



Drug Court Policy 12

Selection of participants

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1 Purpose

The purpose of this policy is:

- To ensure that the process of selection of participants for Drug Court programs is transparent, equitable and efficient.
- To enable participants to be selected for programs expeditiously, so as to reduce delay which can interfere with the effectiveness of treatment.
- To provide additional access to a Drug Court program for Aboriginal or Torres Strait Islander identifying offenders to assist in addressing the overrepresentation of Aboriginal and Torres Strait Islander persons in custody.
- To enable referring courts to finalise cases of offenders who are not accepted by the Drug Court efficiently and expeditiously.

2 Definitions

Term	Definition
Act	means the <i>Drug Court Act 1998</i>
Applicant	means a person who is willing to be referred to the Drug Court under Section 6 of the <i>Drug Court Act 1998</i> .
Drug Court	means the Drug Court of NSW
Drug Court program	means the conditions that a participant has accepted under section 7(3)(a) of the Act.
Drug Court team	means a Drug Court Judge, the Registrar, the Legal Aid NSW (LA) solicitor, the solicitor from the Office of the Director of Public Prosecutions (ODPP), the Police Prosecutor, the Community Corrections Court Coordinator, the Aboriginal Casework Coordinator and the Justice Health NSW clinician attached to the Drug Court, and/or the alternate delegates for each.
Participant	means a person dealt with under sections 7(2) and (3) of the Act.

3 Scope

This policy applies to the selection of participants for the Drug Court of New South Wales program.

4 Policy statement

4.1 Referral of applicants

- 4.1.1 To be eligible to enter a Drug Court program a person must meet the criteria set out in section 5 of the Act, and clause 5 of the Drug Court Regulation 2020.
- 4.1.2 If a person appearing before a referring Court appears eligible and willing to take part in a Drug Court program, that Court must refer the person to the Drug Court.
- 4.1.3 If a sentencing Judge or Magistrate directs that a person be referred to the Drug Court, the Court Officer at the referring court advises the Drug Court registry by telephone of the name and case details of the applicant.
- 4.1.4 As the program resources are limited, a ballot may need to be held to determine which referred offenders can be considered for a Drug Court program.

5 Manner of selection

5.1 Selection

- 5.1.1 Once each week the Drug Court Judge, in consultation with the Drug Court team, will determine the number of program places available.
- 5.1.2 The names of apparently eligible applicants for entry will be placed on the ballot list.
- 5.1.3 Subject to the pre-ballot procedures set out below in sections 5.3.1 to 5.3.7, a computer-generated random selection will be made from the pool of apparently eligible applicants to meet the number of available places.
- 5.1.4 The Judge may direct that the ballot selection process addresses the circumstances of the day. For example, it may be appropriate to take all the referred applicants who have not had a previous Drug Court opportunity, and only take, again for example, one of the three referred applicants who have had a previous Drug Court program opportunity or a Compulsory Drug Treatment Order. Refer to section 9 of this policy.

5.2 Applicants who may not be “eligible” offenders

- 5.2.1 If it is apparent to the solicitor for the ODPP or the Police Prosecutor that a referred person is not an eligible offender, the ODPP solicitor or Police Prosecutor will advise the Registrar and the solicitor for Legal Aid of that fact as soon as possible, preferably by email.
- 5.2.2 The Registrar will submit that information, together with any available documents, to the Judge in chambers or in court. The Judge will then

determine whether or not the referred person should be included in any ballot conducted.

- 5.2.3 The Judge may also decide that the referred person’s application to the Drug Court be deferred to a later ballot, so as to allow any necessary information regarding eligibility to be obtained.

5.3 Applicants who may not be “appropriate”

Pre-ballot

- 5.3.1 A “pre-ballot” procedure can assist in ensuring that persons who are apparently inappropriate for the program do not displace persons who are apparently “appropriate” for a Drug Court during the ballot process. To prevent the loss of “appropriate” participants, or the inclusion in the Drug Court Ballot of “inappropriate” participants, the Drug Court may, before the ballot is run, scrutinise the question of the “appropriateness” of the referred applicants. The pre-ballot procedure also prevents raising expectations with the applicant and their family that a Drug Court opportunity may be available, when in fact there is no real prospect of a program being provided.
- 5.3.2 If it is apparent to the solicitor for the ODPP or the Police Prosecutor that a referred person may not be an “appropriate” person, given his or her antecedents, the ODPP solicitor or Police Prosecutor will advise the Registrar and the solicitor for Legal Aid of that fact as soon as possible, preferably by email. Any material sought to be relied upon by the ODPP must be provided to Legal Aid.
- 5.3.3 The Registrar will submit that information, together with any available documents, to the Judge in chambers or in court. The Judge may form the preliminary view, on the information provided, that the referred person appears to be ineligible and/or inappropriate for a Drug Court program. The Judge will provide brief reasons for forming that opinion.
- 5.3.4 The referred person may then be deferred to a ballot in one or two weeks. This will provide an opportunity for the Legal Aid solicitor to inform the referred person of the preliminary view reached by the Judge, and to provide advice and assistance.
- 5.3.5 If on the deferred ballot date, the court is informed that the referred person wishes to proceed with the application for a Drug Court program, the referred person will be included in the ballot. If the referred person is successful in the ballot, the court will conduct a hearing under s7A(2) of the Act to determine if the person should be accepted into the program. Refer to section 5.3.11 of this policy.

- 5.3.6 If on the deferred ballot date, the court is informed that the referred person does not wish to proceed with the application for a Drug Court program, the referred person will not be included in the ballot.
- 5.3.7 The Judge may, at any time, defer a referred person’s application to the Drug Court to a later ballot, so as to allow any necessary information regarding appropriateness to be obtained.

Post ballot - Initial referral

- 5.3.8 The court cases of applicants who are successful in the ballot will be adjourned to the Drug Court for an “Initial Referral” appearance. This is to establish the eligibility of a person for a Drug Court program.
- 5.3.9 On the Initial Referral appearance at Drug Court, the solicitor for the ODPP may make submissions as to whether they are an “appropriate” person for a Drug Court program.
- 5.3.10 On the initial referral appearance at the Drug Court, the solicitor for the ODPP may make submissions as to whether they are a person who usually resides in the catchment area of a Drug Court.
- 5.3.11 The Court must, after hearing submissions, determine that:
- On the information available, the person is eligible and appropriate for a Drug Court program, or
 - on the information available, the person is not eligible for a Drug Court program, or
 - the person is an eligible person, but only if additional special conditions are added to their program plan.

If it considers it warranted, the Court may make a provisional determination as to eligibility if it is of the view that an assessment as to capacity to undertake a Drug Court program is required.

6 Aboriginal or Torres Strait Islander referrals

- 6.1 The Drug Court acknowledges the overrepresentation of Aboriginal and Torres Strait Islander persons in the criminal justice system, and the proven need to improve access to such programs as the Drug Court program for Aboriginal or Torres Strait Islander identifying offenders. The recognition and addressing of special needs is specifically authorised by section 21 of the *Anti-Discrimination Act 1977*.
- 6.2 To increase the opportunity for Aboriginal and Torres Strait Islander identifying offenders to take part in a Drug Court program, the Registrar and the Drug Court team will have regard to the number of Aboriginal and Torres Strait Islander identifying applicants when determining the number

of program places available. The number of available places will be increased by one place in each gender for which there are Aboriginal or Torres Strait Islander identifying offenders.

- 6.3 The computer-generated random selection will then allocate places. That selection will allocate a minimum of one place to an Aboriginal or Torres Strait Islander identifying offender in each gender for which there are Aboriginal and Torres Strait Islander identifying offenders.

7 Applicants who are selected

- 7.1 The Registrar will notify the referring Court if an applicant has been accepted, and request that Court to remand the applicant to the Drug Court on a specified date within the next fortnight.

8 Applicants who are not selected

- 8.1 The Drug Court will not accept an applicant who is not selected in accordance with sections 4 and 5 of this policy.
- 8.2 The Registrar will notify the referring Court if an applicant has been unsuccessful in a ballot, or if the applicant's referral has been deferred.
- 8.3 An applicant who was not selected in a ballot will not be placed in a subsequent ballot unless the applicant is referred to the Drug Court in respect of an offence other than one related to the unsuccessful ballot.

9 Previous participants

- 9.1 The Drug Court acknowledges that a drug-addicted person may need many episodes of treatment to achieve long-term recovery.
- 9.2 As the resources of the Drug Court are limited, preference will be given to applicants who have not been Drug Court participants previously.
- 9.3 An applicant who has previously been a Drug Court participant is not an appropriate person for a Drug Court program if it is **less than three years** since:
- Final Sentence was imposed in relation to the participant's last Drug Court program.
 - Completion of the non-parole period of any Final Sentence that was imposed (not suspended).
 - Completion of an ICO imposed at Final Sentence, whichever is the later.
- 9.4 Subject to section 9.5 below, if the number of referred applicants exceeds the number of available places for the ballot, the judge may decide to

exclude from the ballot any or all applicants who have previously had the opportunity of a Drug Court program, or a Compulsory Drug Treatment Order.

- 9.5 To increase the opportunity for Aboriginal and Torres Strait Islander identifying offenders to take part in a Drug Court program, a previous participant who identifies as an Aboriginal or Torres Strait Islander person may be included in the ballot, despite having previously had the opportunity of a Drug Court program or a Compulsory Drug Treatment Order.

10 Previously refused applicants

- 10.1 To take part in a Drug Court program, the Drug Court must be satisfied that, having regard to the person’s antecedents, it would be appropriate for the person to participate in a Drug Court program.
- 10.2 From time to time the Drug Court conducts hearings and makes determinations as to whether individuals are appropriate for a Drug Court Program.
- 10.3 If an applicant referred to the Drug Court has, within **two years** of the date of referral, been formally found to **not** be an appropriate person under s 7A(2) of the Act, the applicant is not an appropriate person for a Drug Court program and the Registrar will notify the referring Court that the applicant has not been accepted. The two-year exclusion does not apply to applicants who have only been “held not to be appropriate” and excluded pre-ballot.

11 Related legislation/regulation and other documents

- [Drug Court Act 1998](#)
- [Drug Court Regulation 2020](#)
- [Anti-Discrimination Act 1977](#)

12 Document information

Document name	Drug Court Policy 12 – Selection of participants
Applies to	All Drug Courts of New South Wales
Policy administrator	Senior Judge of the Drug Court of NSW
Approval	Senior Judge Mottley, October 2024

13 Version and review details

Version	Effective date	Reason for amendment	Due for review
1	03/10/2024	Policy reviewed, updated and re-formatted.	03/10/2026