanctions on the offender following:
  - (a) a review of the offender's progress under the order as mentioned in section 20(2)(c) or 21(2)(b); and
  - (b) consideration of a report by a court clinician about the offender's progress under the order.
- (2) The Court may confer rewards if the offender has maintained a satisfactory level of compliance with the SMART order or may impose sanctions if the offender has not done so.

### **25                      Rewards and sanctions**

- (1) The Court may confer the following kinds of rewards on the offender:
  - (a) an appropriate change in the frequency of treatment;
  - (b) a decrease in supervision;
  - (c) a lengthening of the intervals at which the offender must be tested for the consumption or use of a substance;
  - (d) a change in the programs, courses or activities in which the offender must participate;
  - (e) a change in the services the offender receives.
- (2) The Court may impose the following kinds of sanctions on the offender:
  - (a) an appropriate change in the frequency of treatment;
  - (b) an increase in supervision;
  - (c) a shortening of the intervals at which the offender must be tested for the consumption or use of a substance;
  - (d) a change in the programs, courses or activities in which the offender must participate;

- (e) a change in the services the offender receives;
- (f) a requirement that:
  - (i) if the offender is a youth – the offender be detained for up to 14 days in relation to any one failure to comply with a condition of the order; or
  - (ii) if the offender is an adult – the offender be imprisoned for up to 14 days in relation to any one failure to comply with a condition of the order.
- (3) This section does not limit the conditions that may be imposed under a SMART order as varied under this Part.

## **26 Variation generally**

At any time during the period the SMART order is in force, the Court may vary the SMART order by varying or revoking conditions or adding conditions.

## **27 Bringing offender before Court for failure to comply**

- (1) If the Court is satisfied the offender has failed to comply with the SMART order, the Court may:
  - (a) issue a summons for the offender to appear before the Court; or
  - (b) if satisfied the offender may not appear – issue a warrant for the arrest of the offender.
- (2) The summons or warrant may be issued on the Court's initiative or on application.

## **28 Revocation if further progress unlikely or risk to community**

The Court may revoke the SMART order if satisfied on the balance of probabilities that the offender:

- (a) is unlikely to make any further progress under the order; or
- (b) the community faces an unacceptable risk that the offender may commit an offence punishable by imprisonment.

## **29 Revocation for substantial compliance or on request**

The Court may revoke the SMART order if:

- (a) satisfied on the balance of probabilities that the offender has substantially complied with the conditions of the order; or



- (b) the offender requests the Court to revoke the order.

### **30 Final sentence after deferral of sentencing**

- (1) This section applies if an offender subject to a SMART order under section 20 appears before the Court:
  - (a) as mentioned in section 20(2)(d); or
  - (b) in relation to the revocation of the order under this Part.
- (2) The Court must sentence the offender after taking into account the following matters:
  - (a) the extent to which the offender complied with the SMART order;
  - (b) any sanctions imposed on the offender during the period the order was in force;
  - (c) any other matters the Court considers relevant.
- (3) Sections 78BA and 78BB of the *Sentencing Act* do not apply in relation to the offender if the SMART order was not revoked under this Part.

### **31 Final sentence after suspension of execution of sentence**

- (1) This section applies if an offender subject to a SMART order under section 21 appears before the Court:
  - (a) as mentioned in section 21(2)(c); or
  - (b) in relation to the revocation of the order under this Part.
- (2) The Court must reconsider the sentence imposed on the offender under section 21 and do one of the following:
  - (a) confirm the sentence;
  - (b) set it aside and impose a new sentence with a period of imprisonment not exceeding the period imposed under section 21.
- (3) However, the Court must first take into account the following matters:
  - (a) the extent to which the offender complied with the SMART order;

- (b) any sanctions imposed on the offender during the period the order was in force;
  - (c) any other matters the Court considers relevant.
- (4) Sections 78BA and 78BB of the *Sentencing Act* do not apply in relation to the offender if:
  - (a) the Court imposes a new sentence on the offender; and
  - (b) the SMART order was not revoked under this Part.

## **Part 6                      Court clinicians and assessment reports**

### **32                      Appointment of court clinician**

The Chief Executive Officer may appoint a person to be a SMART Court clinician if satisfied the person has the appropriate qualifications or experience for appointment.

### **33                      Functions and powers of court clinician**

- (1) A court clinician has the following functions:
  - (a) to make clinical assessments of, and assessment reports about, eligible offenders;
  - (b) to give assessment reports to the Court;
  - (c) to do the following, as ordered by the Court:
    - (i) give the Court progress reports about offenders who are subject to SMART orders;
    - (ii) liaise with the Director of Correctional Services about those offenders;
    - (iii) liaise with persons or entities providing treatment or other programs or services to offenders;
    - (iv) give directions to those offenders;
  - (d) other functions conferred on the court clinician by the Court or under this or another Act.
- (2) A court clinician has the powers necessary for performing the functions.

**34 Assessment report**

- (1) An assessment report about an offender must be in writing.
- (2) In the assessment report, the court clinician must state whether or not the clinical assessment of the offender indicates the offender may benefit from treatment for substance misuse.
- (3) If the assessment report states that the clinical assessment indicates the offender may benefit from treatment for substance misuse, the report must include recommendations for an action plan for the offender.
- (4) Without limiting subsection (3), the action plan may relate to the following:
  - (a) the kind of treatment appropriate for the offender;
  - (b) programs or services that may assist in the offender's rehabilitation, including (for example) employment, housing, health care and financial assistance programs or services.

**Part 7 Miscellaneous matters****35 Delegations**

Each of the following persons may delegate any of the person's powers or functions under this Act to a public sector employee:

- (a) the Minister;
- (b) the Chief Executive Officer;
- (c) the Director of Correctional Services.

**36 Protection from liability**

- (1) A court clinician is not civilly or criminally liable for an act done or omitted to be done by the clinician in good faith in the exercise of a power or performance of a function under this Act.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

***exercise***, of a power, includes the purported exercise of the power.

***performance***, of a function, includes the purported performance of the function.

**37                      Regulations**

The Administrator may make regulations under this Act.

**Part 8                      Repeal and transitional matters for Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011**

**38                      Definitions**

*commencement day* means the day on which section 39 commences.

*repealed Act* means the *Alcohol Court Act* as in force immediately before the commencement day.

**39                      Repeal**

The *Alcohol Court Act* (Act No. 1 of 2006) is repealed.

**40                      Relevant offences committed before commencement day**

Subject to section 41, this Act applies in relation to a person charged with a relevant offence even if the offence was committed, or the person was charged with the offence, before the commencement day.

**41                      Continuation of matters under repealed Act**

- (1) The repealed Act continues to apply as if it were still in force in relation to:
  - (a) a proceeding being conducted in the Alcohol Court immediately before the commencement day; and
  - (b) an order made by the Alcohol Court in force immediately before the commencement day; and
  - (c) an offender subject to an order made by the Alcohol Court and in force immediately before the commencement day.
- (2) For subsection (1), the repealed Act applies as if a reference in that Act to the Alcohol Court were a reference to the SMART Court.

**42       Locations and buildings for Court sittings**

A direction about a location in which the Alcohol Court may sit, or an approval of a building for the holding of the Alcohol Court, in force under the repealed Act continues in force as if:

- (a) the direction or approval had been given under section 10; and
- (b) a reference in the direction or approval to the Alcohol Court were a reference to the SMART Court.

**43       Court clinicians**

A person who, immediately before the commencement day, was a court clinician under the repealed Act is taken to be a court clinician appointed under section 32.

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
*Gaz* = *Gazette*  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2 LIST OF LEGISLATION

*Alcohol Reform (Substance Misuse Assessment and referral for Treatment Court) Act 2011* (Act No. 19, 2011)

|             |   |
|-------------|---|
| Assent date | 20 May 2011                                     |
| Commenced   | 1 July 2011 ( <i>Gaz</i> G23, 8 June 2011, p 6) |

### 3 LIST OF AMENDMENTS

|            |                        |
|------------|------------------------|
| pt 9 hdg   | exp No. 19, 2011, s 47 |
| ss 44 – 47 | exp No. 19, 2011, s 47 |
| sch        | exp No. 19, 2011, s 47 |