

Serial 33
Alcohol Court Bill 2005
Dr Toyne

**A BILL
for
AN ACT**

to establish the Alcohol Court with power to make particular orders in respect of certain offenders with alcohol dependency and to make sentencing orders and ancillary orders in respect of those offenders, and for related matters

NORTHERN TERRITORY OF AUSTRALIA

ALCOHOL COURT ACT 2005

Act No. [] of 2005

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2005

AN ACT

to establish the Alcohol Court with power to make particular orders in respect of certain offenders with alcohol dependency and to make sentencing orders and ancillary orders in respect of those offenders, and for related matters

[Assented to [] 2005]
[Second reading [] 2005]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Alcohol Court Act 2005*.

2. Commencement

This Act comes into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3. Purpose

The purpose of this Act is to establish a court with enhanced powers to make orders in respect of people with alcohol dependency who have been found guilty of committing certain offences –

- (a) to provide increased opportunity for rehabilitation; and
- (b) to reduce the commission of offences associated with alcohol dependency; and

(c) to reduce risks and harm associated with alcohol dependency.

4. Interpretation

(1) In this Act, unless the contrary intention appears –

"alcohol intervention order" means an order referred to in section 20;

"assessment report" means a report about an offender made in accordance with section 40;

"Court" means the Alcohol Court established by section 6;

"court clinician" means an Alcohol Court clinician appointed under section 38;

"CSJ" means court of summary jurisdiction;

"Director of Correctional Services" has the same meaning as in the *Prisons (Correctional Services) Act*;

"Director of Licensing" means –

- (a) the Director of Licensing appointed under section 22(1) of the *Northern Territory Licensing Commission Act*; or
- (b) a person appointed to act as the Director of Licensing under section 22(2) of that Act while so acting;

"licensed premises" has the same meaning as in the *Liquor Act*;

"offender" means a person referred to the Court under section 15 or 30;

"probation officer" has the same meaning as in the *Prisons (Correctional Services) Act*;

"proceeding" means a proceeding before the Court;

"prohibition order" means an order referred to in section 34;

"prosecutor" includes the Director of Public Prosecutions;

"relevant offence" has the meaning in section 5;

"sentencing component", of an alcohol intervention order, means the component of the order referred to in section 20(1)(a);

"severe harm", in relation to a person referred to the Court under section 30, means any of the following resulting from the regular and excessive consumption of alcohol:

- (a) physical harm;
- (b) neurological harm;
- (c) significant deterioration of or damage to the person's mental condition;

"treatment and supervision component", of an alcohol intervention order, means the component of the order referred to in section 20(1)(b) and includes the conditions imposed during the period the treatment and supervision component is in force.

(2) A reference in Part 4 to a person having been taken into protective custody is a reference to the person having been apprehended and taken into custody under Part VII, Division 4 of the *Police Administration Act* on the belief the person was intoxicated with alcohol.

5. Relevant offence

(1) A relevant offence is an offence the CSJ has jurisdiction to hear and determine in a summary manner.

(2) However, the Regulations may specify that a particular offence is not a relevant offence for this Act.

PART 2 – ALCOHOL COURT

Division 1 – General matters

6. Establishment of Court

(1) The Alcohol Court is established.

(2) The Court is constituted by 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.

7. Jurisdiction of Court

(1) The jurisdiction of the Court is exercisable by a magistrate sitting alone.

- (2) The Court has the following jurisdiction:
 - (a) to conduct proceedings, to take guilty pleas and make findings of guilt in respect of persons referred to the Court;
 - (b) to decide whether to make alcohol intervention orders in respect of persons referred to the Court under Part 3 and to make those orders when appropriate;
 - (c) to decide whether to make prohibition orders in respect of persons referred to the Court under Part 4 and to make those orders when appropriate;
 - (d) to make sentencing orders under the *Sentencing Act* to the extent it applies in relation to a proceeding;
 - (e) to make any other orders necessary or convenient to be made by the Court, including orders under the *Justices Act* and *Bail Act* to the extent they apply 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 *Justices Act* and *Bail Act*.

(4) The Court does not have jurisdiction to conduct a proceeding or make an order in respect of a person under (or apparently under) 18 years of age or who is alleged to have committed a relevant offence while under (or apparently under) 18 years of age.

8. Registrar of Court

A Registrar of the Local Court is a Registrar of the Alcohol Court.

9. Where Court may sit

The Court may sit in the locations the Minister directs and in any building approved by the Minister for the holding of the Court.

Division 2 – Proceedings generally

10. Procedure

Subject to this Act, the Regulations and any rules or practice directions made or issued under section 43, 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 *Sentencing Act*, *Justices Act* or *Bail Act*.

11. Proceeding to be in open court

- (1) A proceeding must be held in open court.
- (2) However, if it appears to the Court that justice will be best served by closing the court, it may order that –
 - (a) the court be closed; and
 - (b) no person may, without the Court's permission, remain in or enter a room in which the proceeding is being held or remain within the hearing of the court.
- (3) Subsection (2) does not authorise the Court to exclude from the proceeding the following persons:
 - (a) the offender;
 - (b) a legal practitioner representing the offender;
 - (c) the prosecutor.
- (4) A person must not contravene an order made under subsection (2).

Penalty: 200 penalty units or imprisonment for 12 months.

12. Restriction of publication

- (1) The Court may make an order prohibiting publication of any of the following:
 - (a) a report of or information relating to a proceeding;
 - (b) specific details of a proceeding;
 - (c) the result of a proceeding.
- (2) A person must not contravene an order made under subsection (1).

Penalty: If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

If the offender is a body corporate – 1 000 penalty units.

- (3) It is not a contravention of an order made under subsection (1) –
 - (a) for a police officer, under an arrangement for the exchange of such information, to send to the Police Force of a State or another Territory information relating to the conviction of an offender; or
 - (b) for a court clinician to provide to a person or body involved in the treatment of an offender –
 - (i) information contained in an assessment report about the offender; or
 - (ii) information relevant to the treatment of the offender.

Division 3 – Appeals

13. Right of appeal to Supreme Court

- (1) A party to a proceeding may appeal to the Supreme Court against –
 - (a) an alcohol intervention order, a prohibition order or a sentencing order; or
 - (b) any other order or adjudication of the Court on a ground involving an error or mistake on a matter or question of fact alone, of law alone, or of both fact and law.
- (2) Part VI, Division 2 of the *Justices Act*, except sections 163, 164 and 165, apply (with the necessary changes) in relation to an appeal under this section as if it had been made under section 163(1) of the *Justices Act*.

PART 3 – ALCOHOL INTERVENTION ORDERS

Division 1 – Referrals to Court for alcohol intervention orders

14. When person eligible for referral to Court

- (1) A person who appears before the CSJ charged with a relevant offence is eligible for referral to the Court under section 15 if all the following circumstances apply:
 - (a) the person has pleaded guilty to the relevant offence or has indicated an intention to plead guilty;
 - (b) the person has not been sentenced for the relevant offence;
 - (c) it is highly likely on the facts alleged and the person's criminal history that, on finding the person guilty of the relevant offence, the CSJ would record a conviction and order the person to serve a term of imprisonment;

- (d) on information available to the CSJ, the person appears to be dependent on alcohol;
 - (e) the person has stated in writing that the person is willing to be referred to the Court for a decision about whether an alcohol intervention order should be made and, if such an order is made, the person will comply with the order;
 - (f) the person satisfies any criteria specified by the Regulations.
- (2) If the offender is before the CSJ charged with multiple relevant offences, the offender is eligible for referral to the Court if –
- (a) all the circumstances referred to in subsection (1) apply in relation to at least one of the offences; and
 - (b) the circumstances referred to in subsection (1)(a) and (b) apply in relation to all the other offences.
- (3) Subsections (1) and (2) apply even if any of the relevant offences were committed, or the person was charged with any of the relevant offences, before the commencement of this section.
- (4) A person is not eligible for referral to the Court if any of the following circumstances apply:
- (a) a parole order under the *Parole of Prisoners Act* is in force in respect of the person;
 - (b) a sentencing order under section 7(g) or (h) of the *Sentencing Act* is in force in respect of the person;
 - (c) an alcohol intervention order is in force in respect of the person;
 - (d) the person is excluded by the Regulations.
- (5) The Regulations 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 specified by the Regulations.

15. Referral by CSJ

- (1) If the CSJ is satisfied a person is eligible under section 14 for referral to the Court ("the eligible person"), the CSJ may refer the eligible person to the Court for a decision about whether an alcohol intervention order should be made in respect of the eligible person.
- (2) The referral may be on the initiative of the CSJ or on application by a prosecutor, a police officer or the eligible person.

Division 2 – Making alcohol intervention orders and other orders

16. Purpose of alcohol intervention order

An alcohol intervention order is a sentencing order, the primary purpose of which is –

- (a) to facilitate the rehabilitation of the offender; and
- (b) to reduce the commission by the offender of offences associated with alcohol dependency; and
- (c) to reduce the offender's health risks associated with alcohol dependency.

17. Orders before decision about alcohol intervention order

(1) Before deciding whether to make an alcohol intervention order in respect of an offender, the Court must order an assessment report.

(2) The Court may adjourn the proceeding and make the orders the Court considers necessary.

18. When alcohol intervention order may be made

(1) The Court may make an alcohol intervention order in respect of an offender if all the following circumstances apply:

- (a) the CSJ or Court has found the offender guilty of a relevant offence and recorded a conviction;
- (b) a sentence of imprisonment would be an appropriate sentence for the relevant offence if an alcohol intervention order were not to be made;
- (c) the offender is dependent on alcohol;
- (d) the offender's dependency on alcohol contributed to the commission of the relevant offence;
- (e) the offender satisfies all other requirements of eligibility for referral specified in section 14.

(2) In satisfying itself about anything referred to in subsection (1), the Court is not bound by the rules of evidence and may inform itself in the manner it considers appropriate.

(3) The Court must not make an alcohol intervention order unless the Court has taken into account the advice and recommendations of the assessment report about the offender.

19. Orders if offender charged with multiple offences

(1) If an offender is charged with multiple relevant offences and all the circumstances referred to in section 18(1) ("the circumstances") apply in relation to all the offences, the Court may make one alcohol intervention order in respect of the offender.

(2) If the circumstances do not apply in relation to all the relevant offences, the Court may –

- (a) make an alcohol intervention order for the offences to which the circumstances apply; and
- (b) sentence the offender for the other offences, except by making an order for imprisonment or home detention.

20. Alcohol intervention order

(1) An alcohol intervention order is an order that the offender –

- (a) is sentenced to a term of imprisonment, for a period not exceeding 2 years, that is suspended wholly or partly; and
- (b) for a period not exceeding 12 months –
 - (i) must undergo treatment for alcohol dependency; and
 - (ii) is subject to the supervision of the Director of Correctional Services and the conditions imposed under this section.

(2) An alcohol intervention order must include all the following conditions, to apply during the full period of the treatment and supervision component:

- (a) the offender must remain in the Territory;
- (b) the offender must not, in the Territory or elsewhere, commit an offence punishable by imprisonment;
- (c) the offender must not consume alcohol;
- (d) the offender must undergo the specified treatment for the specified period;
- (e) the offender must report to and obey the directions of the Court, the Director of Correctional Services or a court clinician, as specified by the order;
- (f) the offender must comply with any requirement of a probation officer.

(3) The Court may impose any other conditions it considers appropriate, to apply during part or all of the period of the treatment and supervision component, including any of the following:

- (a) the offender must undertake education or employment courses or other types of rehabilitation programs;
- (b) the offender must submit to medical, psychiatric or psychological treatment;
- (c) the offender must reside at specified premises;
- (d) the offender is subject to a specified curfew.

(4) To avoid doubt, the general principles of Part 2 of the *Sentencing Act* apply to the making of an alcohol intervention order.

21. Copies of alcohol intervention order to be provided

The Court must provide a copy of each alcohol intervention order to the Director of Correctional Services and a court clinician.

22. Sentencing offender if no alcohol intervention order made

If the Court decides not to make an alcohol intervention order in respect of an offender, the Court may –

- (a) sentence the offender for the relevant offence; or
- (b) refer the offender to the CSJ for sentencing.

Division 3 – Reviews of alcohol intervention orders

23. Review of treatment and supervision component

(1) On its own initiative or on application, the Court may review the treatment and supervision component of an alcohol intervention order.

(2) The offender, a police officer or a prosecutor may apply to the Court for a review of the treatment and supervision component.

24. Variation following review

(1) Following the review of the treatment and supervision component of an alcohol intervention order, and taking into account the extent of the offender's compliance with the treatment and supervision component, the Court may –

- (a) vary a condition of the treatment and supervision component; or

- (b) revoke the treatment and supervision component and order that the offender serve some or all of the term of imprisonment suspended under the sentencing component.

(2) Without limiting subsection (1)(a), a variation may reduce or relax a condition of the treatment and supervision component if the offender has successfully completed treatment, courses or rehabilitation programs ordered by the Court.

Division 4 – Contraventions of alcohol intervention orders

25. Application if contravention of treatment and supervision component

(1) If it appears to a prosecutor or the Director of Correctional Services that an offender has contravened the treatment and supervision component of an alcohol intervention order, he or she may apply to the Court for an order under section 28.

(2) Subsection (1) applies even if the alcohol intervention order is no longer in force.

26. Issue of summons or warrant

(1) If it appears to the Court that an offender has contravened the treatment and supervision component of an alcohol intervention 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 under section 25.

27. Arrest without warrant by police officer

(1) A police officer who suspects on reasonable grounds that an offender has contravened the treatment and supervision component of an alcohol intervention order may, without warrant, arrest the offender to appear before the Court.

(2) For sections 137 and 138 of the *Police Administration Act*, a contravention of the treatment and supervision component of an alcohol intervention order is taken to be an offence.

28. Orders if contravention of treatment and supervision component

(1) If the Court is satisfied an offender has contravened the treatment and supervision component of an alcohol intervention order, the Court may make one of the following orders, as appropriate in the circumstances:

- (a) an order committing the offender to prison for a period not exceeding 14 days;
- (b) an order revoking the treatment and supervision component and ordering the offender to serve all or part of the term of imprisonment suspended under the sentencing component;
- (c) an order revoking the alcohol intervention order and sentencing the offender for the relevant offence.

(2) The order may be made even if the alcohol intervention order is no longer in force.

(3) If the Court makes an order under subsection (1)(a), the period for which the offender is imprisoned must be deducted from the total period of the term of imprisonment suspended under the sentencing component.

PART 4 – PROHIBITION ORDERS

Division 1 – Referrals to Court for prohibition orders

29. When person eligible for referral to Court

(1) A person who appears before the CSJ charged with a relevant offence (or multiple relevant offences) is eligible for referral to the Court under section 30 if all the following circumstances apply:

- (a) the person has been found guilty of a relevant offence, has pleaded guilty to the offence or has indicated an intention to plead guilty;
- (b) the person has not been sentenced for the relevant offence;
- (c) on information available to the CSJ, the person appears to be dependent on alcohol;
- (d) the person satisfies any criteria specified by the Regulations;
- (e) the person is not excluded by the Regulations.

(2) Subsection (1) applies even if the relevant offence was committed, or the person was charged with the relevant offence, before the commencement of this section.

(3) For subsection (1)(c), the CSJ may be satisfied a person is dependent on alcohol if the person has been taken into protective custody at least 6 times in the past 3 months.

(4) The Regulations 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 specified by the Regulations.

30. Referral by CSJ

(1) If the CSJ is satisfied a person is eligible under section 29 for referral to the Court ("the eligible person"), the CSJ may refer the eligible person to the Court for a decision about whether a prohibition order should be made in respect of the eligible person.

(2) The referral may be on the initiative of the CSJ or on application by a prosecutor, a police officer or the eligible person.

Division 2 – Making prohibition orders and other sentencing orders

31. Purpose of prohibition order

A prohibition order is an order, the primary purpose of which is –

- (a) to facilitate the rehabilitation of the offender; and
- (b) to reduce the commission by the offender of offences and reduce other harm associated with the offender's alcohol dependency; and
- (c) to reduce the offender's health risks associated with alcohol dependency.

32. Orders before decision about prohibition order

(1) Before deciding whether to make a prohibition order in respect of an offender, the Court must order an assessment report.

(2) The Court may adjourn the proceeding and make the orders the Court considers necessary.

33. When prohibition order may be made

(1) The Court may make a prohibition order in respect of an offender if all the following circumstances apply:

- (a) the CSJ or Court has found the offender guilty of a relevant offence;

- (b) the offender is dependent on alcohol and would benefit from one or both of the following:
 - (i) withdrawal from or a reduction in the consumption of alcohol;
 - (ii) treatment for the dependency;
 - (c) the order is necessary to protect the offender from severe harm or to prevent the offender from causing a serious risk to the health or safety of others because of the offender's regular and excessive consumption of alcohol;
 - (d) the offender satisfies all other requirements of eligibility for referral specified in section 29.
- (2) The Court must also take the following matters into account:
- (a) the number of times the offender has been taken into protective custody;
 - (b) the offender's criminal history and whether alcohol was a contributing factor in the commission of any previous offences.
- (3) The Court must not make a prohibition order unless the Court has taken into account the advice and recommendations of the assessment report about the offender.
- (4) In satisfying itself about a matter referred to in this section, the Court is not bound by the rules of evidence and may inform itself in the manner it considers appropriate.

34. Prohibition order

- (1) A prohibition order may include one or both of the following orders:
- (a) the offender must not, for a period not exceeding 12 months, consume alcohol or enter or remain on licensed premises, except as specified in the order;
 - (b) the offender must undergo specified treatment for alcohol dependency as recommended by the assessment report about the offender.

(2) An order under subsection (1)(a) may impose a prohibition on the consumption of alcohol or entry onto licensed premises or it may impose conditions, including the following:

- (a) the type of alcohol the offender may or may not consume;
- (b) the particular times when the offender may enter or remain on licensed premises.

(3) An order under subsection (1)(a) may include directions to the Director of Licensing relating to the prohibition notice to be given under section 122 of the *Liquor Act*.

(4) Without limiting subsection (3), the Court may include directions about the following matters:

- (a) the licensees of particular licensed premises who must be given the notice;
- (b) the area within which licensees of licensed premises must be given the notice.

35. Copy of prohibition order to Director of Licensing

As soon as practicable after making a prohibition order under section 34(1)(a), the Court must give the Director of Licensing a copy of the order.

36. Sentencing offender if prohibition order made

(1) If the Court decides to make a prohibition order in respect of an offender, it must also sentence the offender for all the relevant offences being dealt with in the proceeding.

(2) The Court may, for a period not exceeding 6 months, adjourn the sentencing of the offender for the relevant offences.

37. Sentencing offender if no prohibition order made

If the Court decides not to make a prohibition order in respect of an offender, the Court must –

- (a) sentence the offender for all the relevant offences being dealt with in the proceeding; or
- (b) refer the offender to the CSJ for sentencing.

PART 5 – ALCOHOL COURT CLINICIANS AND ASSESSMENT REPORTS

38. Appointment of court clinicians

The Chief Executive Officer may appoint one or more persons to the office of Alcohol Court clinician.

39. Functions of court clinician

(1) A court clinician has the following functions:

- (a) to provide the Court with assessment reports about offenders;
- (b) to provide the Court with progress reports about offenders subject to alcohol intervention orders or prohibition orders;
- (c) to liaise with the Director of Correctional Services about offenders subject to alcohol intervention orders;
- (d) to give directions to offenders subject to alcohol intervention orders, in accordance with the orders.

(2) A court clinician has the powers necessary and convenient for performing the functions of office.

40. Assessment report

(1) In making an assessment report about an offender, a court clinician must include the following matters:

- (a) an assessment of whether the offender may benefit from an alcohol intervention order or prohibition order, as relevant;
- (b) if the assessment is that the offender may benefit from the relevant order – recommendations for the treatment of the offender for alcohol dependency.

(2) If the court clinician recommends treatment, the court clinician may also include in the assessment report any of the following matters:

- (a) a case management plan for the treatment of the offender;
- (b) recommendations for conditions considered appropriate for inclusion in the relevant order.

PART 6 – MISCELLANEOUS MATTERS

41. Delegations

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

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

42. Protection from liability

- (1) This section applies to a person who is or has been –

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

(2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

43. Rules and practice directions

(1) The Chief Magistrate may make rules, not inconsistent with this Act, relating to 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), relating to the practice and procedure of the Court.

44. Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters –

- (a) required or permitted by this Act to be prescribed; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
