



Australian  
National  
University

CENTRE FOR SOCIAL  
RESEARCH & METHODS

ACT Drug and Alcohol Sentencing List:  
Process and Outcome Evaluation Final Report

Professor Meredith Rossner

Professor Lorana Bartels

Dr Karen Gelb

Dr Gabriel Wong

Professor Jason Payne

Samuel Scott-Palmer

June 2022

***We acknowledge and celebrate the First Australians on whose traditional lands we meet, and pay our respect to the Elders past, present and emerging.***

## Table of Contents

<b>Table of Contents</b> .....	<b>viii</b>
<b>List of Figures</b> .....	<b>viii</b>
<b>List of Tables</b> .....	<b>viii</b>
<b>List of Acronyms</b> .....	<b>x</b>
<b>Acknowledgments</b> .....	<b>xii</b>
<b>Executive Summary</b> .....	<b>xiii</b>
<b>1 Introduction</b> .....	<b>1</b>
1.1 About the ACT DASL .....	1
1.2 The Operation of the ACT DASL.....	4
<b>2 The Research Design and Methodology</b> .....	<b>7</b>
2.1 Research Design .....	7
2.1.1 Semi-structured interviews with participants and professional stakeholders .....	8
2.1.2 Survey of DASL participants.....	9
2.1.3 Observations of DASL in operation.....	9
2.1.4 DASL administrative data .....	9
2.1.4 Court documents, including judgments and judicial remarks at graduation ceremonies .....	10
2.1.6 Relevant legislation, Hansard and the ACT Inquiry into Community Corrections.....	10
2.1.7 ACT Health administrative data.....	10
2.1.8 ACT Policing data .....	10
2.2 Conclusion .....	11
<b>3 Profile of DASL Cases</b> .....	<b>13</b>
3.1 Sentence and DATO Length .....	14
3.2 Participant Demographics .....	16
3.2.1 Gender .....	16
3.2.2 Age.....	18
3.2.3 Indigenous status.....	19
3.3 Key Addiction Issues .....	20
3.4 Other Key Issues .....	21
3.5 Conclusion .....	21

<b>Case Study 1 .....</b>	<b>22</b>
<b>4 Pathways into DASL .....</b>	<b>23</b>
4.1 Referral and Assessment .....	23
4.2 Eligibility .....	26
4.3 Suitability .....	29
4.3.1 Accessing detainees in the AMC.....	30
4.3.2 Housing.....	30
4.3.3 'Readiness' and suitability .....	33
4.4 Mental Health and Complex Needs.....	38
4.5 Sentencing and Entry Into DASL .....	40
4.6 Conclusion .....	41
<b>Case Study 2 .....</b>	<b>43</b>
<b>5 Cooperation and Collaboration Between Stakeholders .....</b>	<b>44</b>
5.1 The Treatment Order Team.....	44
5.2 The Benefits of an Interdisciplinary Approach .....	45
5.3 Case Conferences .....	48
5.4 AOD Stakeholders.....	55
5.4.1 Relationship with DASL.....	55
5.4.2 Constraints on resources .....	56
5.5 Conclusion .....	61
<b>Case Study 3 .....</b>	<b>62</b>
<b>6 DASL in Practice .....</b>	<b>63</b>
6.1 The Behavioural Contract.....	63
6.2 Managing and Supporting Participants .....	68
6.3 Identifying Further Support for DASL .....	71
6.3.1 More Treatment Options.....	71
6.3.2 Mental Health and Disability Issues.....	73
6.4 Managing Caseloads.....	76
6.5 Check in Hearing and Communication from the Bench.....	77
6.6 Marking Progress.....	85
6.6.1 Progression hearings .....	85
6.6.2 Graduations .....	87
6.6.3 Cancellation hearings .....	92
6.7 Conclusion .....	92

<b>Case Study 4 .....</b>	<b>94</b>
<b>7 Description of Outcome Indicators .....</b>	<b>96</b>
7.1 In-program Outcomes .....	96
7.2 Social Integration Outcomes .....	97
7.3 Recidivism.....	97
7.4 Complying with the Principles of Therapeutic Jurisprudence .....	98
7.4.1 Key components to a successful drug court .....	98
7.4.2 Best Practice Standards .....	99
7.5 In-depth Case Study of a DASL Graduate .....	100
7.5.1 Case study methodology .....	100
7.5.2 Case study: Matthew.....	100
7.5.3 Matthew’s outcome indicators .....	105
7.6 Conclusion .....	105
<b>8 In-program Outcomes .....</b>	<b>107</b>
8.1 Analysis of Cancellations and Graduations/Completions.....	107
8.2 Survey of DASL Participants.....	118
8.3 ACT Health Data.....	124
8.3.1 Drug dependency and use .....	124
8.3.2 Self-reported offending during the program.....	126
8.4 Understanding Participant Trajectories: Analysis of Status Reports .....	127
8.4.1 Offending during DATO .....	129
8.4.2 Drug use during DATO .....	130
8.4.3 Time in custody.....	134
8.4.4 Time in residential rehabilitation .....	135
8.4.5 Missed appointments.....	136
8.4.6 Changes in sanction points .....	137
8.5 Estimate of Savings from Avoided Prison Time .....	139
8.6 Conclusion .....	142
<b>Case Study 5 .....</b>	<b>144</b>
<b>9 Social Integration Outcomes .....</b>	<b>145</b>
9.1 Psychological Health and Wellbeing.....	148
9.2 Family and Relationships .....	150
9.3 Employment .....	151
9.4 Housing.....	153

9.5	Emotional Growth and Maturity .....	158
9.6	Hope and Optimism.....	159
9.7	Conclusion .....	160
<b>Case Study 6</b>	.....	<b>161</b>
<b>10 Recidivism</b>	.....	<b>162</b>
10.1	ACT Policing Data.....	162
10.1.1	Methods .....	162
10.1.2	Recidivism during and after DASL.....	163
10.2	Court Appearances .....	171
10.3	Conclusion .....	172
<b>Case Study 7</b>	.....	<b>174</b>
<b>11 Principles of Therapeutic Jurisprudence</b>	.....	<b>175</b>
11.1	Components of a Successful Drug Court and Best Practice Principles .....	175
11.2	Conclusion .....	183
<b>12 Legal Analysis</b>	.....	<b>185</b>
12.1	General Observations about the Legislation .....	185
12.2	Specific Issues Requiring Reform.....	187
12.2.1	Should a DATO be available for total sentences of 1–4 years, where no individual sentence meets this threshold?.....	187
12.2.2	Referring matters to the Magistrates Court .....	187
12.2.3	Definition of a ‘sentencing order’ .....	189
12.2.4	Calculating pre-sentence custody when imposing a DATO .....	190
12.2.5	Dealing with breaches .....	191
12.2.6	Reviewing a DATO, prior to cancellation .....	192
12.2.7	Calculating pre-sentence custody for offences committed during DATO .....	192
12.3	Comments on judicial practice .....	193
<b>13 Recommendations</b>	.....	<b>195</b>
13.1	Process Evaluation.....	195
13.1.1	Pathways into DASL .....	195
13.1.2	Collaboration and cooperation between stakeholders .....	196
13.1.3	DASL in practice .....	197
13.1.4	Preliminary outcomes.....	198
13.1.5	Analysis of case law and legislation .....	200
13.2	Outcome Evaluation .....	200

13.2.1 Supporting participants with additional needs .....	200
13.2.2 Ensuring program fidelity and quality .....	201
13.2.3 Monitoring and evaluation .....	201
13.3 Broader social issues impacting on DASL .....	202
<b>References.....</b>	<b>203</b>
<b>Cases Cited .....</b>	<b>210</b>
<b>Legislation Cited .....</b>	<b>211</b>
<b>Appendix I. Participant Information Sheet for Stakeholders and DASL Participants.....</b>	<b>212</b>
<b>Appendix II. Stakeholder and Participant Consent Forms .....</b>	<b>218</b>

## List of Figures

Figure 1. Sentence length distribution, DASL participants, 2020–March 2022 .....	15
Figure 2. Distribution of DATO lengths, 2020–March 2022.....	16
Figure 3. Gender distribution, across DASL and by year, 2020–March 2022 .....	17
Figure 4. Age distribution, by year of imposition, 2020–March 2022 .....	19
Figure 5. Behavioural expectations, sanctions and rewards .....	64
Figure 6. Case study: A timeline of events and themes described in Matthew’s status reports .....	103
Figure 7. Case study: Matthew’s status reports, plotted as scores over time .....	104
Figure 8. Gender distribution, by case status, 2020–March 2022.....	108
Figure 9. Age distribution, by case status, 2020–March 2022.....	109
Figure 10. Indigenous status, by case status, 2020–March 2022 .....	110
Figure 11. Sentence length distribution, by case status, 2020–March 2022.....	111
Figure 12. DASL participant satisfaction, by program component, 2020–March 2022.....	119
Figure 13. DASL survey question: Have you been treated fairly while on the DASL program? .....	121
Figure 14. DASL survey question: How helpful or unhelpful has urinalysis been during DASL? .....	122
Figure 15. DASL survey question: How difficult has it been to meet the DASL program requirements? .....	123
Figure 16. Total sanction points of individual participants in each reporting period, cancelled cases, 2020–March 2022.....	138
Figure 17. Total sanction points of individual participants in each reporting period, graduates and completed cases, graduates and completed cases, 2020–March 2022 .....	138

## List of Tables

Table 1. Progression through DASL, 2020–March 2022 .....	14
Table 2. DATOs imposed, by year, 2020–March 2022.....	14
Table 3. Sentence length (years), by year imposed, for DASL participants, 2020– March 2022 .....	15
Table 4. DATO length (years), by year imposed, DASL participants, 2020–March 2022 .....	16
Table 5. Female defendants, as % of all finalised defendants, by year and court level .....	17
Table 6. Age of DASL participants, by year of imposition, 2020–March 2022.....	19
Table 7. Key details of DASL graduates, 2020–March 2022 .....	90
Table 8. DASL participant ages, by case status, 2020–March 2022.....	108
Table 9. Sentence length, by case status, 2020–March 2022 .....	110
Table 10. DASL participants’ TCU-5 drug dependency scores, over time, 2020–March 2022 .....	124
Table 11. DASL participants’ ATOP self-reported drug use, over time, 2020–March 2022..	125
Table 12. DASL participants’ ATOP self-reported offending, over time, 2020–March 2022	126
Table 13. Length of time of status reporting, 2020–March 2022.....	129
Table 14. Self-reported offending during DATO, 2020–March 2022.....	129
Table 15. Self-reported drug use during DATO, by program phase, 2020–March 2022 .....	130
Table 16. Drug use during DATO, by program outcome, 2020–March 2022 .....	131
Table 17. Drug type detected, 2020–March 2022.....	132
Table 18. Concordance between self-report drug use and urinalysis results, 2020– March 2022 .....	132
Table 19. Time difference between each recurrence of reported drug use and previous report of use, by program phase, 2020–March 2022.....	133
Table 20. Time difference between each recurrence of reported drug use and previous report of use, by program outcome, 2020–March 2022.....	133
Table 21. Time in custody, by program phase, 2020–March 2022.....	134
Table 22 Time in custody, by program outcome, 2020–March 2022.....	134
Table 23. Time in residential rehabilitation , by program phase, 2020–March 2022.....	135
Table 24. Time in residential rehabilitation , by program outcome, 2020–March 2022.....	136
Table 25. Missed appointments, by program phase, 2020–March 2022 .....	136
Table 26. Missed appointments, by program outcome, 2020–March 2022 .....	137
Table 27. Change to sanction points, when DASL participants reported using drugs, 2020– March 2022 .....	139
Table 28. Cost of prison days, by program phase, 2020–March 2022 .....	141



Table 29. Participants’ ATOP scores for health and quality of life, over time, 2020–March 2022.....	149
Table 30. Participants’ ATOP employment status during DATO, over time, 2020–March 2022 .....	152
Table 31. Participants’ ATOP record of accommodation during DATO, over time, 2020–March 2022 .....	157
Table 32. Number of participants receiving new charges during DASL, by gender and age groups, 2020–March 2022 .....	164
Table 33. Mean number of charges (for free days), per 365 days, before, during and after DASL, 2020–March 2022 .....	165
Table 34. Change in number of offences, by crime type, before and during DASL, 2020–March 2022 .....	166
Table 35. Change in number of offences for past participants, by program completion and crime type, before, during and after DASL, 2020–March 2022.....	168
Table 36. Change in number of offences for current DASL participants, by crime type, before and during DASL, 2020–March 2022 .....	170
Table 37. Number of free days before first offence, by DASL case status and demographic, 2020–March 2022 .....	171
Table 38. Evaluation of DASL against key components of a successful drug court .....	176
Table 39. Evaluation of DASL against best practice standards .....	179

## List of Acronyms

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ACTCOSS	ACT Council for Social Services
ACTCS	ACT Corrective Services
ADACAS	ACT Disability, Aged and Carer Advocacy Service
AFI	Advocacy for Inclusion
ALO	Aboriginal Liaison Officer
AMC	Alexander Maconochie Centre
ANU	Australian National University
AOD	Alcohol and other drug
ATODA	Alcohol Tobacco and Other Drugs Association ACT
ATOP	Australian Treatment Outcomes Profile
CEO	Chief Executive Officer
CRS	Canberra Recovery Services
CYPS	Child, Youth and Protective Services
DASL	Drug and Alcohol Sentencing List
DATO	Drug and Alcohol Treatment Order
DPP	Director of Public Prosecutions
FARE	Foundation for Alcohol Research & Education
ICO	Intensive correction order
JACS	ACT Justice and Community Safety Directorate
JRI	Justice Reform Initiative
MERIT	Magistrates Early Referral into Treatment (program)
NSW	New South Wales
OE	Outcome evaluation
PE	Process evaluation
SD	Standard deviation
TCU-5	Texas Christian University Drug Screen 5
TGI	Transgender, gender-diverse and intersex
the Act	<i>Crimes (Sentencing) Act 2005 (ACT)</i>
TJ	Therapeutic jurisprudence
TOT	Treatment Order Team
UK	United Kingdom

## Acknowledgments

A great many people gave generously of their time and expertise to this report. In particular, we thank Acting Justice Refshauge for his leadership of the Drug and Alcohol Sentencing List (DASL). In addition, we thank former Chief Justice Murrell, Acting Justice Walker, as her Honour then was, and Justice Loukas-Karlsson. We also thank the Principal Registrar and Chief Executive Officer at ACT Courts and Tribunal, Amanda Nuttall, for her assistance in facilitating the completion of this report. We also acknowledge the support of ACT Health, especially Alex Durant and Amanda Wallis; ACT Corrective Services, particularly Commissioner Ray Johnson, Dr Annie Glover and Natalie Adams, in facilitating access to former DASL participants in the Alexander Maconochie Centre (AMC); and ACT Policing, especially Justin Susanto, for providing re-offending data.

Lillian Ireland, Alice Spencer, and Sam Xiang, the DASL associates during our fieldwork for this report, Sean Wiles, the DASL coordinator, and Amy Faden, the former DASL coordinator, have also been very helpful. In addition, we are grateful to Randi Tolbøll Taylor and other staff at the ACT Courts, who have assisted us in our evaluation work.

We also appreciate the assistance of Lewis Pope, in the Attorney-General's office, for clarifying aspects of the DASL's budget allocation. We acknowledge the help from staff at the Justice and Community Safety Directorate in the early stages of this project, especially Philippa Spence.

We also recognise the input and thoughtful comments of Associate Professor Anthony Hopkins and the research assistance of Dr Helen Taylor, Hannah Robertson, and Cameron Langfield.

We are very grateful to all of the stakeholders who participated in interviews and shared their time and insights about the program. We are particularly appreciative of the perspectives of the DASL participants who engaged enthusiastically with our research.

The opinions, comments and/or analyses expressed in this document are those of the authors and do not necessarily represent the views of any agency of the ACT Government and cannot be taken in any way as expressions of ACT Government policy.

## Executive Summary

This report presents the findings of a mixed methods process and outcome evaluation of the ACT Drug and Alcohol Sentencing List (DASL), conducted by the Australian National University (ANU). It represents a synthesis of the three elements of the overall evaluation, conducted in stages between 2019 and 2022:

1. a review of internationally-recognised best practice principles and procedures for the creation and implementation of a successful drug court, submitted to the Court in 2019;<sup>1</sup>
2. a process evaluation of the fidelity to best practice standards during the implementation of the ACT DASL, submitted to the ACT Supreme Court in April 2021, with updates in April 2022; and
3. an outcome evaluation, with initial outcomes explored in the 2021 process evaluation report and a full outcome evaluation report submitted to the Court in April 2022.

### *Approach and Methodology*

Given the nature and size of the DASL program, a mixed methods approach was taken that involved quantitative analysis of program and criminal justice data, where appropriate, and qualitative analysis of stakeholder and participant experiences with the program. Data were collected via the following mechanisms:

- semi-structured interviews with DASL participants and professional stakeholders;
- a survey of DASL participants;
- observations of DASL in operation;
- analyses of DASL, ACT Health and ACT Policing administrative data;
- analyses of court documents, including judgments and judicial remarks; and
- reviews of relevant legislation, Hansard and submissions to and evidence before the ACT Inquiry into Community Corrections.<sup>2</sup>

The process and outcome evaluation draws on analyses of all these data.

---

<sup>1</sup> Gelb, K. (2019). Monitoring and Evaluation of Drug Courts: A Review of Best Practice, prepared for the ACT Courts.

<sup>2</sup> The ACT Legislative Assembly Standing Committee into Justice and Community Safety was undertaking an inquiry into community corrections, during the course of our research. The terms of reference for the inquiry included consideration of DATOs. All of the submissions to the inquiry, as well as transcripts of evidence before the inquiry, are available at: Legislative Assembly for the ACT (2022). *Inquiry into Community Corrections – Submissions*. <https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/jcs/inquiry-into-community-corrections#tab1780034-3id>.

## *Part I: Process Evaluation*

The process evaluation considered the implementation and operation of DASL, from initial referral through to participants' exit from the program.

### *Profile of DASL Cases*

Since the program commenced, there have been 106 people referred for a Drug and Alcohol Treatment Order (DATO). A small number were immediately deemed ineligible, due to having warrants out or similar, while 102 were sent for suitability assessment. As at 31 March 2022, there had been 56 DATOs imposed.<sup>3</sup>

Despite the small number of DASL participants to date, it appears that the program is generally appropriately reaching its target cohort.

In the period under evaluation, the sentence length of DATO participants has increased slightly and the length of their DATOs has increased substantially, to an average of 1.75 years in 2021/2022. This could signal a shift in the seriousness or complexity of the client base over time. It could also suggest a recognition that 12 months is not a long enough period to engage deeply in a recovery program.

The proportion of women in the DASL program across this period (12.5%) is roughly proportional to the number of women whose cases are finalised in the Supreme Court (11%). However, this number is skewed by the larger number of women who were referred in Year 1 of the program. In the second year of the program, women accounted for only 6% of DASL participants.

DASL participants were on average 32 years old and, in Year 2 of the program, were slightly older than in Year 1. The age of DASL participants ranged from 20 to 50 years old.

Unlike the changes in relation to age and gender, there was no change in the proportion of Indigenous participants in 2020, compared to 2021/22; approximately 30% of DASL participants were Indigenous. This is slightly higher than the representation in the Alexander Maconochie Centre (AMC), which was 27% in 2021.<sup>4</sup> This suggests that the program is, in the first instance, serving to divert some Indigenous people away from custody.

DASL participants have clear substance use issues, with alcohol and drug use beginning at an early age, often in the teenage years, but occasionally even younger. They reported both

---

<sup>3</sup> The evaluation team is aware of at least three DATOs that have been imposed since this date, but 31 March was selected as the cut-off date, to allow a month for data cleaning and analysis.

<sup>4</sup> ABS (2022). *Corrective Services, Australia – December 2021*. We recognise that only about 60% of these people were sentenced and therefore eligible to participate in DASL: see ABS (2020). *Prisoners in Australia, 2020*; ABS (2021). *Prisoners in Australia, 2021*.

complex personal histories and a range of other criminogenic needs that are well-suited to the therapeutic, holistic approach that a drug court offers.

#### *Pathways into DASL*

After the indication or entry of a plea of guilty, a defendant (or their legal representative) or the Director of Public Prosecutions (DPP) may apply for the defendant to be sentenced to a DATO. Eligibility and suitability is determined by the Court, with input from Canberra Health Services and ACT Corrective Services (ACTCS).

Participants reported satisfaction with their entry into DASL and felt they were kept informed about their status and were treated with respect by the DASL team. While ‘clunky’ at first, the referral process has improved and now appears to be working well. Legal practitioners are increasingly familiar with the process and it is becoming normalised within the legal community. A proposed practice direction is likely to streamline the process even further. Greater awareness of the program, and potentially expanded eligibility requirements, would allow more people the opportunity to participate.

In terms of eligibility, we report on stakeholder suggestions that DASL should both facilitate ‘longer orders’ – with our data indicating that reductions in drug use do not occur until participants have been on the program for 9–12 months – *and* be inclusive of those facing shorter sentences. These two objectives are difficult to achieve without alternative DASL pathways or some form of intermediate DASL-style program, such as the Magistrates Early Referral into Treatment program,<sup>5</sup> which operates in New South Wales (NSW), or the Court Integrated Services Program in Victoria.<sup>6</sup>

In terms of suitability, a consistent issue currently facing the DASL is the lack of appropriate housing for justice-involved people. It is not an eligibility requirement that participants have housing. However, suitable accommodation is needed, in order to benefit from the program; as such, people without stable accommodation are not likely to meet the suitability requirements. People who are assessed as needing residential treatment can move into transitional housing, but this is neither a long-term solution, nor is it an option for those assessed as only needing community-based treatment. The lack of housing many participants face is a significant hurdle to entry onto the program and likely impacts on the chances of sobriety and successful completion, once they are on the program.

Many stakeholders and participants also suggested that ‘readiness to change’ should be a relevant consideration when assessing suitability. However, it is difficult to assess ‘readiness’ and there were cases where concerns about a person’s readiness were well-founded and resulted in DATOs being cancelled, while other similar participants have progressed well. It

---

<sup>5</sup> Local Court NSW (nd). *Magistrates Early Referral into Treatment (MERIT) Program*.

<https://localcourt.nsw.gov.au/local-court/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html>.

<sup>6</sup> Magistrates’ Court of Victoria (nd). *Bail support (CISP)*. <https://www.mcv.vic.gov.au/find-support/bail-support-cisp>.

ought, therefore, not be the position of a court such as DASL only to accept those who, at the time of referral, are assessed as ‘ready to change’. The objective of a drug court should not be only to provide treatment opportunities for those who have already recognised the need for change, but to use the intervention as an opportunity to motivate for change.

The complexity of the legislation means that preparation for sentencing is complex and time-consuming; significant effort by the judge, their associate, and the DPP all need to be adequately resourced.

#### *Cooperation and Collaboration between Stakeholders*

Our findings suggest that the ACT DASL team has developed an effective and collaborative working relationship. The Treatment Order Team (TOT), including the DASL Judge and staff from ACT Health, ACTCS, DPP, Legal Aid, and ACT Police, meet weekly in a case conference where they discuss each participant’s progress.

The DASL team’s collaborative working relationship and interdisciplinary approach lend significant strength to the program, enabling a holistic and therapeutically-oriented response for participants. The TOT continues to show strength in its ability to collaborate and communicate effectively, though we acknowledge its increasing caseload and the lack of resources to support each participant to a greater extent.

The team no longer uses the ‘traffic light system’, which was designed to help track a participant’s status over the course of their DATO. As a result, team members reported that case management can be largely reactive and could benefit from a consistent overarching view of participants’ progress. This also has implications for ongoing program monitoring and evaluation.

It was suggested that, where relevant, DASL participants could benefit from more involvement in case conferences from mental health professionals, representatives from ACT Housing and a clinician who has an understanding of participants’ pharmacological and other health needs.

In addition, there was a desire expressed for ongoing training and planning meetings, that could also include members of the alcohol and other drug (AOD) community. While the AOD community continues to experience substantial constraints on its resources, it nonetheless is largely supportive of DASL and would like further integration and ongoing communication with the program.

#### *DASL in Practice*

Consistent with international literature and practice, DASL is designed to support reintegration into a pro-social community. Elements of reintegration are fostered both in court and outside of court, through the support and supervision of the TOT and, in collaboration with other relevant service providers, such as mental health, AOD, and residential rehabilitation facilities.

The day-to-day operation of DASL appears to be working well and in a manner that is consistent with the principles of therapeutic jurisprudence (TJ). The supervision and support offered as part of the program are generally viewed favourably, particularly the positive relationships that have developed among staff and between staff and participants.

However, participants and stakeholders raised concerns about the inconsistent application of the behavioural contract protocol and the issues that this poses, particularly in terms of participants' views of the program. We therefore suggest that this be the subject of review by the DASL team, with better communication detailing how the contract is used in practice.

We identified some challenges in managing caseloads, which suggests that DASL may need additional resources to continue to meet participants' complex needs. This is especially important, in light of the issues we identified around the work members of the team are doing to address participants' housing needs.

Stakeholders also identified the need for more – and more varied – treatment options; multiple stakeholders identified a need for more beds in residential programs, as an ongoing issue that is likely to increase as the number of participants grows. Treatment is the foundation of a drug court, but it is currently difficult to support the needs of all DASL participants who need a bed.

Many DASL participants have trauma and other mental health issues in their background; mental health support is thus a vital element to their recovery process. It is clear that significant efforts are being undertaken to support participants with mental health issues. There may also be scope for expanding this kind of support and DASL's work with participants with mental health and/or disability issues needs should be both well-integrated and appropriately resourced.

The DASL judge is widely recognised by participants and stakeholders to be fair, thoughtful, and committed to participants' best interests and TJ principles. In our analysis of communication from the bench, we identified many aspects of TJ practice. However, there were also some suggestions about how the judge could adopt a more strengths-based approach, especially in relation to graduation speeches.

## *Part II: Outcome Evaluation*

Drawing on our earlier research,<sup>7</sup> it is clear that outcome indicators of 'success' for the ACT DASL are complex and varied. Recidivism is an important indicator of success for many criminal justice interventions. However, it can be a blunt tool that obscures a more nuanced understanding of both addiction recovery and desistance from crime.

---

<sup>7</sup> See Gelb, n 1; Rossner, M., Bartels, L., Gelb, K. and Payne, J. (2021). *ACT Drug and Alcohol Sentencing List: Process evaluation*. Australian National University.



Based on the international literature on drug court outcomes, the evaluation considered four sets of indicators.

### *In-program Outcomes*

Best practice guidelines suggest that drug courts continually monitor participant outcomes during enrolment in the program, capturing short-term measures of a drug court's success, as well as participants' partial progress.

We analysed data from a range of sources to evaluate DASL's in-program outcomes.

There were 15 cancelled cases, out of the 56 that entered the program during the evaluation period (27%). Both younger and Indigenous participants were disproportionately represented in cancelled cases, compared to graduations. In order to ensure that the fullest range of approaches to better support DASL's Aboriginal and Torres Strait Islander participants is considered, we recommend that the Court consult with representatives from key Indigenous organisations, including Winnunga, Yeddung Mura, Tjillari, the Gulanga Program at the ACT Council of Social Services (ACTCOSS) and the Aboriginal Legal Service, as well as the Elders in the Galambany Court.

Our survey with 20 current DASL participants demonstrated a high level of satisfaction with the program: 85% reported being completely or somewhat satisfied with their experience of DASL so far. Both in the survey and in qualitative interviews, the DASL judge received an overwhelming endorsement from participants: 95% were completely or somewhat satisfied with the judge and their role on the DASL program. However, the lack of adequate housing is a systemic issue that was raised by several participants.

Data from ACT Health showed a marked improvement in DASL participants' drug use score, from an average of 9.7/10 at the beginning of their orders, to 3.2 after nine months and 0.2 after 12 months. The fact that it took some time for this improvement to occur confirms the need for a lengthy order, to bring about lasting change in drug use. It is important to note, however, that these data are incomplete and should be treated as preliminary and indicative. There were also notable reductions in participants' self-reported offending, victimisation and use of ambulance or hospital services.

Each week, the TOT prepares a status report for participants attending court, reporting on drug use, engagement with recovery and other services, and relevant personal and professional progress and challenges. Analysis of the status reports demonstrates the dynamic nature of participants' trajectories during DASL. Setbacks are common, including offending, drug use, missed appointments and periods spent in residential rehabilitation or custody. Of note is that even the cohort of graduates experienced such setbacks, though largely during Phase 1 of the program.

Finally, a preliminary economic assessment of DASL found that up to \$14 million is estimated to have been saved, due to avoided prison time. This is more than the \$13.3 million the Government recently allocated to continue to run DASL over two years. It therefore appears that the cost of DASL has likely been more than offset, through the reduction in demand on the AMC alone. However, a fuller cost-benefit evaluation is required, taking into account a broader range of variables.

### *Social Integration Outcomes*

Social integration outcome measures can include exploration of a person's integration within their social networks, employment, accommodation and physical and/or mental health. They allow a more complex and broader understanding of the multiple ways desistance can influence a person's behaviour, social relations, and health.<sup>8</sup>

There is evidence that participation in DASL has led to positive outcomes across various domains of social integration: psychological and physical health, quality of life, relationships, employment, emotional maturity, and hope and optimism about the future. For example, participants' ratings of their psychological health increased, from a median of 5/10 at the start of the order, to 9/10 at 12 months. In addition, the proportion of participants who were in employment increased from 8% to 63%. Many participants also experienced improved relationships with their loved ones, especially their children. The positive outcomes achieved are a testament to participants' commitment to their recovery, as well as the work of the TOT and other stakeholders.

Although there were some improvements in participants' housing situation during DASL, the issues around the lack of housing in the ACT are impacting DASL participants' ability for social integration and present a major challenge for both participants and the DASL team.

In addition, inconsistent data collection limited the ability of the evaluation team to draw strong conclusions from this information. We therefore recommend that the DASL team collect ongoing data about social integration during DASL and be appropriately resourced to do so. Finally, social integration data could also be collected in the form of exit interviews with participants when they graduate or finish their DATO. The collection of such data would be an important element to support ongoing monitoring and evaluation.

---

<sup>8</sup> While Shapland and colleagues were writing here in relation to offenders on probation, the point is relevant to all people involved in the justice system in any way – particularly for drug court participants, for whom desistance is very much a journey, rather than a 'sudden cessation': Shapland, J., Bottoms, A., Farrall, S., McNeill, F., Priede, C. and Robinson, G. (2012). *The Quality of Probation Supervision – A Lit Review*. University of Sheffield Centre for Criminological Research, 11.

### *Recidivism*

Given the short amount of time that DASL has been operational and the small number of participants to date, our findings on recidivism outcomes should only be regarded as provisional.

Analysis of data from ACT Policing allow for some preliminary indications of re-offending. The notable findings include that:

- participants whose orders were cancelled were offending, on average, nearly twice as frequently in the 12-month period immediately before entering the program;
- participants who had committed violent offences in the 12 months before joining the program were less likely to complete the program successfully;
- for those who are able to complete their DATO successfully, there is a complete cessation in offending post-DASL, at least over the short follow-up period covered by our report;
- in the post-DASL period, graduates, those who completed their DATOs and those who had their orders cancelled reduced their offending, against the number of pre-DASL offences, by 100%, 90% and 81% respectively, with an overall reduction of 81%. It is acknowledged however, that most of this reduction for the cancellation cohort would have been when they were in custody;
- even where participants who were no longer on their orders continued to offend, this was generally less serious offending than prior to their entry on the program, with robbery and assault reducing by 100%;
- for the 22 people still on the program at the time of data collection, there had been an 87% reduction in the number of charges between the periods before and during DASL; and
- no DASL graduates have returned to court since graduation.

These data are preliminary and need to be treated with caution. Nevertheless, they provide initial evidence that the DASL is an effective program to reduce re-offending.

While participants with violent offending records were less likely to complete their DATO successfully, it is worth noting that most evaluations and program reviews have recommended lifting restrictions against their participation. There is also strong evidence that the implications of excluding offenders with a history of violence are disproportionately felt in minority and marginalised populations, including Aboriginal and Torres Strait Islander populations. These preliminary data should therefore not be used as a foundation for limiting DASL to non-violent offenders, as it is too soon to make that judgement and the negative implications of doing so likely outweigh the benefits.

### *Principles of Therapeutic Jurisprudence*

In our literature review, which informed the ongoing evolution of DASL, we considered the 10 key components to a successful drug court and 10 best practice standards described in the

international literature.<sup>9</sup> The evaluation included assessment of DASL's fidelity to these key components and best practice principles as reflecting a commitment to the principles of TJ.

Our process evaluation revealed ongoing evidence of the judge's and treatment team's therapeutic relationship with participants.

We found that DASL continues to perform well against most of these measures. When we quantified this, we found that DASL had improved performance slightly, from 31 (in 2021) to 32 (in 2022) out of 40 points for the 10 components of a successful drug court, and from 29 (in 2021) to 31 (in 2022) for the 10 best practice standards.

The scope for improvement around best practice relates to:

- ensuring the program reaches historically disadvantaged groups;
- the use of the behavioural contract protocol and ensuring consequences are predictable, fair and consistent;
- addressing systemic issues in relation to housing; and
- continuing to monitor and evaluate the program.

We recognise that some of the identified issues are complex and beyond the scope of this program and relate to broader issues in the ACT. We therefore urge a whole-of-government approach to addressing these critical issues, which have far-reaching implications for the ACT community generally.

### *Part III: Legal Analysis*

This section draws on the evaluation team's analysis of the 27 judgments, undertaken for the process evaluation report completed in April 2021; 37 relevant cases delivered between April 2021 and April 2022; 46 uncorrected transcripts that were yet to be finalised as judgments, which were analysed in the outcome evaluation completed in May 2022; and relevant sections of the Act.

A number of points can be distilled from our analysis of the legislation and case law. First, it is clear that the legislation underpinning DASL is complex and excessively lengthy, urgently needing to be amended in several respects. The DASL judge spends significant time preparing judgments in order to address these complexities and inconsistencies in the legislation. In reviewing the specifics of the DATO legislation, it would therefore be timely to take steps to simplify the DATO legislation more generally, to ensure a more workable legislative framework.

The following specific issues were identified as requiring reform:

---

<sup>9</sup> See Gelb, n 1.

- whether a DATO should be available for total sentences of 1–4 years, where no individual sentence meets this threshold;
- whether the Magistrates Court can refer a matter to DASL;
- defining a ‘sentencing order’;
- calculating pre-sentence custody, when imposing a DATO;
- dealing with breaches;
- reviewing a DATO prior to cancellation; and
- calculating pre-sentence custody for offences committed during DATO.

In order to promote consistency, it may also be preferable for all judicial officers to refer matters they consider appropriate for a DATO to the DASL judge for sentencing (and have the length of the treatment and supervision part of the order set at the same time as the DATO itself). Adopting this approach would also ensure that the DASL judge has an opportunity, at the time of making the order, to carefully explain its implications to the participant.

### *Recommendations*

This report concludes by offering 24 recommendations based on the process evaluation (PE) and 15 further recommendations based on the outcome evaluation. The Court and other relevant stakeholders responded to the process evaluation recommendations in May 2022, and the conclusion of this report discusses these responses and relevant commentary.

#### *Process Evaluation Recommendations*

##### *Pathways into DASL*

1. To increase opportunities for program participation, the Court should undertake activities to increase awareness of the DASL program, particularly among legal practitioners.
2. Eligibility criteria should be revisited to ensure that the program is enrolling the appropriate target cohort.
3. Referral pathways into DASL should be reviewed, to ensure that they are as efficient as possible, including having the DASL judge make the order for suitability assessments and sentencing people into the program, and improving communication between DASL and the rest of the Court.
4. Referrals to the DASL judge should be made as early as possible.
5. In recognition of the complexity of the sentencing process – and the time required to apply therapeutic elements – more resources should be allocated to the program.

*Collaboration and cooperation between stakeholders*

6. Consistent co-location of ACTCS and Health should be arranged to provide further opportunities for collaborative work.
7. Collaborative problem-solving during case conferences could be enhanced by providing a more intimate layout in case conferences, with the judge and associate seated with the rest of the team.
8. Consideration should be given to widening the circle of stakeholders participating in the case conferences, such as Housing, Forensic Mental Health and other mental health professionals, nurses, trauma treatment clinicians and Child, Youth and Protective Services (CYPS), as appropriate.
9. The Aboriginal Liaison Officer (ALO) should be directly consulted for every Aboriginal and/or Torres Strait Islander participant.
10. As the DASL caseload grows, care needs to be taken to continue to allow sufficient time for in-depth discussions of each participant.

*DASL in practice*

11. Consideration should be given to providing more guidance and structure to ACT Health staff, in terms of expectations for their meetings with participants in each phase of the program.
12. There is a clear need for more treatment beds, including specialised options for Aboriginal and/or Torres Strait Islander participants. This need will become more urgent as the number of DASL participants increases.
13. Other resources should also be expanded as the DASL list grows, including more sitting days and more time at court for the DASL coordinator.
14. There is a need for more time between the case conference and check-in hearing for the judge to prepare and for Legal Aid to consult with participants.
15. Check-in hearings should use open-ended questions, to allow participants to articulate their experiences in their own words and to build a stronger rapport between participants and the DASL judge.
16. Consideration should be given to ways to improve the rituals surrounding progression hearings and graduations and recognise the progress made by participants whose order has ended before they have completed the program.

*Preliminary outcomes*

17. Monitoring and evaluation of the effectiveness of DASL should incorporate a full range of indicators of success, considering both in-program and post-program outcomes.
18. 'Success' should not be contingent on successful completion of all three phases of the program.
19. Data collection and monitoring processes should be well-resourced and systematic, including regular review to ensure that all appropriate data are being collected.
20. Monitoring should be undertaken with reference to the key components of successful drug courts and best practice principles identified in the drug court literature.
21. Exit interviews with participants should be developed to measure participants' experiences of the DASL program.

*Analysis of case law and legislation*

22. The DATO legislative framework requires review and simplification, with specific attention to the issues identified above, especially in relation to the issue of taking pre-sentence custody into account.
23. To ensure consistency and that all relevant issues are considered by the DASL team, all DASL sentences should be delivered by the DASL judge(s).
24. To ensure clarity in relation to and promote compliance with the Court's orders, the length of the DATO and treatment and supervision component of the order should be clearly stated, in terms that participants are likely to be able to understand.

*Outcome Evaluation Recommendations*

*Supporting participants with additional needs*

1. The Court consult with representatives from key Indigenous organisations, to ensure that the fullest range of approaches to better support DASL's Aboriginal and Torres Strait Islander participants is considered, and all suitable suggestions adopted (see also PE Recommendations 9 and 12).
2. Where appropriate, the use of culturally appropriate facilities interstate be prioritised for Indigenous participants (see also PE Recommendations 9 and 12).
3. The DASL team liaise with A Gender Agenda, to determine what steps can be taken to support any prospective or current transgender, gender-diverse and intersex participants.
4. Any misunderstandings about DASL's availability and suitability for people with mental illness and/or disability issues be addressed.

5. Consideration be given to expanding DASL's ability to support participants with significant mental illness and/or disability issues.
6. Consideration be given to expanding the range of court-based treatment options for people who are not serving sentences of between one and four years, which would be of particular benefit to women, who typically serve shorter sentences (see also PE Recommendation 2).
7. Additional resources be allocated, to ensure DASL can continue to meet participants' complex needs (see also PE Recommendations 5, 12 and 13).

#### *Ensuring program fidelity and quality*

8. The DASL team regularly hold strategic planning days, to discuss the program's progress and address ongoing issues around management, data collection, adherence to the behavioural contract and other strategic goals (see also PE Recommendation 11).
9. There be better integration between DASL and the AOD sector, including specialised training and participation in strategic planning days.
10. Steps be taken to ensure the Court adopts a coordinated response to participants' compliance, including revision of and adherence to the behavioural contract protocol and the implementation of consequences that are predictable, fair and consistent.
11. A more strengths- and trauma-based approach be taken in relation to graduation ceremonies (see also PE Recommendation 16).
12. The legislation be simplified and the issues identified by the evaluation team addressed (see also PE Recommendation 22).

#### *Monitoring and evaluation*

13. The DASL team collect ongoing data about social integration during a participant's DATO and be appropriately resourced to do so. In particular, we suggest that staff systematically record relevant information, through the use of a standardised data file (see also PE Recommendations 17 and 19).
14. Consideration be given to undertaking exit interviews with participants when they graduate or finish their DATO, as an important element to support ongoing monitoring and evaluation (see also PE Recommendation 21).
15. We recommend that a full cost-benefit evaluation of DASL be undertaken.

#### *Broader social issues affecting DASL*

Our findings demonstrate that many aspects of DASL's operation are adversely impacted by issues beyond its control, especially in relation to the resourcing issues in the AOD and



housing sectors. We also acknowledge broader issues in relation to the over-representation of Aboriginal and Torres Strait Islander people in the justice system. We note that the ACT Government is yet to respond to the report of the ACT Legislative Assembly Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021. Our findings therefore underpin our strong support for the recommendations in that report that the ACT Government should:

- significantly increase its investment in alcohol and other drug services;
- continue its commitment to establish and fund an Aboriginal Community Controlled residential rehabilitation facility and increase the number of First Nations alcohol and other drugs Peer Support Workers; and
- invest in housing options for people who use alcohol and other drugs and are at-risk of or experiencing homelessness.<sup>10</sup>

Implementing these recommendations will not only enable DASL to increase its effectiveness, but will have far-reaching benefits for the ACT community as a whole.

---

<sup>10</sup> ACT Select Committee (2021). *Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021*, Legislative Assembly for the ACT. Recommendations 7–9.

## 1 Introduction

This report presents the findings of a mixed methods process and outcome evaluation of the ACT Drug and Alcohol Sentencing List (DASL), conducted by the Australian National University (ANU). A literature review identifying best practice standards and components of successful drug courts was submitted to the ACT Supreme Court in 2019. The process evaluation was submitted to the Court in April 2021, with updates in April 2022. Initial outcomes were explored in the 2021 Process Evaluation Report and a full outcome evaluation report was submitted to the Court in April 2022. The current report brings together these evaluations, along with a discussion of the feedback provided by the Court to the earlier reports.

### 1.1 About the ACT DASL

In mid-2019, the ACT Government created the DASL, by introducing legislation to allow the Supreme Court to sentence substance-dependent defendants to a Drug and Alcohol Treatment Order (DATO).<sup>11</sup>

Under the *Crimes (Sentencing) Act 2005* (ACT) (the Act), the aims of DATOs are to:

- facilitate the rehabilitation of the offender by providing a judicially supervised, therapeutically oriented and integrated treatment regime;
- reduce the offender's dependency on alcohol or a controlled drug;
- reduce the health risks associated with the offender's dependency on alcohol or controlled drugs;
- assist with the offender's integration into the community; and
- promote community safety by reducing the level of criminal activity caused by alcohol or controlled drug dependence in offenders.<sup>12</sup>

The ACT DASL includes many of the elements that are common to drug courts, such as judicial oversight, supervision, drug testing, substance abuse treatment, and sanctions and incentives, to attempt to modify the behaviour of drug-involved defendants. As with other Australian drug courts,<sup>13</sup> the ACT DASL model is holistic, therapeutic and non-adversarial in philosophy, while being targeted at people with higher needs, drug dependencies, and those who commit drug-related offences.<sup>14</sup>

---

<sup>11</sup> See *Crimes (Sentencing) Act 2005* (ACT) s 12A and Pts 4.2B and 5.4A, as introduced by the *Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Act 2019* (ACT).

<sup>12</sup> *Crimes (Sentencing) Act 2005* (ACT) s 800.

<sup>13</sup> For recent discussion of Australian drug courts, see Clarke, A. (2020). The rehabilitative ideal and the realism of drug court success, *Journal of Judicial Administration*, 30: 19-36. See also Kornhauser, R. (2018). The effectiveness of Australia's drug courts. *Australian and New Zealand Journal of Criminology*, 51: 76-98.

<sup>14</sup> Hughes, C., Shanahan, M., Sotade, O. and Ritter, A. (2017). *Towards a New ACT Drug and Alcohol Court: A Program and Systems Perspective*. Drug Policy Modelling Program, University of NSW, 6.

Each drug court has unique features, based on local environments, defendant profiles, justice system culture and relationships with other services. The ACT DASL differs from most other Australian drug courts in several ways:<sup>15</sup>

- it includes people dependent on alcohol, as well as illicit drugs. The only other Australian court to include this cohort is the recently re-established Queensland Drug and Alcohol Court;
- it includes people who are convicted of violent offences;<sup>16</sup>
- it operates in the Supreme Court. In most other Australian jurisdictions, drug courts operate in lower and intermediate level courts (either as a 'Drug Court' or under a related title): the Magistrates' Court in Victoria, Tasmania, Queensland and South Australia, and the Local and District Courts in NSW. Unusually, the Western Australian Drug Court operates in both the Magistrates Court and the Children's Court and accepts referrals from the District and Supreme Courts as well;
- it serves a far smaller caseload of participants than courts in other jurisdictions. This is partly a function of a smaller population, resulting in fewer defendants appearing before the ACT courts each year, and partly a function of the program's operation within the Supreme Court; and
- Canberra Health Services plays a leading role in case management, with the support of ACT Corrective Services (ACTCS). In many other jurisdictions, the court or correctional agencies manage supervision and compliance, with the support of a health team.

In general, there appears to be continued support for the program across various sectors in the ACT. Several - to the Inquiry into Community Corrections currently being undertaken by the ACT Legislative Assembly Standing Committee on Justice and Community Safety indicated general support for the program. For example, the Law Society claimed that members had reported 'a positive experience' with DASL and that 'there is support for the use of [DATOs] to be continued'.<sup>17</sup> The submission from the Alcohol Tobacco and Other Drugs Association

---

<sup>15</sup> Ibid, 6–7.

<sup>16</sup> The Act does, however, exclude people convicted of *serious* violence offences, such as intentionally causing grievous bodily harm, as well as those convicted of sexual offences: see s 12A(9). The inclusion of violent offences is partly a function of its operation within the ACT Supreme Court. This is supported by research that shows that courts that accept participants with a history of violence have equal reductions in recidivism as those which exclude violent offenders. See Saum, C. and Hiller, M. (2008). Should violent offenders be excluded from drug court participation? An examination of the recidivism of violent and nonviolent drug court participants. *Criminal Justice Review*, 33: 291-307.

<sup>17</sup> ACT Law Society (2021). *Inquiry into Community Corrections*, Submission 24, 4. See also ACT Sentence Administration Board (2021). *Inquiry into Community Corrections*, Submission 23; Justice Reform Initiative (JRI) (2021). *Inquiry into Community Corrections*, Submission 5. We acknowledge, however, that this submission was co-written by a member of the DASL evaluation team. Another of the JRI's patrons, Richard Refshauge, is the DASL judge. Support for DASL was inferred from the following comment: 'Unfortunately, the Drug and Alcohol Court is not currently accepting referrals during COVID-19': FARE (2021). *ACT Inquiry into Community Corrections*, Submission 18, 3. Prisoners Aid ACT also indicated that it supports DASL participants and therefore, presumably, supports the program generally: see Prisoners Aid ACT (2021). *Submission to the*

ACT (ATODA) asserted that '[w]ith the commitment from specialist AOD services, the DASL has the potential to be an important therapeutic intervention for vulnerable Canberrans'.<sup>18</sup>

As with other therapeutically-oriented courts, drug courts are founded on notions of therapeutic jurisprudence (TJ),<sup>19</sup> which involves a collaborative, largely non-adversarial approach that is focused on participants' needs, and aims to improve future outcomes, rather than punishing past behaviours.<sup>20</sup> Drug courts generally aim to address the underlying substance use issues, as well as wider criminogenic factors, such as housing, education, employment, family and other pro-social relationship building, and life skills, that contribute to the individual's offending behaviour.

Drug courts arose in the United States and now number more than 3,000.<sup>21</sup> They have also been implemented around the world, including New Zealand, Canada and the United Kingdom. In Australia, drug courts are in operation in Victoria, New South Wales (NSW), Queensland, Western Australia, South Australia and Tasmania, and previously existed in the Northern Territory.<sup>22</sup>

Drug courts in Australia have generally adopted features that have been shown to enhance the courts' effectiveness and have been incorporated into accepted best practice. These include features such as:

- progression through three distinct stages as part of an individualised treatment plan;<sup>23</sup>
- close judicial monitoring;
- regular drug testing; and

---

*Standing Committee on Justice and Community Safety ACT Legislative Assembly Inquiry into Community Corrections*, Submission 3. We also note that the submission from the ACT Council on Social Services (ACTCOSS) called for the process evaluation report completed in 2021 to be publicly released. In particular, ACTCOSS suggested that, '[g]iven the significant investment in the ACT budget for expanding the DASL, the sector and the community should have access to this report': ACTCOSS (2021). *Inquiry into Community Corrections*, Submission 26, 13.

<sup>18</sup> Alcohol Tobacco and Other Drug Association ACT (ATODA) (2021). *Inquiry into Community Corrections*, Submission 15, 1.

<sup>19</sup> Wexler, D. and Winick, B. (1996). *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence*. Carolina Academic Press; Wexler, D. B. and Winick, B. J. (1991). *Essays in Therapeutic Jurisprudence*. Carolina Academic Press; Winick, B. J. (2003). Therapeutic jurisprudence and problem-solving courts. *Fordham Urban Law Journal*, 30: 1044-1090; Winick, B.J. and Wexler, D.B. (2002). Drug treatment court: Therapeutic jurisprudence applied. *Touro Law Review*, 3: 479-485.

<sup>20</sup> King, M. (2006). Therapeutic jurisprudence in Australia: New directions in courts, legal practice, research and legal education. *Journal of Judicial Administration*, 15: 129-141.

<sup>21</sup> The National Institute of Justice estimated that, by 2015, there were more than 3,700 drug courts operating in the United States, with more than half targeting adults, as well as including driving while intoxicated offenders, veterans, juvenile offenders and others; see National Institute of Justice (2021). *Overview of Drug Courts*. <http://www.nij.gov/topics/courts/drug-courts/pages/welcome.aspx>.

<sup>22</sup> For further discussion, see Clarke, n 13.

<sup>23</sup> The three phases are: stabilisation, consolidation and re-integration, during which the intensity of monitoring, reporting and testing requirements decreases. *Stabilisation* refers to immediate detoxification and initial assessment. This is followed by the intensive treatment (*consolidation*) phase. Finally, transition out of the drug court prepares the person for independence and a return to the community (*re-integration*).

- a graduated system of rewards and sanctions.

Evaluations of the various Australian courts have generally been positive,<sup>24</sup> although various methodological limitations are acknowledged.<sup>25</sup> The NSW Drug Court has undergone rigorous evaluation that found it to achieve significant improvements in health, social functioning and drug use.<sup>26</sup> Subsequent evaluations found that Drug Court participants were less likely to be reconvicted and were slower to re-offend than people given a conventional sentence.<sup>27</sup> A subsequent evaluation followed up participants for an average of 13.5 years and found they had a 17% lower re-offending rate than potential participants who were deemed eligible, but not placed in the program. Participants in the Drug Court program also took 22% longer to commit an offence against the person.<sup>28</sup> Similarly, the Victorian Drug Court has been shown to result in less recidivism (both in terms of rates and seriousness of re-offending), lower levels of risk (such as medical and psychiatric risk, as well as drug and alcohol risk) and improved health outcomes. The Victorian Drug Court has also been shown to facilitate improvements in participants' family relationships, housing situations, and general life skills.<sup>29</sup>

Extensive research has shown that drug courts that adhere to best practice principles<sup>30</sup> are likely to provide effective (and cost-effective) interventions.

### 1.2 The Operation of the ACT DASL

In the first instance, a potential participant must plead guilty. If the potential participant seeks referral to the DASL, the Court will usually order an Eligibility Assessment. If the potential participant does this in the Magistrates Court, they are then committed for sentence to the Supreme Court for referral to the DASL. If the potential participant has been committed for trial to the Supreme Court, they may still change their plea to guilty in the Supreme Court and seek referral to the DASL, when the Supreme Court will usually order an eligibility assessment and refer the matter into the DASL. If a potential participant is found to be eligible, then a suitability assessment is ordered by the Court (i.e, the DASL judge in the Supreme Court). The suitability assessment is more in-depth and is conducted by team members from ACT Health and ACTCS. This will result in a proposed treatment plan to address relevant aspects of the prospective participant's rehabilitation. This process also requires written consent from a participant, agreeing to take part in a DATO. Suitability assessments are taken into account

---

<sup>24</sup> Clarke, n 13.

<sup>25</sup> See Kornhauser, n 13.

<sup>26</sup> Freeman, K. (2002). *New South Wales Drug Court Evaluation: Health, Well-Being and Participant Satisfaction*. NSW Bureau of Crime Statistics and Research.

<sup>27</sup> Weatherburn, D., Jones, C., Snowball, L. and Hua, J. (2008). *The NSW Drug Court: A Re-evaluation of its Effectiveness*. NSW Bureau of Crime Statistics and Research.

<sup>28</sup> Weatherburn, D., Yeong, S., Poynton, S., Jones, N. and Farrell, M. (2020). *The Long-term Effect of the NSW Drug Court on Recidivism*. NSW Bureau of Crime Statistics and Research.

<sup>29</sup> KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Magistrates' Court of Victoria.

<sup>30</sup> For further discussion of these principles, see Gelb, n 1.

during sentencing, where participants are sentenced to a DATO, and become part of the DASL program. A copy of the treatment order and plan is given to the participant.

The DATO is managed by the Treatment Order Team (TOT), a collaborative group of professional stakeholders, including the DASL Judge, representatives/Case Managers from Health, ACTCS, Legal Aid, the Office of the Director of Public Prosecutions (DPP), ACT Policing and others.

The DASL program aims to support rehabilitation and pro-social reintegration into the community. It is divided into three phases: stabilisation (Phase 1), consolidation (Phase 2), and reintegration (Phase 3). Supervision is provided via case management by both Community Corrections (part of the ACT Justice and Community Safety Directorate (JACS)) and Alcohol and Drug Services (of Canberra Health Services).

In Phase 1, the goal is to stabilise a participant's life and reduce their substance use. This involves rigorous supervision, involving urinalysis testing and supervision from Community Corrections, and beginning to implement the treatment plan, with a focus on improving participants' psychological, emotional, and physical health. This phase lasts a minimum of three months and, in order to progress, a participant must demonstrate cooperation and active participation with relevant aspects of their treatment plan. They also must not commit any new criminal offences and produce negative urinalysis samples for at least four weeks.

Phase 2 involves a consolidation of gains from Phase 1, with an increased emphasis on abstinence and addressing the risk factors for relapse. For some participants, this may include time spent in a residential rehabilitation facility. To progress to the next phase, a participant must continue to demonstrate active engagement with their treatment, not offend, produce eight consecutive weeks of negative urinalysis samples, and participate in appropriate work, study, volunteer, and/or parenting, as relevant to their life circumstances. This phase lasts a minimum of four months.

Phase 3 promotes reintegration to a positive lifestyle, identifies strengths and builds skills to prevent a relapse or future offending. The goal is to abstain from all illicit substances and offending, secure stable accommodation, be involved in employment, education and/or caring, where appropriate, and be able to manage one's own finances. A negative urinalysis is required for the 12 weeks preceding graduation. The minimum time spent in this phase is five months.

Each week, the TOT meets in a case conference to discuss the status of active cases. Check-in hearings are also held with the judge: participants in Phase 1 attend a court hearing every week; in Phase 2, this is every two weeks and, in Phase 3, this moves to every four weeks.

DASL participants enter into a behavioural contract with the Court, with a series of sanctions and incentives for negative or positive behaviour respectively. Negative behaviour may

include offending, substance use, lack of engagement with the treatment plan, dishonesty or disrespect, or other breaches of the DATO. Positive behaviour may include honesty, active engagement, exemplary compliance with the order, sustained abstinence, restitution to the victim or community, or demonstrating fiscal responsibility.

After a certain number of penalties have been accrued, a participant may be warned, have curfews or restrictions imposed, be subject to an increased frequency of urinalysis, be required to undertake a reflective task, be demoted to an earlier phase, have their treatment order extended, spend between three and 14 days in custody, or have their order cancelled.<sup>31</sup>

Incentives may include the removal of curfews or restrictions, reduced frequency of urinalysis, public acknowledgment or accolade, progression to the next phase, shortening of the treatment order, formal recognition of the milestones reached, or a reduction in accumulated breach points.

The length of a DATO is set by the Court and is for a minimum term of 12 months. Progress to different phases is fluid and a participant may progress or regress through the phases. A participant will complete a treatment order and graduate from the program when they have substantially complied with the Phase 3 goals for at least five months.

---

<sup>31</sup> The Behavioural Protocol stipulated that time in custody be 7–14 days, but the legislation permits 3–14 days and individualised justice has led to shorter periods in custody.

## 2 The Research Design and Methodology

To monitor the development, implementation, and early outcomes of DASL, the ANU proposed a developmental evaluation framework. Developmental frameworks are intended to be responsive to the incremental evolution of policy and practice, while at the same time informing ongoing improvement. Given the nature and size of the DASL program, a mixed methods approach was taken that involves quantitative analysis of program and criminal justice data, where appropriate, and qualitative analysis of stakeholder and participant experiences with the program. This also remedies a gap in the Australian literature on drug courts, which includes very little analysis of qualitative data.

### 2.1 Research Design

There are three substantive elements to this evaluation, conducted in stages between 2019 and 2022. They consist of:

1. identification of internationally-recognised best practice principles and procedures for the creation and implementation of a successful drug court;
2. a process evaluation of the fidelity to best practice standards during the implementation of the ACT DASL; and
3. an outcome evaluation.

Each stage of the research informs the next. A review of the internationally-recognised principles and procedures was submitted to the Court in 2019.<sup>32</sup> This work informed the Process Evaluation,<sup>33</sup> which assessed pathways into DASL and the operation and dynamics of the program. The process evaluation also presented an initial analysis of some DASL outcomes. The outcome evaluation<sup>34</sup> report drew on these first two documents and presented an analysis of a range of DASL outcomes. The current report combines all three elements of the research design.

This research was approved by the ANU Human Research Ethics Committee in February 2020 (Protocol 2019/918) and was endorsed by ACT Health in March 2021 and ACTCS in April 2021. In February 2022, we obtained further approval from the ANU Human Research Ethics Committee, to undertake an anonymous survey with DASL participants and to conduct interviews with detainees in the Alexander Maconochie Centre (AMC). Participation in this research was voluntary and anonymous. Appendix I includes a copy of the Participant Information Sheets and Appendix II a copy of the consent forms used in this research.

Approach and Methodology

---

<sup>32</sup> See Gelb, n 1.

<sup>33</sup> Rossner et al, n 7.

<sup>34</sup> Ibid.



Our previous research established the lack of qualitative investigations into Australian drug courts. The current evaluation seeks to remedy this, by providing both qualitative and quantitative data to measure the DASL process and outcomes. In what follows, we detail our sources of data for both the process and outcome evaluations.

### 2.1.1 Semi-structured interviews with participants and professional stakeholders

The interviews included members of the TOT, who provide direct support to the program and its participants. We also interviewed a wider range of stakeholders, who are involved in supporting DASL, including representatives from relevant alcohol and other drug (AOD) service providers across the ACT that have been involved with DASL.

The evaluation team conducted 31 interviews with professional stakeholders, across a range of stakeholder roles. Of these, 21 were conducted during the process evaluation phase of the research, but included information on (preliminary) DASL outcomes. The remaining 10 interviews comprised three follow-up interviews with key stakeholders and seven new interviews.

For input from the AOD sector, we worked with the peak body, ATODA, to identify the relevant practitioners who have worked directly with DASL. This included the directors and staff from all the organisations in the ACT that service DASL participants. ATODA contacted all relevant stakeholders on our behalf, informing them about our evaluation and inviting them to contact us for an interview. We then followed up with individual emails to all relevant stakeholders, to request an interview. Ultimately, we interviewed six AOD stakeholders who have worked with the DASL program.

We conducted 12 interviews with participants about their DASL experience; we had conducted five of these interviews by the time of the process evaluation and undertook a further seven interviews in the following year. We had originally intended to interview participants while they were in each stage of the program. However, once we began observations and interviews, in accordance with the developmental nature of this project, we realised that it would be more beneficial to interview participants once they were nearing the end of the program (for instance, at the end of Phase 2 or in Phase 3 of the program; see Chapter 1 for a description of the phases). We interviewed six of the eight graduates of the program; these interviews were conducted during Phase 3 of the program or just after graduation. We also interviewed two of these graduates when they were at an earlier stage in the program. The remaining two graduates did not respond to our request for interview. We also interviewed two participants in the middle and late stage of the program and two former participants who were in prison, after they had their orders cancelled.

The interviews were conducted in person at the court or other convenient location. As noted above, two participant interviews were conducted in the AMC. During the Omicron COVID wave, we also began to conduct interviews using video-conferencing or telephone. The

interviews were audio-recorded and transcribed. Thematic analysis of the interview data allowed general themes to be identified, with interviews coded according to the various themes. Observation notes took the form of open-ended hand-written fieldnotes, which are used here to supplement the interview analysis.

### 2.1.2 Survey of DASL participants

We conducted a survey of 20 DASL participants in early 2022. The survey included a series of questions on participants' satisfaction and experience with different elements of DASL and included space for open-ended comments.

### 2.1.3 Observations of DASL in operation

Observations of DASL in operation included sentencing hearings, case conferences between the relevant stakeholders, DASL hearings and graduations. Observations commenced in September 2020 and continued until March 2022. We attended court 18 times on 16 separate days, generally for half a day each time.<sup>35</sup> During our observations, we sat in on case conferences, check-in hearings, mentions, sentencing, the cancellation of orders, and other hearings. We also observed seven graduations and five case progressions.

### 2.1.4 DASL administrative data

DASL administrative data used in the evaluations included information on referrals, case progression and graduations. This also includes an analysis of case status reports produced by the Court each week; this information was used to document a participant's progress over the course of their DATO. The DASL administrative data included general data on case status and progression. A unique element of this evaluation is that it also includes an analysis of the weekly status reports produced by the TOT, prior to each participant's appearance at court. Each week, the DASL co-ordinator compiles a status report for each participant who will be in court for a check-in hearing that week. The reports include information about a participant's progress, a brief update from the Health case manager, the Community Corrections case manager, and the results of urinalysis. The reports are used in case conferences, prior to court, where the TOT discusses the progress of each participant. After court, the reports are updated to include any relevant outcomes (for instance, if sanctions or rewards are applied). These reports seem to be generally used as a case management tool and were not designed for ongoing data collection or evaluation. As such, it took significant time to enter and recode the data, in order to be able to conduct our analysis. The evaluation team spent approximately 90 hours converting the status reports into data that could be systematically organised, entered and cleaned to be able to be analysed. We therefore make some recommendations about ways to simplify the collection of this information, in order to facilitate ongoing evaluation.

---

<sup>35</sup> Two members of the research team attended together on two occasions, to compare their observations and triangulate the data.

2.1.5 Court documents, including judgments and judicial remarks at graduation ceremonies  
Cases were initially identified by a search of the Australasian Legal Information Institute (AustLII), using the Noteup function for all relevant legislative provisions, as well as the search terms ‘drug and alcohol sentencing list’, ‘drug and alcohol treatment order\*’, ‘DASL’ and ‘DATO\*’. From March 2021, the Supreme Court librarian forwarded all relevant cases to the evaluation team, as they became available. In total, the evaluation team examined 64 relevant cases delivered between January 2020 and April 2022. In April 2022, the DASL associate also provided copies of 46 uncorrected transcripts that were yet to be finalised as judgments. These transcripts are subject to editing and possible correction before publication.

2.1.6 Relevant legislation, Hansard and the ACT Inquiry into Community Corrections

In June 2021, the ACT Legislative Assembly Justice and Community Safety Committee commenced an inquiry into community corrections. The terms of reference for the inquiry are very broad and include ‘hearing from as many people as possible about what is working well in community corrections, and what can be improved, in the following areas:...Drug and alcohol treatment orders’.<sup>36</sup> The Committee received 29 submissions. On 16 and 17 February and 16 March 2022, the Committee heard evidence in relation to the community corrections inquiry.<sup>37</sup> The evaluation team reviewed all submissions and evidence before the Committee in relation to DATOs and/or DASL.

2.1.7 ACT Health administrative data

We analysed the regular drug screening and wellbeing tools administered by ACT Health to participants, using two well-established tools: the Australian Treatment Outcomes Profile (ATOP) and Texas Christian University Drug Screen 5 (TCU-5). These are self-reported instruments that capture participants’ psychological health, physical health and quality of life, as well as the severity of their drug use.

2.1.8 ACT Policing data

This information includes, at an aggregate level, DASL participants’ arrest records before, during and, where relevant, post-DASL. This information is disaggregated by participants’ age, gender and Indigenous status, as well as the type and frequency of offending.

---

<sup>36</sup> Legislative Assembly for the ACT (2021). *Inquiry into Community Corrections – Terms of Reference* [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0007/1780387/ToR-JCS-Community-Corrections.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/1780387/ToR-JCS-Community-Corrections.pdf).

<sup>37</sup> Professor Bartels gave evidence twice before the Committee, but this was principally focused on issues other than DASL.

### 2.2 Conclusion

This chapter has outlined our research design and the sources of our data for conducting the process and outcome evaluation report. What follows in the remainder of this report is divided into three parts.

Part 1 reports on our process evaluation, considering aspects of the development and implementation of DASL. Data are drawn from our initial period of data collection, from 2020 to March 2021 and follow-up data collection from 2021 to March 2022. Chapter 3 presents basic descriptive information about the first two years of the DASL program, including case status, case progression and characteristics of the DASL cohort. Chapter 4 explores the pathways into DASL, including referrals, eligibility, suitability, and sentencing. Chapter 5 considers the interdisciplinary operation of DASL, both among members of the TOT and the wider circle of AOD service providers. Chapter 6 presents data about DASL in practice, exploring the experiences of the DASL participants and stakeholders regarding the operation of the different stages of the program. This includes the behavioural contract, treatment and support, areas where more support is needed, communication from the bench, and graduations and other markers of progress.

Part 2 comprises the outcome evaluation, including administrative data from 2020 to 2022 and primary data collection from 2021 to 2022. Chapter 7 describes the four outcome indicators used in this study. Chapter 8 considers in-program outcomes, including a comparative analysis of cancelled and completed cases, the results of a survey of DASL participants, an analysis of administrative data from ACT Health and the Court, and an estimation of costs saved by not incarcerating people who are sentenced to a DATO. Chapter 9 considers social integration outcomes, drawing on data from ACT Health and interviews with participants and other stakeholders. Chapter 10 presents a recidivism analysis of DASL participants. Chapter 11 considers the extent to which the program complies with TJ principles. Here, we return to some of the results of the process evaluation, to assess DASL's fidelity to best practice principles and standards.

Part 3 considers relevant legislation, case law, and other relevant documents in relation to DASL.

Our conclusion presents the recommendations arising out of this research and provides an update, where relevant, about the status of these recommendations.

We also include a series of brief case studies throughout the report, to illustrate the diversity of backgrounds and challenges that participants face, as well as their progress and development during their DATO. Some details in the case studies have been changed, to protect DASL participants' anonymity.

# Part I: Process Evaluation

### 3 Profile of DASL Cases

The DASL program began accepting referrals on 3 December 2019. The flow of cases was impacted by the COVID-19 pandemic, as new referrals were not accepted between approximately April and August 2020. One reason for this was that capacity was extremely limited in detoxification programs and residential rehabilitation at this time.

Cases are referred to DASL commonly through a sentencing magistrate or judge, though potential cases are often brought to the attention of the Court by Legal Aid or private solicitors. Since the opening of the list, there have been 106 people referred for a DATO. A small number were immediately deemed ineligible, due to having warrants out or similar, while 102 were sent for suitability assessment. As at 31 March 2022, there had been 56 DATOs imposed.<sup>38</sup>

As set out in Table 1, from the beginning of the program in December 2019 to 31 March 2022, there were:

- eight graduations (14%);
- three completions (ie, people who finished their DATO, but had not yet progressed through all the stages by the end of their DATO)<sup>39</sup> (5%);
- 15 cancellations (27%); and
- 30 active cases (54%).

Of the active cases, 20 people (67%) were in Phase 1 of the program, six (20%) were in Phase 2 and five people (17%) were in Phase 3 of the program. This reflects a large number of referrals that came in at the end of 2021. With 30 active cases, the list is now considered to be full. We note that it was initially envisaged that, at full capacity, the program would be able to take 35 participants. However, due to staffing pressures, the TOT has since determined that 30 is a more realistic case load. Accordingly, in late February 2022, the Court stopped taking new referrals.<sup>40</sup> We are aware that some participants have recently joined the program, having been referred earlier in the year. This reflects the time it takes for the suitability assessment to be completed.

---

<sup>38</sup> The evaluation team is aware of at least three DATOs that have been imposed since this date, but 31 March was selected as the cut-off date, to allow a month for data cleaning and analysis.

<sup>39</sup> For a variety of reasons, these participants' progress through DASL was substantively different from the graduates' progress.

<sup>40</sup> See Supreme Court of the ACT (2022, February 22). *Notice to Practitioners: Drug and Alcohol, Sentencing List – Pause on New Referrals*. [https://www.courts.act.gov.au/data/assets/pdf\\_file/0003/1954740/Notice-to-Practitioners-Drug-and-Alcohol-Sentencing-List-Pause-on-new-referrals.pdf](https://www.courts.act.gov.au/data/assets/pdf_file/0003/1954740/Notice-to-Practitioners-Drug-and-Alcohol-Sentencing-List-Pause-on-new-referrals.pdf).

Table 1. Progression through DASL, 2020–March 2022

Stage in program	Number of cases
Referrals	106
Sent for suitability assessment	102
Sentenced to DATO	56
Active cases (as at 31 March 2022)	30
<b>Phase 1</b>	20
<b>Phase 2</b>	6
<b>Phase 3</b>	4
Graduations	8
Completions	3
Cancellations	15

Source: DASL program data

Table 2 sets out the number of admissions to the program, by year of imposition. It is of course acknowledged that there have been lockdowns running for about the same period in each full year of DASL’s operation to date (April–June 2020 and August–October 2021). During the 2020 lockdown, DASL did not accept any new participants. During the 2021 lockdown, by contrast, new participants were admitted, as the program was more established by that stage and there was greater awareness of it across the ACT community.

Table 2. DATOs imposed, by year, 2020–March 2022

Year imposed	Number of cases
2020	20
2021	29
2022 (to 31 March)	7
<b>Total</b>	<b>56</b>

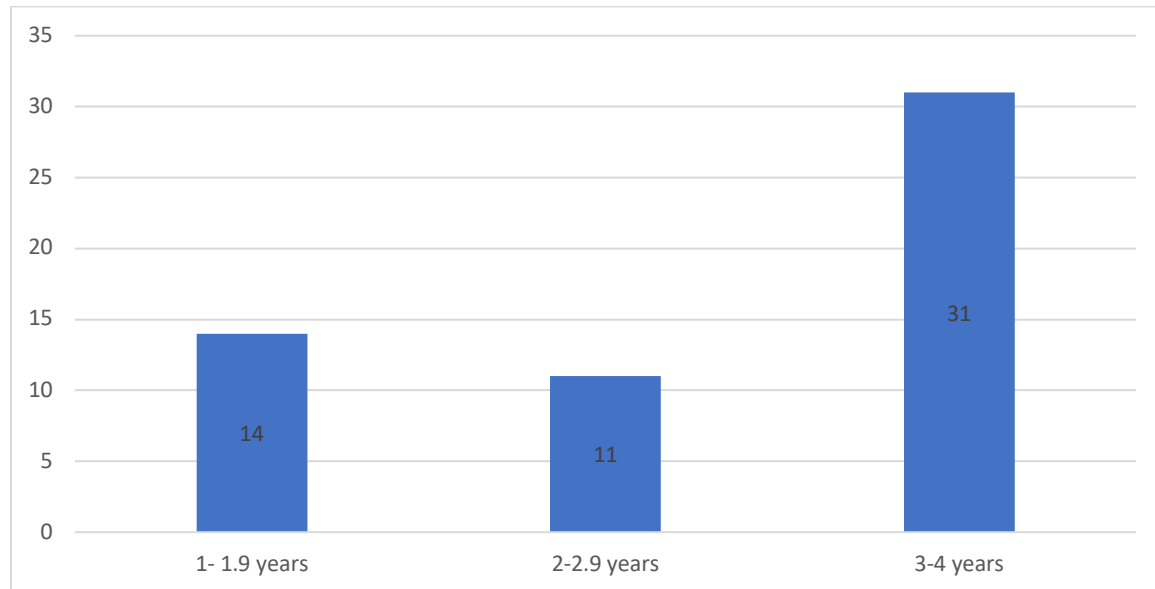
Source: DASL program data

### 3.1 Sentence and DATO Length

Across the whole cohort, people referred to DASL were sentenced to between 13 months and four years for their head sentence – that is, nearly running the whole spectrum of eligible sentence lengths. The mean sentence was 2.87 years (standard deviation (SD) 1.03). Sentence length was not evenly distributed across the cohort, with 14 people (25%) receiving a sentence of under two years, 11 people receiving sentences of 2–3 years (20%) and 31 people (55%) receiving sentences of 3–4 years (see [Figure 1](#)). In fact, 19 people (34% of all DASL

participants) received sentences between three years and nine months and four years – the very upper limit of sentences eligible for a DATO. The fact that sentences were skewed toward longer periods suggests that the offences that bring people into DASL are on the more serious end of the spectrum.

*Figure 1. Sentence length distribution, DASL participants, 2020–March 2022*



*Source: DASL program data*

We also examined the average sentences for DASL participants, across Year 1 and 2 of the program (Table 3). In 2019/20, the average sentence was 2.59 years (SD 1.07). In 2021/22, the average sentence was 3.02 (SD 0.99). This means that sentences appeared to be longer in 2021/22, compared to 2019/20. In 2019/20, six out of 20 of sentences (30%) were between three years and nine months and four years, compared with 13 out of 36 (36%) in 2021/22.

*Table 3. Sentence length (years), by year imposed, for DASL participants, 2020– March 2022*

Sentence length	Min	Max	Average	Median	SD
Whole cohort (N=56)	1.12	4	2.87	3.08	1.03
2019/20 cohort (N=20)	1.12	4	2.59	2.25	1.07
2021/22 cohort (N=36)	1.12	4	3.02	3.42	0.99

*Source: DASL program data*

DATOs were originally envisioned to last between 12 and 18 months. Towards the end of Year 1 of DASL, it was recognised by the Court and the TOT that many participants would require more time to complete all of the phases. At that point, the length of DATOs began to increase. Overall, DATOs ranged between one and three years, with an average of 1.57 years (SD 0.48). When analysed by year of imposition, one can see from Table 4 that the length of



DATOs has increased significantly. In 2020, the average DATO length was 1.23 years (SD 0.3); in 2021/22, it increased to 1.75 (SD 0.46).

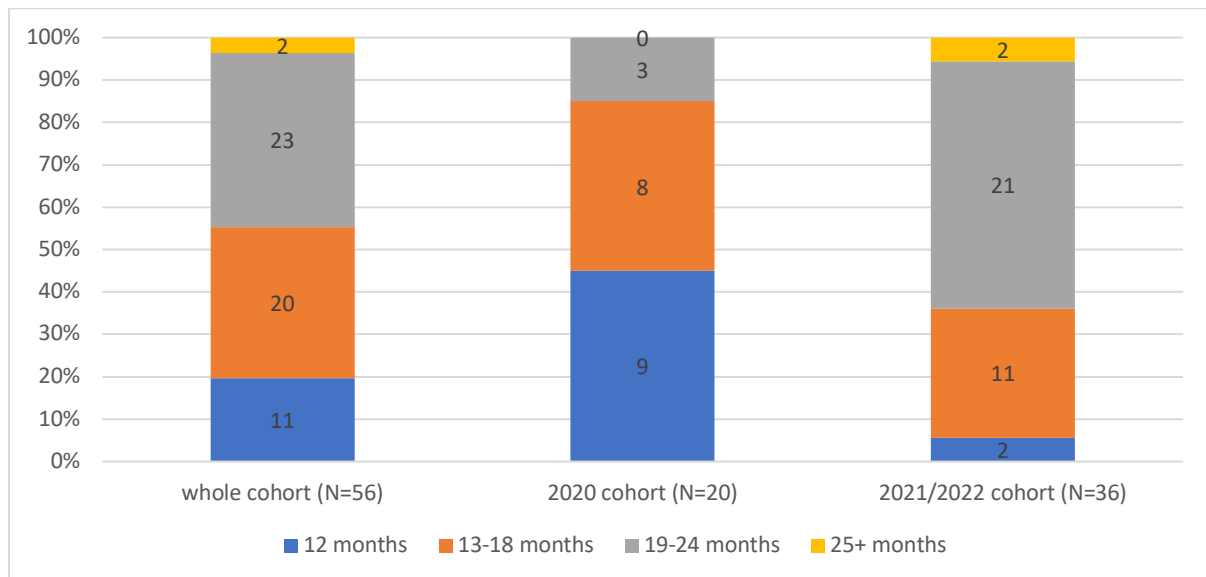
Table 4. DATO length (years), by year imposed, DASL participants, 2020–March 2022

DATO length	Min	Max	Average	Median	SD
Whole cohort (N=56)	1	3	1.57	1.5	0.48
2019/20 cohort (N=20)	1	2	1.23	1.07	0.3
2021/22 cohort (N=36)	1	3	1.75	2	0.46

Source: DASL program data

The frequency chart (Figure 2) provides a visual of this shift in DATO lengths. In 2019/20, most DATOs were for 12 months (n=9) or between 13 and 18 months (n=8). By 2021/22, the majority of DATOs (n=21) were between 19 and 24 months. This could signal a shift in seriousness or complexity of the client base over time. It could also suggest a recognition that 12 months is not a long enough period to engage deeply in a recovery program.

Figure 2. Distribution of DATO lengths, 2020–March 2022



Source: DASL program data

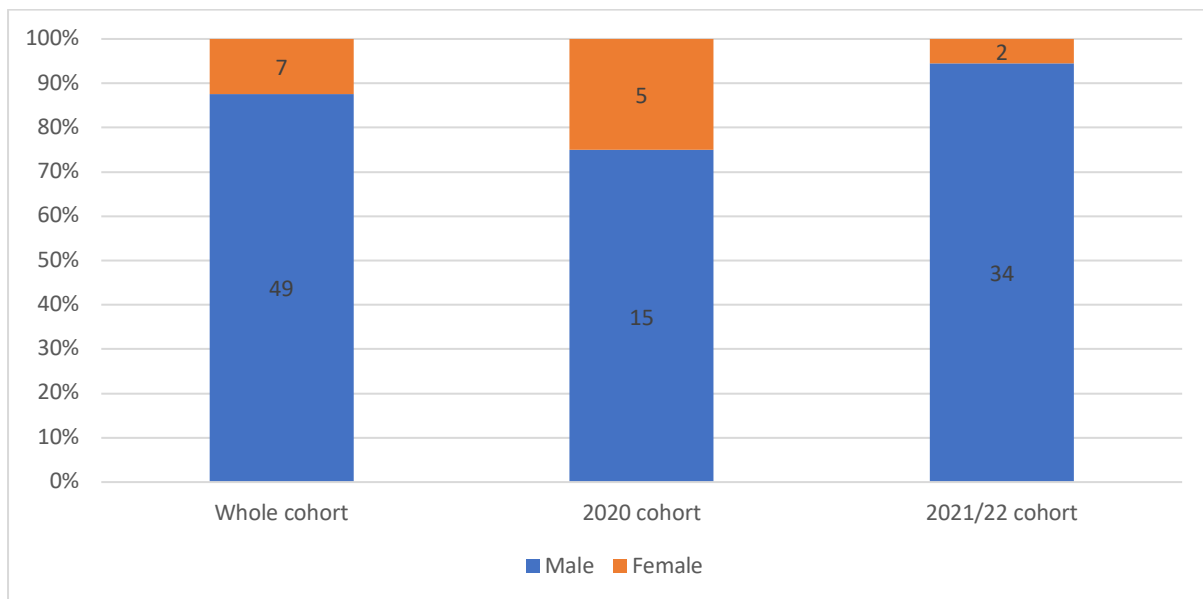
### 3.2 Participant Demographics

#### 3.2.1 Gender

Across the life of the program, women have made up 12.5% of all DASL participants (seven out of 56; see Figure 3). However, this number is skewed by the larger number of women who were referred in Year 1 of the program. In fact, women comprised five of the first seven referrals into the program, in its first two months of operation. Since that period, however, only two additional women have received DATOs. This means that, in 2021/22, women

accounted for only 6% of DASL participants.

Figure 3. Gender distribution, across DASL and by year, 2020–March 2022



Source: DASL program data

Table 5 sets out the proportion of finalised defendants in the ACT courts in 2019/20 and 2021/22 who were female.<sup>41</sup> The figure for the Magistrates Court is broadly similar to the overall figure, because about 90% of all matters are finalised there. As Table 5 demonstrates, women are a minority across the system, but especially at the Supreme Court level. The figure for 2019/20 appears to be atypical, with longer-term data indicating that the average and median proportion of women finalised in the Supreme Court from 2010/11 to 2020/21 was 11%. The reasons for more women than usual being finalised in the Supreme Court in 2019/20 are unclear, but this likely explains the comparatively high number of early female participants in DASL. This also suggests that relatively few women are likely to be eligible to participate in DASL, as they only account for about 11% of the Supreme Court's entire caseload.

Table 5. Female defendants, as % of all finalised defendants, by year and court level

Female defendants	2019/20	2021/22
All courts	19%	17%
Supreme Court	16%	9%
Magistrates Court	19%	17%

Source: ABS 2022b

The DASL judge has expressed a desire to sentence more women to a DATO, but remarked

<sup>41</sup> ABS (2022). Criminal Courts Australia, 2020-21. Table 51.

'I'm very dependent upon referrals'. In its submission to the Inquiry into Community Corrections, ACT Council for Social Services (ACTCOSS) expressed concern that restricting DASL to sentences of at least one year 'especially affects women who are more likely to have shorter sentences'.<sup>42</sup> Although specific data on sentence length and gender are not available for the ACT, the data above support this assertion.

In its submission, ATODA, recommended 'ensuring equitable access for women'. The Chief Executive Officer (CEO) of ATODA commented on this issue:

Broadly, I think we should be extending the eligibility and participation of people, including making sure that more women are going through it – women across Australia are the largest growth area in our prison population, which I think is something we want to avoid...<sup>43</sup>

One of the submissions before the ACT Community Corrections Inquiry was from The Farm at Galong,<sup>44</sup> which supports women with AOD issues. Although DATOs were not expressly mentioned, the submission commented on the need for funding and more support for women with AOD issues.

Finally, at the inquiry, A Gender Agenda highlighted the risks that transgender, gender-diverse and intersex (TGI) people face in prison and the need to pursue alternatives, such as DATOs.<sup>45</sup> However, A Gender Agenda also noted that TGI people may not take up such options, because residential facilities are gendered, and they may therefore avoid treatment options.<sup>46</sup> This issue was not raised with us by any stakeholders and we do not suggest that there is any evidence to indicate that TGI people might experience disadvantage or discrimination in the program. Nevertheless, we recognise that there may be a perception among members of the TGI community that DASL may not be appropriate. We therefore suggest that the TOT liaise with A Gender Agenda to determine the steps that might be taken to support any prospective or current TGI participants.

#### 3.2.2 Age

The age of DASL participants ranged from 20 to 50 years, and the average was 32.1 years across the entire cohort (SD 7.5). Between 2019/20 and 2021/22, the average age increased from 30.3 to 33.2 years (see Table 6). [Figure 4](#) shows the frequencies of different age groups across the program, demonstrating that all participants over the age of 40 joined the program

---

<sup>42</sup> ACTCOSS, n 17, 13.

<sup>43</sup> Bowles, D. (2022, February 16). Chief Executive Officer (CEO), Alcohol Tobacco and Other Drug Association ACT (ATODA). ACT Legislative Assembly, *Hansard* <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf> 24.

<sup>44</sup> The Farm in Galong (2021). *Inquiry into Community Corrections*, Submission 10.

<sup>45</sup> A Gender Agenda (2021). *Inquiry into Community Corrections*, Submission 20.

<sup>46</sup> Shoring, J. (2022, February 16). Acting Executive Director of A Gender Agenda. ACT Legislative Assembly, *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf>.

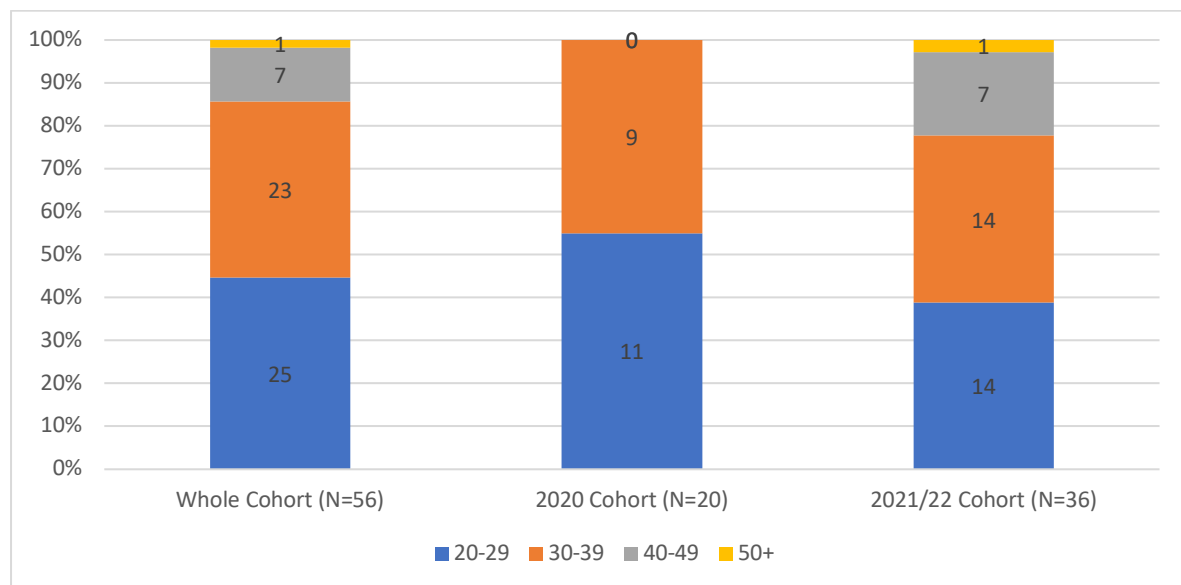
in 2021/22. Over the course of the program, participants are older, on average, which may reflect the longer sentences discussed above and/or their more serious offences.

Table 6. Age of DASL participants, by year of imposition, 2020–March 2022

Age of DASL participants	Min	Max	Average	Median	SD
Whole cohort (N=56)	20.2	50.0	32.1	30.4	7.5
2019/20 cohort (N=20)	20.2	38.8	30.3	28.8	6.1
2021/22 cohort (N=36)	20.3	50.0	33.2	31.4	8.0

Source: DASL program data

Figure 4. Age distribution, by year of imposition, 2020–March 2022



Source: DASL program data

### 3.2.3 Indigenous status

The Court does not collect information on participants’ Indigenous status and, as such, this information was not consistently included in the administrative data. The evaluation team was able to identify Indigenous status, based on pre-sentence reports and assessments prepared by Corrections and Health and by examining the judgments. A few participants were identified in the reports as not Indigenous, but there was other information that suggested they were Indigenous. There was also at least one note that a participant was Indigenous, but did not want to be identified as such in their record. This highlights some of the complexities of capturing such demographic data and also the need for integrating a culturally-appropriate approach for all participants.

To the best of our abilities to identify participants' Indigenous status, 30% of the DASL cohort (n=17) were Indigenous, while 39 (70%) were not. Unlike with age and gender, there was no change in the proportion of Indigenous participants in 2019/20, compared to 2021/22; in both cohorts, 30% of the participants were Indigenous. This is slightly higher than the representation in the AMC; in 2020 and 2021, Indigenous people made up between 23% and 27% of the total population in the AMC.<sup>47</sup> This suggests that the program is, in the first instance, serving to divert some Indigenous people away from custody.

However, the Tjillari Justice Aboriginal Corporation noted in its submission that, due to the relatively small list, DASL 'is not an alternative to incarceration for Aboriginal offenders'.<sup>48</sup> The submission went on to note that:

The requirements to be placed on this type of order include the need to plead guilty to the offences before the Court and it has been reported that some people feel pressured to plead guilty for offences they believe they did not commit by their legal representatives. Rigidity of the conditions for someone who has been using and the wrap around services can be seen as a 'Community Prison'.<sup>49</sup>

We recognise the wisdom in these comments and consider the challenges facing the inclusion of Indigenous participants in Chapter 8.

### 3.3 Key Addiction Issues

All of the DASL participants were clearly demonstrated to have significant substance abuse issues, with alcohol and drug use beginning at an early age, often in the teenage years, but occasionally even younger.<sup>50</sup> Unsurprisingly, participants were commonly identified as having substance use disorder and their drug use was generally identified as directly related to their offending. Common drugs identified were methamphetamine; opioid-class drugs (heroin and some pain medications); cannabis; benzodiazepines; and alcohol. Poly-substance use was common. Although many participants had issues with alcohol, no participants were involved exclusively in relation to their alcohol use. There was a pattern of significant difficulty in abstaining from drug use, with mixed experience of past attempts at rehabilitation, ranging from very limited attempts, through to past participation in the NSW Drug Court program and successful participation in the Solaris program in the AMC.

---

<sup>47</sup> ABS (2022). *Corrective Services, Australia – December 2021*. We recognise that only about 60% of these people were sentenced and therefore eligible to participate in DASL: see ABS (2020). *Prisoners in Australia, 2020*; ABS (2021). *Prisoners in Australia, 2021*.

<sup>48</sup> Tjillari Aboriginal Justice Corporation (2021). *Inquiry into Community Corrections*, Submission 25, 1.

<sup>49</sup> *Ibid*, 1–2.

<sup>50</sup> Information on addiction and other key issues was drawn from a detailed content analysis of 27 judgements in 2020 and 2021, as part of the process evaluation.

#### 3.4 Other Key Issues

Examination of participants' personal circumstances revealed widespread reference to complex mental health conditions, including depression, anxiety, psychosis, attention deficit hyperactivity disorder, foetal alcohol spectrum disorder, post-traumatic stress disorder, borderline personality disorder, self-harm and suicide attempts. Another common theme was participants' troubled childhoods, including instability and separation from parents, family violence, the death of family members, early introduction to drugs by family members, and disengagement from education. The lack of stable housing and/or employment was another common feature of many participants' lives. Many participants had experienced troubled intimate partner relationships, including family violence, and several had had their children removed to state care and/or were not as active in their children's lives as they wanted to be. Re-engagement with their children was often stated as a strong motivation for participation in the program and drug rehabilitation more generally. In many cases, there was evidence at the time of sentencing of participants' insight into their issues, including recognition of the wrong of their offending or showing a desire to fulfil goals. Conversely, in some cases there was also ambivalence towards a DATO or evidence of lying/trying to avoid the DATO's requirements.

#### 3.5 Conclusion

It appears that the program is generally reaching its target cohort. In the period under evaluation, the sentence length of DASL participants has increased slightly and the length of their DATOs has increased substantially. This could signal a shift in the seriousness or complexity of the client base over time. It could also suggest a recognition that 12 months is not a long enough period to engage deeply in a recovery program. The proportion of women in the DASL program across this period (12.5%) is roughly proportional to the number of women whose cases are finalised in the Supreme Court (11%). However, this number is skewed by the larger number of women who were referred in Year 1 of the program. In the second year of the program, women accounted for only 6% of DASL participants. DASL participants were on average 32 years old and, in Year 2 of the program, were slightly older than in Year 1. Approximately 30% of the DASL cohort were Indigenous. Unlike with age and gender, there was no change in the proportion of Indigenous participants in 2021/222, compared with 2019/20. This suggests that the program is, in the first instance, serving to divert some Indigenous people away from custody. DASL participants have clear substance use issues and report both complex histories and a range of other criminogenic needs that are well-suited to the therapeutic, holistic approach that a drug court offers.

## Case Study 1

Mr U was in his late 20s when he received a sentence of nearly two years, with a 14-month DATO. He was sentenced to a DATO after breaching an earlier order, which included a sentence for inflicting grievous bodily harm.

Mr U's breach involved the use of methamphetamine, which he had started using at the age of 21, and he used up to 1 gram daily. He had sometimes returned positive urine tests in custody, but then participated in rehabilitation programs and then returned negative tests.

He had a happy childhood, left school after Year 10 and began an apprenticeship as a chef. He has a close relationship with his father, little contact with a sibling who lived nearby and was significantly affected by his mother's death a few years ago.

Mr U's offending appeared to be linked with his relationship with his former partner, who was his co-offender. He had since commenced a new relationship, but this was marred by domestic violence. Although Mr U said that he wanted to be a positive role model for his children, at the time he entered the program, they were in the care and protection system.

During his participation in DASL, Mr U experienced some issues and his DATO was extended. Despite this, he successfully completed the program and, by the time of his graduation, had regained parental responsibility for his children from Child and Youth Protection Services.

## 4 Pathways into DASL

### 4.1 Referral and Assessment

After the indication or entry of a plea of guilty, a defendant (or their legal representative) or the DPP may apply for the defendant to be sentenced to a DATO.

Once a defendant applies to be sentenced to a DATO, they undergo a threshold eligibility assessment, usually while they are remanded in custody. Eligibility is determined by the Court, pursuant to s 12A(1) of the Act. To be eligible, a potential participant must:

- be over 18 years and live in the ACT;
- have entered or indicated a guilty plea;
- receive a sentence of imprisonment of between one and four years;
- have no other sentencing orders in place;
- be dependent on alcohol or a controlled drug;
- give informed consent to the order being made; and
- not have committed a serious violence offence or a sexual offence.

Eligibility is generally determined by the Court in a matter of days, though they usually request a screening report from ACT Health.

If satisfied of a potential participant's eligibility for a DATO, the Court will order a full suitability assessment. There appears to be a preference for potential participants to be on bail and in the community for this assessment; in practice, however, most are in custody during this period. If the potential participant is in the community, the assessment period is six weeks, or four weeks if they are in custody.<sup>51</sup>

A potential participant is assessed by ACTCS and ACT Health and each prepares a separate report for the Court and the TOT. The report provides an assessment of suitability, a proposed treatment program to address aspects of a participant's rehabilitation that each agency would supervise or coordinate, and the participant's signed consent to participate in the treatment program.

Based on our interviews, it appears that most defendants hear about DASL from their legal representative. In other instances, a potential case may be identified by a magistrate or judge and sent to the DASL team for consideration. One participant reported that they had heard about DASL from another detainee at the AMC. All participants reported an enthusiasm and willingness to take part in the program upon first learning of it. One participant thought that 'it was a great idea' that would 'keep us accountable,' provide them with counselling and support, and also get them out of prison. Participants repeatedly referred to feeling 'ready' for drug court, and that this in part motivated their actions:

---

<sup>51</sup> ACT Supreme Court (nd). *Behavioural Contract Protocol*. <https://www.courts.act.gov.au/supreme/law-and-practice/criminal/drug-and-alcohol-sentencing-list>.



I was confident that it was either gaol or this drug court... Basically, [I] just knew that me sitting in gaol wasn't the person that I was, and I basically was sort of shocked that I was sitting in a gaol cell. I'm ready to make a change. Anything that would get me out of that life.

We are not in a position to evaluate the clinical appropriateness of the assessment tools or the treatment provided. However, participants reported positive initial interactions with the TOT, in particular case-workers from Canberra Health Services and ACTCS. They recalled their initial assessment meetings with these stakeholders as comprehensive and respectful and largely agreed with the treatment plans proposed.

From the participants' perspective, the initial steps towards a DATO were relatively straightforward. From the perspective of the various professional stakeholders we interviewed, by contrast, the referral and assessment pathway operated less smoothly. Some professional stakeholders acknowledged that referrals tend to come from lawyers, magistrates, and judges, who were particularly knowledgeable and enthusiastic about the DASL. Initially, some team members suggested that referrals would increase, if there were more knowledge and support from the legal community: 'if you've got another lawyer who's super busy and doesn't know about the referral pathway, they're not going to look at referring to you. So, I think we're really missing the mark in the group we are seeing referred to us.' Another stakeholder commented: 'I think a lot of solicitors and counsel don't really know about DASL as a sentencing option.'

In our 2021 process evaluation, there was consistent feedback from professional stakeholders that a streamlined referral and assessment pathway would be beneficial. Two interviewees referred to the referral process as 'clunky', in terms of the movement from referral to assessment to sentence. Communication between DASL and other parts of the ACT Courts, including the Registry, could be improved and streamlined. As one stakeholder from the Health team noted, '[it's] a bit clunky sometimes in how the actual material reaches us....it makes sense that everyone just comes to the one judge, there's one pathway, it would just be one of those things that removes that extra bit of confusion'.

Numerous professional stakeholders indicated that an efficient pathway might involve referring courts conducting an eligibility assessment and then referring the case to the DASL judge, who would order the suitability assessment, sentence, and make the DATO. As another stakeholder commented:

it's actually a lot easier [to] just refer it to Drug Court and let [the DASL judge] deal with it. Because then oftentimes, we don't have the opportunities to communicate [with a sentencing judge]. [If] there's nuances about something, we just have to kind of write it in the report and hope they get it, whereas the whole structure of the Drug Court is there, so we can discuss it with [the DASL judge].

This touches on the unique collaborative component of DASL. Because the TOT meets in weekly case conferences to discuss each case with the DASL judge, complex details of a potential case can be discussed and resolved in conference. If a referral into DASL comes later in the process (for instance after a suitability assessment or sentence), then the TOT may experience challenges in developing a fully informed view of the case and what is needed to proceed.

In our follow-up on the referral process, as part of the 2022 outcome evaluation, the general feedback was that the referral process had improved somewhat. According to some members of the DASL team, legal practitioners are increasingly familiar with the process and it is becoming normalised within the legal community. As one stakeholder put it:

As that exposure and familiarity has increased, it's moulding into part of the normal structure of the courts as a whole. Especially as we see positive outcomes, it's seen as a good thing.

Referrals still come from a range of sources, including the Magistrate Court and other judges in the Supreme Court. Stakeholders reported an improved process, though there is still a need to further refine pathways and procedures. In recent months, a practice direction has been drafted by the DASL co-ordinator. This is likely to further improve the referral process. As described by one stakeholder:

The practice direction was intended to provide a step-by-step guide for practitioners, magistrates and judges, on how to approach the Drug and Alcohol Court, and how to appropriately refer someone for an eligibility screen. The quirky preferences of how that fits in with our legislative requirement, and our capacity as a court to entertain it, which is still being ironed out...and in the absence of the practice direction it's been an internal process of familiarising magistrates' associates and judges' associates, as to what our expected approach is.

This stakeholder noted that, 'from a Registry perspective, having a practice direction or a notifiable instrument or a bit of legislation which says "this is how it's done" works wonders'. This highlights the need for further clarification on the process for referring people into the program. We would support the dissemination of a practice direction, as a flexible and court-led means of achieving this.

DASL ceased taking new referrals in February 2022 and this has been communicated to the ACT legal profession.<sup>52</sup> Despite this, we became aware of one case, where a person pleaded guilty, so that he would be able to participate in DASL. He was then told that the program was at capacity and unable to accept any new participants. Accordingly, he reportedly believed he had missed an opportunity to maintain a not guilty plea. This highlights the need for clear

---

<sup>52</sup> Supreme Court of the ACT, n 40.

communication, when new referrals are not being accepted into DASL, so that defendants' legal rights are not adversely affected.

### 4.2 Eligibility

As noted above, unlike other drug courts, the ACT DASL sits in the Supreme Court and has a relatively serious threshold to entry. This can be seen as a benefit, in that it includes people with serious histories, who might not otherwise be given these opportunities. But, at the same time, this also means that a potentially large population of people whose offending is related to their drug and alcohol dependence are being overlooked. As one stakeholder put it:

What about the people who are going through and just picking up petty theft charges again and again and again and again? They're never really going to be given an opportunity until it hits serious crime, to get 12 months in the Supreme Court. I think we're kind of failing that population of people.

A judge involved with the program acknowledged this, noting that they would like to see the sentencing option extended to the Magistrates Court. This sentiment was echoed by stakeholders working in multiple areas.

In the Inquiry into Community Corrections, the issue of whether the eligibility criteria should be extended to the Magistrates Court was raised several times. In response to a question about broadening eligibility, the Attorney-General, Shane Rattenbury, commented:

Those...are exactly the sorts of things we want to flush out in the evaluation. Should the criteria be broader? Should we have more people eligible to enter into the sentencing list? Your question was about whether it should be available in the Magistrates Court. That was a design question right at the beginning of the process. It is a quite intensive process – a sentencing list – and the discussion at the time was about what level of offender should be subject to a treatment order. They are quite intensive, and potentially in the Magistrates Court you have people who are quite early in the system. Applying a full drug and alcohol treatment order on them could be described as overdoing it because of the intensity of the order.

THE CHAIR: Well, what better time to get them but early on?

Mr Rattenbury: That is exactly the alternative argument, Mr Cain, and that will be something that we will be looking at in the evaluation process. That is why it went into the Supreme Court. The view amongst the range of academics and experts who worked on setting it up was that we should emphasise our resources in some of those

more difficult cases, where the intensive treatment could really have an impact on someone who needed the more intensive consideration.<sup>53</sup>

A representative from ACTCS likewise acknowledged before the Inquiry that '[t]here are some restrictions around eligibility, of course, because the referrals have to come from the Supreme Court'.<sup>54</sup>

There was a general perception before the Committee that there would be value in extending the scope of the program. In its submission, Meridian called for eligibility for DATOs to be extended 'to include offenders sentenced to imprisonment for under 1 year'.<sup>55</sup> The submission from the Justice Reform Initiative likewise indicated its strong support for DASL and 'encourage[d] consideration to be given to the expansion of this program to the Children's and/or Magistrates Court, to ensure substance-related offending is dealt with appropriately'.<sup>56</sup>

The first recommendation in the submission from ATODA was to

[e]xtend the eligibility for drug and treatment orders to individuals with sentences of less than one year; extend eligibility to all individuals with comorbidities or ensure appropriate therapeutic alternatives are available; and ensure equitable access for women.<sup>57</sup>

The following comments in the Committee hearings are to similar effect:

Broadly, I think we should be extending the eligibility and participation of people, including making sure that more women are going through it—women across Australia are the largest growth area in our prison population, which I think is something we want to avoid—and also expanding it to people with sentences of less than a year.<sup>58</sup>

One issue that the Law Society would like to see as an aim, at least in the long term, is to extend the drug and alcohol list to include Magistrates Court matters being capable of being referred, rather than it applying only to Supreme Court matters. It seems to follow, as a matter of common sense, that a lot of people first get themselves into a

---

<sup>53</sup> Rattenbury, S. (2022, February 17). Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction. *Hansard*.

<https://www.hansard.act.gov.au/hansard/2021/comms/jacs13a.pdf> 109–110.

<sup>54</sup> Aloisi, B. (2022, February 16). Acting Assistant Commissioner, Community Corrections and Release Planning, ACT Corrective Services, Justice and Community Safety Directorate. *Hansard*.

<https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf> 3.

<sup>55</sup> Meridian (2021). *Inquiry into Community Corrections*, Submission 2, 4.

<sup>56</sup> JRI, n 17, 11. As noted above, two of the JRI's patrons have close involvement in the DASL and cannot therefore be regarded as objective on this issue.

<sup>57</sup> ATODA, n 18, 1.

<sup>58</sup> Bowles, n 43, 24.

little bit of trouble around drugs before they get themselves into a lot of trouble around drugs. Therefore, getting them at the earlier stages would be desirable, and diverting them at that stage, rather than waiting until they become somewhat habitual or serious offenders before we intervene and avail them of this intervention. In the long run, it would seem a better practice to try to treat those people and deal with them through the more intensive rehabilitation that is available through the drug and alcohol sentencing list, at that earlier stage, rather than waiting until they reach a more chronic level, both of their offending and of their addiction.<sup>59</sup>

The scheme, if effective, should be expanded to include offenders sentenced to imprisonment for under a year.<sup>60</sup>

In its submission, the ACT Sentence Administration Board

querie[d] whether the eligibility criteria of the Court need to be reviewed to enable the Court to operate at a greater scale given the number of offenders who offend largely due to long-standing substance abuse issues. The Board is currently managing the vast majority of these offenders, and in its experience the rehabilitation services are not at a scale and/or tailored adequately to support these offenders.<sup>61</sup>

ATODA also raised the relationship between the Therapeutic Care Court, which operates in the Magistrates Court, and DASL:

ATODA understands there are no specific pathways from the Therapeutic Care Court to the DASL, and that individuals accessing this court and who would benefit from AOD treatment are required to seek treatment like any member of the public. Given waiting times for residential care and the implication of delays for child wellbeing, it may be worth considering clear referral pathways between the Therapeutic Care Court and DASL or combining the Courts in order to facilitate timely access to treatment.<sup>62</sup>

It is possible that expanding the statutory minimum to less than one year would enable more people, especially women, to participate. However, it is important here to recognise that the international drug court movement, particularly in Australia, has focused its attention on the more serious end of the offending population, targeting drug-dependent offenders facing sentences of longer than one year (although other jurisdictions do not generally accept participants with sentences of over two years). There are several reasons why this has occurred. First, drug courts are expensive interventions, the cost of which is often weighed

---

<sup>59</sup> Kukulies-Smith, M. (2022, February 16). Chair, Criminal Law Committee, ACT Law Society. *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf> 47.

<sup>60</sup> ACTCOSS, n 17, 13.

<sup>61</sup> ACT Sentence Administration Board, n 17, 6.

<sup>62</sup> ATODA, n 18, 3.

against the likely return on investment from the prevention of re-offending or savings in prison days (see Chapter 8). These calculations are often made on short-to-medium term indicators, and rarely consider the much longer term and wider societal benefits of drug treatment. Second, there are important natural justice considerations, such that courts can only reasonably mandate treatment for lengths and levels of intensity that are commensurate with the severity or length of the original sentence. As most drug court evaluations have indicated a need for participation and treatment of about 18–24 months, this has precluded consideration of offenders facing sentences shorter than one year. The challenge, of course, is that, early in the drug-crime cycle, a person’s treatment needs are often greater than a short sentence can reasonably address. Accordingly, potential participants, for whom the longest-term benefits might accrue, are excluded.

In this evaluation, we have heard that DASL should both facilitate ‘longer orders’ – with our data indicating that reductions in drug use does not occur until participants have been on the program for 9–12 months – *and* be inclusive of those facing shorter sentences. For the reasons mentioned above, these two objectives are difficult to achieve without alternative DASL pathways or some form of intermediate DASL-style program, such as the Magistrates Early Referral into Treatment (MERIT) program,<sup>63</sup> which operates in NSW, or the Court Integrated Services Program (CISP) in Victoria.<sup>64</sup> Both of these are bail support programs that have been shown to address substance use issues, be cost-effective and reduce re-offending.<sup>65</sup> Such options should be widely discussed and debated, including hybrid pathways through DASL and into post-sentence treatment that is a condition of probation or voluntary. The benefit of early treatment engagement and exposure to multiple episodes of treatment should not be overlooked.

### 4.3 Suitability

As we discussed above, once a referral is made, the matter is either committed to the Supreme Court from the Magistrates Court or is listed by the Supreme Court. If the potential participant meets the eligibility criteria, then a suitability assessment is ordered by the Court. The suitability assessment is more in-depth and is conducted by team members from ACT Health and ACTCS. If assessed as suitable, members of the Health team propose a treatment plan, to address relevant aspects of the prospective participant’s rehabilitation. This process also requires written consent from a participant to take part in a DATO. Suitability assessment

---

<sup>63</sup> Local Court NSW (nd). *Magistrates Early Referral into Treatment (MERIT) Program*. <https://localcourt.nsw.gov.au/local-court/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html>.

<sup>64</sup> Magistrates’ Court of Victoria (nd). *Bail support (CISP)*. <https://www.mcv.vic.gov.au/find-support/bail-support-cisp>.

<sup>65</sup> See eg NSW Department of Health (2007). *The Magistrates Early Referral Into Treatment (MERIT) Program: Health Outcomes*; Lulham, R. (2009). *The Magistrates Early Referral Into Treatment Program: Impact of Program Participation on Re-offending by Defendants with a Drug Use Problem*. NSW Bureau of Crime Statistics and Research; Victorian Department of Justice (2010). *Court Integrated Services Program: Tackling the Causes of Crime – Executive Summary Evaluation Report*.

reports are presented to the Court and discussed by the TOT. If a consensus is reached that a potential participant is suitable, they are sentenced to a DATO and become part of the DASL program.

### 4.3.1 Accessing detainees in the AMC

Stakeholders reported that this procedure appears to be working relatively well, though they noted a few challenges. The first is COVID-related – the staff who conduct suitability assessments have experienced problems accessing detainees at the AMC, in order to conduct interviews. This has resulted in some delays, which potentially increases the time in custody, before a DASL is ordered. As one stakeholder explained:

There's been a lot of backlog associated with COVID, because the AMC is making it really hard for the assessors to get in contact with those potential participants. And as a result, my role is to always extend the time that they have to complete the report, but that is also extending out when they're being sentenced, and how long they're staying in custody.

The delays to these assessments have created challenges for the program. This is likely to have improved, as the AMC has opened up to visitors, but the potential for delays will remain, as long as assessors need to meet with detainees, in order to conduct suitability assessments. Adequate resourcing is therefore required to minimise delays.

### 4.3.2 Housing

Second, and more significantly, the team is regularly running into a series of problems around potential participants who are experiencing homelessness. It is not an eligibility requirement that participants have housing. However, the team agrees that someone on a DATO needs suitable accommodation, in order to benefit from the program and, as such, people without stable accommodation are not likely to meet the suitability requirements. As one stakeholder observed:

A lot of the assessments are coming back unsuitable at the moment, because we just don't have the places or the housing for potential participants. And, as a result, then they go back to regular sentencing.

In the past year, there have been a number of referrals, where a potential participant would have been suitable and would clearly have benefitted from a DASL, except for the lack of available housing. This challenge is described in detail by the DASL judge:

I start from the premise that the Court ought not to be any more discriminatory than the rules provide. I'm told that some drug courts will not admit a participant who doesn't have stable accommodation. We don't have that rule. And we're lucky that both Justice Housing and CRS (Canberra Recovery Services) do have some capacity for housing post-residential treatment. But there are some who fall through the cracks...

But we are coming to the stage – for instance, Mr X today was someone who was homeless, and the recommendation would have come that unless he had a place to live he would not be suitable. I'm troubled by that. That he was going into a day program rather than a residential program meant that he was actually properly a matter of unsuitability, because if you're homeless you can't do a day program. But if you're homeless, and I've got a place at CRS or Karralika or Arcadia, then I'm prepared to have a go and see if we can work out the homelessness on the way. But that becomes difficult if we don't work it out. And at the moment, the list ordinarily is years long, literally years long. And I can't justify putting a criminal above a single mum, you know? So, it's very difficult. But it does undermine the integrity and the success of the program, and that's not good for the community. Now, if only governments would...actually do something about social housing. Even if they double what they're doing now there would still be people falling through the cracks, but I'd feel much more comfortable about saying these people don't need to fall in the cracks, and need to be helped now, because this program is valuable to the whole community as well as them. So homelessness is a challenge. We're managing it, but I can see big lights coming up as a problem.

If residential treatment is recommended as a part of an order, this provides a temporary solution, and allows a DATO to be ordered. This is because some of the facilities have implemented transitional housing for people coming out of rehabilitation. This provides a partial solution, as one stakeholder noted:

So everywhere is full, all the hostels are full, temporary accommodation is full, there's no options whatsoever. CRS, thankfully, has developed a transitional accommodation program, and the guys who do rehab can go into that accommodation.

While this has been an effective strategy the team has used to enable participation in a DASL, it does not solve some of the longer-term problems with housing in the ACT. As one stakeholder put it:

I think if you're homeless, you shouldn't get on the program. We're setting them up to fail then, because we're saying 'do 12 months, 18 months of this really intensive program, we'll put you in residential rehab, oh, and then we're going to exit you to homelessness. But we'll expect you not to use'. I don't know if we're going to manage to get them housing. It's just predominantly, if you're male and you've got no dependents, it's 10 years probably plus. They're not a priority. And I think, without stable accommodation, if you look at your hierarchy of needs – you can't grow without something over your head.

Several cases raised issues in relation to housing. For example, in one case, the fact that the applicant would be housed in residential rehabilitation facility was deemed a special circumstance justifying the grant of bail in *R v Dowling (No 1)* [2020] ACTSC 374. In a decision



which is yet to be published, the participant was homeless, prior to entering the program. In deciding to impose a DATO, Refshauge AJ made the following comments at page 18:

In the first place, if he is admitted to the residential drug rehabilitation program at Canberra Recovery Services, he will have secure accommodation for six months. He has submitted an application for housing accommodation and is also on the wait list for the Housing Justice Program. Now, it's quite unlikely, and highly regrettable in the state of social housing availability in the territory at the moment, that the application will be successful for social housing by the time his program ends.

Secondly, he has been recommended to seek assistance for the Justice Housing Program and, as I've noted, he has applied. This is a program conducted by the Justice and Community Safety Directorate to enable inter alia Aboriginal and Torres Strait Islander people involved in the criminal justice system to provide accommodation options.

In any event, thirdly, Canberra Recovery Services has introduced a policy to assist the participants to transition to accommodation. The service has made arrangement for some placement so the graduating participants will not be left homeless. This is a little like the process of this court whereby the various phases of the program are designed so that completion of intensive treatment does not mean that the job has been done.

ACTCS recommended against making a DATO, in light of this person's previous non-compliance and lack of suitable accommodation. Nevertheless, his Honour imposed a DATO and, at the time of writing, the participant had recently entered Phase 3 of the program.

Issues around housing were also discussed in two other cases that are yet to be published. In the latter case, Mr F was deemed unsuitable for a DATO, because of his housing situation, but a place had since become available in the ACT Government's Justice Housing Program. It was also anticipated that his father's house would be assessed as suitable. Refshauge AJ therefore considered the initial unsuitability assessment to no longer apply and imposed a DATO.

In *R v K*,<sup>66</sup> the defendant was initially deemed unsuitable, in part because of his lack of accommodation, but Refshauge AJ observed that residential rehabilitation at CRS would address this issue in the short-term and 'the agency is reported to be ensuring that participants are, unless discharged, not exiting into homelessness' (at [108]). His Honour therefore determined that:

if Mr K is admitted to the Canberra Recovery Services program, he will have suitable accommodation for the period of the program and there will be a high likelihood that there will be suitable accommodation available to him at the end of that time. While

---

<sup>66</sup> Here and elsewhere we anonymise cases that refer to unpublished decisions or to protect the anonymity of our interviewees.

Mr K does not have, at this stage, such suitable accommodation, as yet identified, it will be a condition of any Treatment Order that this be identified before he completes the residential drug rehabilitation program (at [109]).

His Honour also made the salient observation that:

*an assessment of whether a person has suitable accommodation is only a matter relating to the statutory suitability for a Treatment Order under s 12A of the Sentencing Act if the offender will not live in the ACT, or if a member of the household where the offender proposes to live does not consent to him or her being there.*

This is a more general consideration and thus, a potential impracticability of compliance with a Treatment Order (at [110]-[111]; emphasis added).

Unfortunately, although K did receive a DATO, this was cancelled soon after. Clearly, access to suitable housing is not the only factor that determines a person's ability to successfully complete their DATO and those without housing should be supported in locating housing, rather than being excluded from the program and thereby further marginalised. Nevertheless, the importance of housing in assisting a participant should not be understated, as Refshauge AJ recognised on pages 2–3 of another recent case that is yet to be published:

stable and safe accommodation can be essential to the success ... under a treatment order. Thus, it does cause challenges, especially at the end of any residential drug rehabilitation placement. It would be an unfortunate result were the court required to discriminate against a willing participant if there were no facilities available or if they were effectively homeless. But the fact is that such problems are likely to undermine the effectiveness of the program and in effect set the offender up to fail.

The lack of housing many participants face is a significant hurdle to entry onto the program and likely impacts on the chances of sobriety and successful completion of the program. We discuss this issue in Chapter 9 on social integration outcomes.

### 4.3.3 'Readiness' and suitability

In both our 2021 process evaluation and our 2022 follow-up, some stakeholders have suggested that the criteria for suitability be 'tightened' in some way, to allow for more robust assessments of whether a potential participant displays a certain 'readiness to change'. The assessment tool considers people's addiction history and lifestyle and asks whether a potential participant does feel ready and able to undergo what will be required of them, as a part of a DATO. Almost all potential participants, who have often been in custody for a number of months by the time they are assessed, indicate that they are ready for this. With this information, the person writing the report will come up with a rating of how severe the substance use issue is and how ready a person is to change. But, as one stakeholder from Health suggested, it might be possible to gather more information:

There's a missing link with measuring people's readiness for change. But I just feel like there would be an ability to make a questionnaire that could ask certain questions that would give us a bit more of an indication of what they think they need to change. If their self-esteem is lacking, or their life skills, all of these different things that go into making up a rehab program or a treatment program, there would be markers for that. You could do that...as part of this.

Stakeholders with expertise in health and mental health made similar statements, suggesting there is scope for more comprehensive tools that measure readiness for treatment.<sup>67</sup>

On the one hand, a drug court would be consistent with TJ principles, even if it welcomed a participant who did not display explicit 'readiness,' as part of the drug court process is to enable and support a person who uses drugs to be 'ready' to stop using. However, there are also limited resources and, arguably a drug court should focus its therapeutic efforts on people who have already demonstrated a commitment to change in some way. As one stakeholder put it:

And the referrals are still coming in. And I think that this comes down to Justice Refshauge, he wants to give everyone a chance. And even then, when people are assessed, sometimes when they're not even assessed as suitable, he'll still put them on a DATO. So, there's things that need to be tightened up. He wants to give everyone a chance, and that's fine, and some people have done really well. But also, it's a lot of work for not much outcome, sometimes, and I think we need to be really targeted in who we're letting in, given the limited number of spaces we have.

One of the former participants, whose DATO had been cancelled, put it this way:

I feel like if someone is actually ready to do something about the way that their life is going and they want to change - I think that's probably the biggest thing. The person that's getting put onto the order needs to actually want to fucking change their ways, otherwise it's not going to help them at all. They're just going to get out of jail and go, 'right, now I'm going to get high. I'm out, right?'

Another participant explained, 'the time has to be right, you have to be willing, and you're going to need help as well. It sounds simple, but all those things have to line [up].'

The issue of readiness was raised in a number of judgments. In a case that is yet to be published, Refshauge AJ remarked, at page 2:

Despite the research that shows that mandated treatment can work, a treatment order requires the offender to consent to the making of such an order, section 12A(2)(c) of the Sentencing Act. That consent is often accompanied by expressions of

---

<sup>67</sup> For a review of the issues, see e.g. Payne J., and Morgan, A. (2016) Appendix E: Building effective interventions for drug users in the criminal justice system: A review of best practice. Queensland Courts.

a wish to reform by offenders and an expressed recognition of the need to do so. It is said or appears a turning point for the offender who say how they want to move on from the life of drugs and crime, quite frequently pointing to the things, especially participation in family life, that this lifestyle has prevented them from enjoying and in which they have been unable to engage. They see the waste that the prison life has led to.

These can, of course, be very strong motivation for reform and the recognition of such loss is an important insight. Nevertheless, courts must be astute to appreciate that these are words and can be difficult to translate into action. Further, there is considerable motivation to participate in treatment order for it involves avoiding the immediate imprisonment as the required imprisonment is a pre-condition for the making of a treatment order but it is suspended.

Soon afterwards, Mr L was charged with fresh offences. Pending resolution of those charges, the DATO was amended and residential rehabilitation imposed.

His Honour also considered this issue in *R v Reid (No 1)* [2021] ACTSC 334, opening his remarks with the following comments:

1. A perennial issue for the Drug and Alcohol Sentencing List (the **List**) of the ACT Supreme Court is the question of whether an offender's wish for rehabilitation will develop into actual action by the offender. A sceptical view is sometimes expressed that an offender's wish to be subject to a Drug and Alcohol Treatment Order (a Treatment Order) under s 12A of the *Crimes (Sentencing) Act 2005* (ACT) (the Sentencing Act) is more a wish to avoid incarceration than a commitment to rehabilitation.
2. The advantage of an offender's rehabilitation to the community, not to mention to the offender and his or her family and associates, is so significant that, as a matter of risk evaluation, taking and giving the opportunity to participate in the List is justified, so long as the Treatment Order is carefully structured and the offending profile does not contraindicate it from the perspective of community safety. A greater challenge for the risk evaluation is when the offender has made prior claims of desiring rehabilitation, or even attempts to rehabilitate, that have not been successful.
3. It is clear, however, that drug rehabilitation, like all behavioural change, especially those linked to dependencies such as gambling, alcohol and other drugs, can be difficult and encounter failures before success. As I pointed out in *Saga v Reid and Collett* [2010] ACTSC 59 at [89], this is not necessarily a prohibition on the affording of further opportunities of rehabilitation if there is a rational basis for doing so.
4. The rational basis must include various considerations. Thus, while the past behaviour of an offender is generally regarded as the best predictor of future conduct, evidence suggests that there are limitations on this general principle, including that it is a best

predictor but specifically in short intervals and where the circumstances are identical both in the past and the future. Further, the form of a treatment program is important for the assessment of whether to give an opportunity to rehabilitate again.

In that case, it is worth noting, the suitability report from ACTCS did *not* recommend a DATO, due to Mr Reid's past 'substantial non-compliance...with community based orders in the past, as well as the assessment of to [sic] the proposed accommodation' (at [92]). Despite this, Refshauge AJ ordered a DATO, as he was

satisfied that this past behaviour does not, in this case, mean a Treatment Order should not necessarily be made. Sometimes the impetus must come externally, though the offender must ultimately take up the rehabilitation options himself or herself (at [97]).

Unfortunately, the concerns expressed by ACTCS and the prosecution appear to have been prescient, as the DATO was cancelled soon thereafter, due to ongoing drug use and failure to abide the required curfew (see *R v Reid (No 2)* [2021] ACTSC 281). In this case at least, the wish to be subject to a DATO did not demonstrate a genuine commitment to or readiness for change.

The case of Mr A is another case where a DATO was imposed, despite an assessment that he was unsuitable (on the basis of past non-compliance and accommodation issues). On page 21, Refshauge AJ stated: 'There can be no guarantees, but I'm satisfied that he is likely to comply with this opportunity'. This was another example of misplaced optimism, with the order subsequently cancelled, due to fresh charges being laid (see *R v A (No 3)*).

On the other hand, in another recent case, in which the judgment is also yet to be finalised, the prosecution expressed reservations about making a DATO, given the defendant's previous behaviour. Refshauge AJ considered that the issues raised could be addressed by the conditions of the DATO and proceeded to impose such an order. This participant is now in Phase-3 of the program, demonstrating that initial concerns about a potential participant's ability to comply with the program are at times unfounded.

*R v P* is yet another case that did not initially appear overly promising. Indeed, Mr P 'expressed a reluctance to stop using cannabis, especially were he to be subject to a treatment order' (at page 8 of the transcript). He was considered suitable, but the prosecution objected, based on Mr P's stated reluctance. Refshauge AJ made the following comments at pages 14-15:

I can accept that until a person who is drug dependent has satisfactorily addressed that dependency, he or she is likely to re-offend. That is the nature of the unaddressed dependency. I am not satisfied that in the circumstances this is a contraindication to the making of a treatment order. A failure while he is subject to the order will result in sanctions or even cancellation.

While Mr [P] has expressed dissatisfaction with the conditions of a treatment order and in particular the abstinence requirements to which I have referred, he can withdraw from the process at any time. Again, a failure to comply with those conditions will result in sanctions or cancellation and he may prefer to serve the term of imprisonment instead.

Again, at the time of writing, these issues appear to have been satisfactorily resolved, with Mr P having recently progressed to Phase 3.

To summarise, it is difficult to assess 'readiness'; there are cases where an apprehension about readiness resulted in DATOs being cancelled, while other participants have progressed well.

This issue of readiness to change is a complex one that requires careful consideration in this evaluation. It is true that participants who are not ready to change will likely experience less favourable long-term outcomes and 'readiness', although difficult to assess and measure, is a key variable with which drug (and alcohol) courts must contend. However, a participant's apparent lack of readiness is also used too often to situate the locus of responsibility squarely on the participant and thus distance the program from its less favourable and less positive outcomes. To be sure, substance addiction and dependency is a complex psycho-physiological condition and abstinence is for many new drug treatment participants an unimaginable and seemingly impossible goal. By the time they reach a drug (and alcohol) court, so much of their life and lifestyle have become inextricably bound together, that gestures of readiness are just that. It is then a specialist court's role to work with that participant, to motivate them for the positive benefits of change, and to edge them closer to being ready for a substance-free life. So, when a drug or alcohol court team identifies a participant who lacks a readiness for change, one must question whether it is, in fact, the participant's failure to be sufficiently ready, or the court's failure to sufficiently motivate them to be ready for change.

Unequivocally, some participants are harder to motivate than others and many participants make multiple attempts at treatment before they are truly ready for change. In addition, despite any AOD program's best efforts and resources, some participants will 'fail', for a variety of reasons, which may include, but not be limited to, mental and physical health issues, intergenerational trauma and family violence. This is to be expected and indeed part of a realistic framework for those working in the AOD and recovery sector. As one stakeholder put it:

I think that's a wonderful way that judge definitely approaches the court, that I know he's talked to me about, is you can't expect them to just rehabilitate. The drug court, even if they fail, even if they have to have their DATO cancelled, might just be something in a long line of experiences that eventually leads them to rehabilitate and turn their lives around. So, it's nice to think about it like that, it's just a step in

the process.

It ought, therefore, not be the position of a court such as DASL only to accept those who, at the time of referral, are ‘assessed’ as ready to change. If this were the case, specialist courts would prove to be a very expensive court-supervised treatment option for participants who might not have needed that level of investment, since they were already motivated for change. Instead, drug and alcohol courts should accept the challenge to motivate the unready and commit to better understanding how program, practice and procedure can be adjusted to maximise positive outcomes. The objective of a drug court should not be only to provide treatment opportunities for those who have already recognised the need for change, but use the intervention as an opportunity to motivate for change.

### 4.4 Mental Health and Complex Needs

The Chair of the ACT Sentence Administration Board made some insightful comments about the high level of needs of some people with AOD issues, including many who are not DASL participants:

We just have to be careful that the limited resources available for intensive alcohol and drug support and treatment do not automatically go to those on those orders when, in fact, we may have people before the board or just in the community, quite frankly – not even in the criminal justice system – who still might have higher risk for the community. That is one point I would like to make. There are limited resources. There just has to be an understanding of that. I know that the ACT government has really tried hard and has done various things to try to fund more places in residential rehabilitation establishments. That is very important.

This comes back to the Australian Law Reform Commission’s point about complex needs. In my experience, people with the most entrenched alcohol and drug issues often have very complex needs. They have trauma, they have probably been doing drugs for quite a while, they have perhaps very little support and they may have disability and mental illness on top. Having places that can cater for people like that is really important. They are probably the hardest people to work with. I am seeing some progress. At one point there were even eligibility criteria that knocked people out. I think NDIS is also contributing here. There is not meant to be overlap but sometimes there can be some supports in their packages. It is a slow process and it is a hard area.<sup>68</sup>

---

<sup>68</sup> Beacroft, L. (2022, February 17). Chair, ACT Sentence Administration Board. *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs13a.pdf> 99. In a similar vein, see Canberra Mental Health Forum (2021). *Inquiry into Community Corrections*, Submission 4, 4.

The submission from Advocacy for Inclusion (AFI) commented on the need for joined-up services for people with comorbidities, noting that:

Siloed systems arise where services limit the scope of their work through exclusionary criteria. While this is often necessary, it may mean that people with multiple and complex support needs are not eligible for specialist support. For example, regarding drug and alcohol dependency, mental health services may refuse to engage with someone with substance use issues; or, as articulated in section 46K, drug and alcohol treatment services may not engage with someone who has significant mental illness. This means that ‘most comorbidity patients [are] ineligible for cross-referral between services’ and therefore receive no specialist intervention.

This issue is prevalent in ACT Government and non-government sectors, including community corrections. Consequently, AFI emphasises the need to ensure that people with complex needs, including disability and mental ill health, are not precluded from the benefits and supports associated with DATOs.<sup>69</sup>

These comments were also echoed in some of the decisions handed down. In *R v L*, the defendant had pleaded guilty to property offences and Refshauge AJ noted that his eligibility assessment appeared to have been conducted in something of a rush. His Honour commented, at [10]:

The [suitability] assessments range over a wide spectrum of matters as needed to explain the relevant considerations of the seven specific matters in Table 46K of the *Sentencing Act*. In addition, they take at least four weeks for an offender in custody or six weeks for an offender on bail, thus delaying the progression of the matter somewhat significantly. For these reasons, such assessments should not be sought if there is no real prospect that a Treatment Order can or should be made. Such reasons, however, should not be used to the detriment of people who suffer from any disability unless they are given every opportunity to overcome that disability.

Although Mr L was deemed ineligible for a DATO, Refshauge AJ decided to override this and order a suitability assessment. As part of the order, his Honour requested consultation with the Court’s Disability Liaison Officer. The suitability assessments found that Mr L was not suitable, given the extent of his disability and that imposing a DATO ‘would set [him] up to fail’ (at page 6 of the uncorrected transcript). His Honour ultimately imposed a suspended sentence, observing (at page 19):

---

<sup>69</sup> Advocacy for Inclusion (AFI) (2021). *Inquiry into Community Corrections Submission*, Submission 19, 16.



It is unfortunate that a drug and alcohol treatment order was not appropriate, but it really wouldn't have worked. It is going to be tough out there. You have got the luxury and the benefit of the NDIS. Make the most of that and hopefully it will all work out.

*R v Moore* [2021] ACTSC 333 was another case, in which the defendant had significant substance abuse issues, as well as an intellectual disability, with an assessed IQ of 69. In that case, however, despite being found unsuitable for a DATO, his NDIS provider 'has indicated that they are able to assist the offender to attend to the commitments associated with a [DATO]' (at [99]). Murrell CJ was accordingly satisfied that these services would sufficiently support Mr Moore's compliance with the order and imposed a sentence of three years and three weeks, with an 18-month supervision component. At the time of writing, Mr Moore had progressed to Phase 2, demonstrating that DASL can be appropriate for participants with intellectual disability, if appropriate supports are put in place, to enable them to comply with its requirements.

In a recent decision, which is yet to be published, Refshauge AJ noted, when imposing a DATO, that the participant, who had been diagnosed with a number of mental health conditions, would have the support of the Detention Exit Community Program operated by Wellways Australia,<sup>70</sup> a mental health and disability support organisation. It remains to be seen how this participant progresses on the program. However, engaging participants with services that have specialist expertise in supporting people with complex mental health and/or intellectual disability issues will expand the reach of the program and address the concerns of stakeholders that the program is not meeting the needs of this particularly vulnerable cohort. This approach is also consistent with the ACT Government's *Disability Justice Strategy 2019-2029*, which 'aims to achieve equity and inclusion for people with disability in the justice system...[and] recognises that equality before the law is not the current reality for too many ACT residents with disability'.<sup>71</sup>

### 4.5 Sentencing and Entry Into DASL

Following a suitability assessment, a potential participant will be listed for a suitability mention and sentencing submissions, usually no later than six weeks from the date of referral for full assessment.<sup>72</sup> As discussed in the previous section, the stakeholders we interviewed expressed a preference that the assessment hearing and sentence be conducted by the DASL judge.

The preparation for sentencing is complex and time-consuming, which further speaks to the complexity of the legislation (see Chapter 12). As described by one stakeholder, 'it's more

---

<sup>70</sup> See Wellways Australia (nd). *Detention Exit Community Outreach (DECO)*. <https://www.wellways.org/our-services/detention-exit-community-outreach-deco>.

<sup>71</sup> ACT Government (2019). *Disability Justice Strategy 2019-2029: A Strategy to Address Unequal Access to Justice in the ACT*, 1.

<sup>72</sup> ACT Supreme Court, n 51.

complicated than how it's traditionally done, and it's quite unique in having sentencing, and then you have the [DATO]'. One judge clarified this distinction in interview:

What I've now come to is a clear view that I should sentence and then consider and make a treatment order, because s 12A(5) says you can't affect the sentence in order to make sure you fit into the eligibility criteria.... So, it's overtly clear that it is a two-stage process. The reality is, of course, the two are intertwined.

This added complexity requires significant effort by the judge, their associate, and the DPP, which needs to be adequately resourced. For instance, a stakeholder from the DPP explained:

It will take me two full days to write written submissions for that matter, and then it will take me another day to draft the facts and put the file together and things like that...and even a cancellation application, judge likes them filed quickly, and that will take me a whole day to do. Write the affidavits, write the applications, put all the stuff together. So, it's a lot of labour-intensive work to be able to go to court and not say much, or to be able to say less, because all the work's already been done.

The sentences that we observed reflected this effort; they were rigorous and highly detailed. They were also conducted in a formal and adversarial format. The judge used formal and legal language and primarily addressed counsel. When asked about this at interview, the judge responded, 'I do the formal stuff in a formal way, because I'm conscious that that's the exercise of judicial power', but went on to add, 'at the end, I get chatty. I then speak directly to the participant and say, 'what I've done is this, you've got to pull your socks up,' and so on. So, I don't disengage with them. However, other stakeholders, including another judge, we interviewed suggested that there is scope for sentencing hearings to take on more elements of therapeutic jurisprudence, for instance, by the use of more inclusive language and by encouraging more direct engagement with participants.

### 4.6 Conclusion

Participants report satisfaction with their entry into DASL; they were kept informed about their status and were treated with respect by the DASL team. While 'clunky' at first, the referral process has improved and now appears to be working well. Further, greater awareness of the program, and potentially expanded eligibility requirements, would allow more people the opportunity to participate. A proposed practice direction is likely to streamline the process even further. In terms of eligibility, we report on stakeholder suggestions that DASL should both facilitate 'longer orders' – with our data indicating that reductions in drug use do not occur until participants have been on the program for 9–12 months – *and* be inclusive of those facing shorter sentences. These two objectives are difficult to achieve without alternative DASL pathways or some form of intermediate DASL-style program.

In terms of suitability, a consistent issue currently facing the DASL is the lack of appropriate housing for justice-involved people. People who are assessed as needing residential

treatment can move into transitional housing, but this is neither a long-term solution, nor is it an option for those who are assessed as only needing community-based treatment. The lack of housing many participants face is a significant hurdle to entry onto the program and likely impacts on the chances of sobriety and successful completion, once they are on the program.

Many stakeholders and participants also suggested that 'readiness to change' should be a relevant consideration, when assessing suitability. However, it is difficult to assess 'readiness' and there were cases where concerns about a person's readiness were well-founded and resulted in DATOs being cancelled, while other similar participants have progressed well. It ought, therefore, not be the position of a court such as DASL only to accept those who, at the time of referral, are 'assessed' as ready to change. The objective of a drug court should not be only to provide treatment opportunities for those who have already recognised the need for change, but use the intervention as an opportunity to motivate for change.

We also identified some of the challenges surrounding the inclusion into DASL of people with mental health and other complex needs and some of the difficulties involved in the sentencing process due to the complexity of the legislation.

## Case Study 2

Mr F was in his mid-20s when he entered the program on a 15-month sentence, with a 12-month DATO. His offences related to driving and property matters.

He had first been exposed to drugs from a young age and then significantly increased his use in his teen years. His main drug of choice was methamphetamine and he was under the influence of this at the time of his offending. He was a moderate cigarette smoker, had previously used benzodiazepines and cannabis regularly and other drugs occasionally, and did not drink alcohol. He had demonstrated periods of abstinence in rehabilitation facilities and prison.

Mr F had a somewhat difficult childhood, but had a limited criminal history. He was in a difficult relationship at the time of sentencing and had experienced housing instability. He also had complex mental health issues, including self-harm, bipolar disorder and/or schizophrenia. He was in good physical health. He had had limited employment experience, but was enrolled in a hospitality course in prison.

At the time of sentencing him, the judge noted that Mr F was 'ambivalent' about the program. Unfortunately, Mr F was unable to comply with the terms of his order. He left his residential rehabilitation facility after a few days and failed to attend court. His situation was complicated by the COVID restrictions in place and the lack of suitable housing. His DATO was therefore cancelled after a few months, while he was still in Phase 1 of his order.

## 5 Cooperation and Collaboration Between Stakeholders

A unique element of drug courts worldwide is that they require active and meaningful collaboration from stakeholders from across different areas of criminal justice and health. Our findings suggest that the ACT DASL team has developed an effective and collaborative working relationship, as the following quote from a member of the DASL team illustrates:

I love coming to court on Fridays. I love actually going and being part of the DASL team, and I really love that multi-agency, multi-disciplinary work, that's my favourite thing of this role. And I just love the philosophy of the job, that this program provides people with an opportunity to get treatment for their substance use, and to recognise that so many people have come from such extensive trauma, and that that's impacted where they are ultimately in life, and that this program provides an opportunity for something other than gaol. It provides an opportunity for treatment instead of just incarceration. Like, philosophically, whenever I'm having hard days on the job, that's what I come back to – for me I think it's a really important program.

This collaborative approach, as well as the shared commitment to individual justice, was further recognised by one of the judges:

The [treatment team] were so impressive. Everybody was flexible, they didn't go into pat responses. Because that's the whole point about individual justice, you are treating the individual, and you're going to require different approaches for each individual, we can't go cookie-cutter. Where somebody might need a prod, somebody else is going to need a little bit more compassion. You've got to size up what matters in that moment for each individual.

### 5.1 The Treatment Order Team

The DASL Treatment Order Team comprises:

- the DASL judge;
- representatives from ACTCS (ie, community corrections officers);
- representatives from ACT Heath (Drug and Alcohol Services);
- a prosecutor;
- a solicitor from Legal Aid ACT; and
- a police officer.

Other members of the team may include an Aboriginal Liaison Officer (ALO), a Forensic Mental Health Service representative, a representative from Housing ACT or ACT Mental Health Service, or any other person identified as necessary by the DASL judge. Other relevant stakeholders, who are not members of the Treatment Order Team, include the DASL coordinator, judge's associate, and Registrar.

The TOT works together to:

1. collaboratively formulate a treatment order plan;
2. administer the order, ensure it continues to be available and suitable, make recommendations for amendment when necessary;
3. work directly with the participants to support them to achieve their goals within the program;
4. assess and report on compliance within the requirements of the order; and
5. address any breach of the order conditions.

The DASL judge leads the Treatment Order Team and has ultimate responsibility for making decisions relation to DASL participants.

Like many programs and working groups across all sectors, the DASL team experienced a complicated first year, due to COVID-19 related upheavals. This included staff turnover and the need to develop socially-distant and remote ways of working, during the height of the lockdown period. In its first year of operation, the DASL team was led by three different judges. Our interviews with these judges and other stakeholders and participants revealed that although the three judges had different judicial styles and approaches, all three brought significant strengths, commitment and a therapeutic approach to the role. In Year 2 of the program, the Court continued to experience COVID-19 related upheavals, including a lockdown in August-October 2021, COVID-19 outbreaks in the AMC, and numerous participants suffering from COVID-19.

### 5.2 The Benefits of an Interdisciplinary Approach

The TOT was designed to encourage collaboration and a team approach. All of the professional stakeholders we interviewed reported very positive experiences working collaboratively across multiple areas. As one team member put it, ‘this is one of the most efficient and cohesive teams that I’ve seen’. The importance of collaboration and a holistic approach was a consistent theme in our interviews. This approach was important, because it created a harmonious working environment. Importantly, it allowed for a fuller understanding of the complex challenges that participants face and therefore better decision-making. As one judge described the benefit of collaborative work:

I learned very early on that it was useful for me to [discuss my thoughts with the team], not just to go away with it in my own head. What I might think was a great idea – when I started running it by the group, they would give me useful tips, or sometimes they’d say ‘no, we really don’t think you should do that.’ It was really good to be able to bounce those approaches off people, because it’s quite nuanced, and that’s the challenge of that role. You can’t just boulder in and say whatever comes off the top of your head, you’ve got to think carefully about each individual and how you’re going to engage with them. Which is not really a very lawyer-like thing to do.

Another judge echoed similar sentiments:

From the word go, I would just hear from everybody. I wanted a full picture. So, it wasn't hard to come to a good decision, based on collaboration. Because I think, and the research shows, that the more collaboration you have, the better decision-making there is. And that's the beauty of such a program.

Team members recognised and valued this approach to judicial leadership. As one team member explained:

That is incredible, to know that a judge is also listening to the whole treatment team, and weighing up all of that different advice. I think [the judge is] very unique, and it gives me a lot of satisfaction to know that [they have] faith in what I'm seeing, and what we're doing.

In our 2022 follow-up to the process evaluation, we found that this collaboration was continuing. Stakeholders from the team all reported a positive working environment, with shared values and an inclusive workplace culture. As one stakeholder commented:

I think we're getting a bit more professional. I think there's more robust conversations in conference, although there is also a degree of greater unanimity in conference. Partly that's personnel, but partly I think that's people kind of getting a sense of the culture of the operation and recognising a kind of unity of purpose.

A benefit of collaborative work is the ability to learn from others. It was acknowledged that there is a potential for tension between the views of Health and Corrections, in that the former is more therapeutic and latter is more focused on criminal justice and community safety. But stakeholders from both areas highlighted the benefit of alternative approaches. For instance one team member from Health remarked:

I really enjoy hearing the different lens that they bring. I think one of the downfalls of Health is that we kind of focus in on the needs of that individual, without necessarily always taking into account the wider community safety needs, and I really appreciate that others in the team bring that to the table.

This was echoed by a team member from community corrections:

I think it's working pretty well, you see it from other's perspective...I've certainly learned from them, and I think they've learned from us as well...I think it's a really good part of the process. Understanding addiction more, I've learned from them. Lapsing and relapsing, that kind of thing.

Our 2022 evaluation revealed a fair amount of turnover within the TOT over the course of the year and they have gone periods of time understaffed. This has created strain on case managers, whose load has increased and, as a result, they have been unable to spend as much time with each participant. This in turn impacts participants, who feel less connected to the staff. This was articulated by one participant, who explained:

Well, there was a few times where – I don't know why, but they always change people [at XX]. I've had probably four or five different people...It's not reliable, and it's not consistent, and you don't exactly want to tell people everything, and you're telling five new people – you know what I mean? I don't know, I didn't really like that... Consistency is probably the best one, because if it were the one person that I already know, who already has everything down for you...every time you get a new one, you have to tell them everything again.

As in most institutions, it is inevitable that there will be turnover and periods with staff shortages. However, the key strength of the TOT is its culture of collaboration and support, which is harder to maintain under such conditions.

In our 2021 evaluation, we suggested that an area where collaboration could be improved was through physical co-location of the team members from Health and ACTCS. Originally, the Health team had office space in the ACT Courts building, working in the same room as the DASL coordinator. The case managers from ACTCS, by contrast, were based in their home office, a short walk away. This was in part because ACTCS staff also maintain caseloads in addition to their work with DASL participants. This presented a challenge to day-to-day teamwork and information-sharing. This concern was raised by stakeholders and, in early 2021, ACTCS case managers began spending one day a week co-located with the Health team. This has facilitated better collaboration:

[It's] so beneficial to have those open conversations face-to-face. And it saves phone calls with the clients and then having to repeat information, if they've just spoken to the Health staff in the morning and we ring them in the afternoon, asking pretty much the same questions.

Having team members from Community Corrections and Health working in the same office was widely acknowledged as an improvement. Corrections staff would like to see their DASL caseload grow and ultimately be able to spend more time at the court, with Health and other members of the TOT.

On the whole, the multi-disciplinary approach has been successful and valued. This was also noted by one of the external treatment providers:

It feels like it's holistic...it's looking at all the different angles and, rather than working in silos, in isolation, there's actually that communication and we're all going, 'well, [the client] needs this, we can do that, you can do that'. Because these clients, their issues aren't in isolation...So, it's really lovely that all these services are kind of tying in together, and we're all working for the same outcome for the client, covering different parts. I'd love to see more of that.



### 5.3 Case Conferences

The main venue where collaborative work happens is the weekly case conferences. These were originally held in the courtroom, prior to the court hearings with participants, and have since been moved into a meeting room within the court building. In advance of the conference, all members of the TOT produce short status reports on each participant. This is collated by the DASL coordinator, along with any other relevant information (such as urinalysis results) and sent out to the entire team in advance of the meeting. The case conference is organised by the judge's associate and is chaired by the DASL judge.

At these meetings, the team discusses any issue about the making, administering, amending, monitoring, or cancellation of an order. Team members discuss relevant treatment program information and share their professional opinions about participants and their progress. They also make recommendations regarding phase promotion or demotion, graduation, program exit, and incentives and sanctions. Where possible, the TOT aims to reach a consensus on each issue, or at the very least identify areas of disagreement. The judge will consider the perspectives of the team before coming to an informed decision that may affect the welfare or liberty of a participant.

Conferences are held after a suitability assessment and before a person is sentenced to a DATO, on each day a participant attends court, or any other occasion, as directed by the judge. Representatives from other service providers (such as Housing or Child, Youth and Protective Services (CYPS)) may be invited to attend conferences, to provide relevant information about a participant. Conferences are closed to participants, except under exceptional circumstances, and to the public. This is to foster open communication amongst the stakeholders. Status reports do, however, form part of the court record. When participants agree to a DATO, they provide voluntary and informed consent for the TOT to share relevant information in this way.

The case conferences that we observed were professional, but less formal than a court hearing. In our 2021 evaluation, some stakeholders pointed out that sitting in a courtroom for a meeting (with the judge sitting with their associate at the bench and the other participants sitting at the bar table) was less conducive to collaboration. Some interviewees indicated a preference for the more intimate space of everyone sitting around a table together. One stakeholder suggested that having a judge at the table with the TOT was 'a bit more laid back'; in comparison, having the judge sit on the bench meant that the conference had 'lost...its cosiness'.

As a result of that recommendation, the cases conference meetings were moved out of the courtroom into a meeting room within the court, where the TOT sit around a large square table. Feedback on this has been generally positive, though it is noted that this room can only be accessed by court and Corrections staff, leaving other members of the TOT reliant upon their colleagues for entry. The stakeholder who pointed this out was critical of the move for other reasons as well:

They're not more intimate in the [XX] room, I think they're even worse down there. It's such a massive table. We don't have access to the room, so you have to kind of knock on the door...The only ones who have access is the court and Corrections, so everyone else has to bang on the door to get in. And Justice Refshauge always sits – he's got his allocated seat...we're all equal but some are more equal than others...So actually, we made it less intimate. Because now it's a real big distance between each person. So, that's kind of hard.

Nonetheless, we observed a high level of cooperation and collaborative problem-solving in the case conferences. People were collegial, respectful, and not afraid to disagree. While basic information about a participant's progress was written in the status reports, the case conferences were an opportunity to clarify and emphasise particular issues a participant may be facing, and to strategise ways to engage effectively with participants.

Case conferences typically last between 60 and 90 minutes. They are dynamic, with the length of time spent on each participant depending on the particular issues that have arisen that week. In some instances, a quick review and update is all that is needed, and could take two minutes. In others, for example, where a breach has occurred, or a participant is facing a particularly complex hurdle, the team may spend up to 30 minutes discussing how to proceed.

In the early consultation phase, the evaluation team suggested that the TOT adopt a traffic light system to help document a participant's status each week. The system had three key objectives: to streamline and standardise the team's deliberations around key aspects of a participant's treatment needs; ensure that sufficient time and attention were given to those key risk factors which presented a challenge to the participant's treatment trajectory; and regularly document their progress, both negative and positive. The TOT used this system in the status reports and case conferences for a number of months, but eventually dropped this, in favour of more detailed notes taken by the DASL coordinator in each status report. While this was an understandable move at the time, we have identified at least three implications of this. The first is that the ability to have a 'bird's eye view' of a participant's trajectory is often obscured in the weekly case conferences. As described by one stakeholder:

Without the traffic lights, there's no indication of anything being achieved either. The traffic lights were good, oh yes, they're green, awesome. But without the traffic lights, there's no systematic way of looking at the person in a holistic way

Second, the lack of a consistently zoomed-out view also results in case conferences focusing on the very specific issues participants face that week, without spending time discussing longer-term issues or forecasting trouble ahead:

I feel like all the case conferences at the moment, they're all reactive, it's not proactive. The traffic lights at least kind of gave some indication with things that might potentially need to be worked on. And without the traffic lights...the stuff brought up is just stuff that's unravelling.

However, it is worth noting that the TOT have had to spend significant time at case conferences in a 'reactive' mode, as they work to solve problems that participants face, due to structural barriers to a successful DATO. This most commonly arises with the ongoing housing issue:

In those greater discussions more recently, I've noticed that they're really associated with maybe more issues with the system itself, in terms of funding, and our interaction with Housing is a massive concern that's been raised in the conference increasingly, and continually, recently, because we've actually just had a participant who's become homeless, with his family and his three kids. So that's obviously on everyone's mind.

This concern that the TOT is spending too much time responding to crises was not necessarily a unanimous view among the TOT, but it may be worth considering whether such an approach to both case management and data collection is useful for the TOT.

Finally, in terms of ongoing program monitoring and evaluation, the lack of traffic light (or similar) system hampers the ability to track and monitor participants' status over time, in order to determine the impact of the program more broadly. The status reports are a useful tool to help organise a weekly case conference, but it is difficult to turn this into data that can be used for monitoring. This is discussed more in Chapter 8, where we report on our analysis of the weekly status reports.

It is in the case conferences that the collaborative and holistic nature of DASL is evident. All of the judges we interviewed valued hearing from different experts, who may not always agree with each other. As one judge commented, when comparing DASL to a standard court hearing:

I often say to people when I sentence them in the ordinary court: 'I'm working on this information, I recognise that this is not all of you, this is a snapshot of what I've got, so this is not the whole person'. And, of course, it's still not the whole person when you have those other bits of information, but it's so much closer to the whole person than what you get ordinarily...getting that information from many different sources is really useful, because it also allows you to test one source against another, which is helpful, and because you have the conference beforehand...you have those tensions between different advisors within the team, but fleshing those out can be very helpful. It's just so helpful, it's hard to put a superlative on it.

Stakeholders uniformly reported the case conferences to be working well. Reasons for this included the ability for people to talk openly and frankly, a comfort and ease with other team members, and the respectful language and approach used by all team members. It was generally recognised that, even if disagreements arose, they were resolved harmoniously. This was borne out by our observations, which revealed an atmosphere that was both relaxed and professional, with team members who seem passionate about the work they do.

We saw the DASL judge use the case conference to seek advice from the TOT on how to calibrate the approach and tone they would take in the check-in hearings later that day. When asked about this at interview, the judge responded that they ‘absolutely’ benefitted from trying out ‘different lines’ on the team, ‘because I’m so aware of the influence that I’m meant to have. And the way in which something is put can be really important’. Another judge echoed this sentiment:

I was mindful, [during the case conference], how I was going to engage with [the participant], what it was we were going to try and achieve. And, of course, if there was a slip-back, or a concern about whether they were likely to go into custody that day, how we were going to deal with that? So, it was about information-gathering, but from my perspective in particular, I was planning what was going to follow later in the day. And that’s the hard bit for me, because it’s not about absorbing the information, we do that all the time, as a matter of course, but how to use that to engage with the person positively. Even if it meant they were going to prison.

While all agreed that cooperation and collaboration were important, there was also an identifiable ‘core’ working group and a ‘periphery’. The core group includes the judge, and representatives from Health and ACTCS. Legal Aid, DPP, Police, and others contribute less in case conferences. In some cases, this is because it is unclear what their role should be at such events. As one judge explained:

The main protagonists are Health and Corrective Services...what I’m still struggling a bit with is the role of the lawyers...it is difficult, because in a sense they don’t have a lot of expertise in the areas we’re talking about. They’re there for the legal stuff. Well, the conference doesn’t really talk about the legal stuff. So their contribution has been muted. I don’t think we’ve worked out quite yet what the real role of the lawyer is in the conference.

This uncertainty was echoed by one stakeholder’s observation that the Legal Aid representative has ‘two hats. One is as a member of the drug and alcohol treatment team, and then as their solicitor’. While it is clear that nothing in the legislation requires a defence lawyer to breach any professional privileges, it is still a careful line to walk.

The idea that some team members are at the core and others on the periphery was echoed in a number of interviews. On the one hand, it seemed to many appropriate that Health and ACTCS play the largest role, as they have the most interaction with participants, and indeed this is a treatment-focused model. But there is also room for a wider circle of participation. As one stakeholder put it:

I love that Health gets such a voice in this court, because I think it’s entirely appropriate in this type of court, and it doesn’t happen in any other courtroom setting. But sometimes, it really feels like all the decisions are kind of dumped on Health, and I’d actually like to hear from the others.

Most stakeholders were satisfied with their level of participation. Others would like the opportunity to contribute more. For example, while the ALO is not a member of the TOT, they are present at the case conferences and seek to be an important link between DASL and Indigenous participants. This role was added in August 2020, after the program had been in operation for a number of months. One stakeholder suggested that their input should be sought in certain cases, noting that the ALO is not always directly consulted when it comes to Aboriginal participants. This stakeholder conceded that this 'might just be because they're not used to having an ALO on a team yet.... [but] I think that needs to be factored in when making decisions with [Aboriginal and Torres Strait Islander] clients.'

Similar sentiments were expressed by other stakeholders. For instance, a representative from Forensic Mental Health is usually involved in the early stages of DASL, contributing to the suitability and eligibility assessments. Once a DATO has been ordered, they move to the periphery. It was suggested that participants could benefit from more involvement from mental health professionals who do not primarily specialise in drug and alcohol issues. As described by one member of the TOT:

I think we have some clients who...would really benefit from specialised psych services, psychological counselling services, to assist with trauma treatment. All the treatment is trauma-informed, but it is AOD-specific, and I really think specifically trauma treatment is what would be needed for a lot of clients.

Multiple stakeholders also suggested that the circle widen further, to include representatives from ACT Housing. In response to this, Housing representatives have begun attending select case conferences, with a view to learning more about how they could make a positive contribution. It was also suggested that the team would benefit from a clinician who has an understanding of participants' pharmacological and other relevant health needs. At the beginning of the program, the DASL coordinator was a nurse, with a background in drugs. It was suggested that this particular expertise was useful, for instance when reading urinalysis reports, but it was acknowledged that the coordinator was not officially part of the TOT and therefore not technically entitled to express a view.

In March 2021, the inaugural DASL coordinator completed her contract and a new coordinator commenced in the position. As a result, there is no one involved in delivering the DASL program who has clinical expertise, which may mean certain pharmacological aspects are missed.

We can additionally point to instances where relevant stakeholders from CYPS were invited into case conferences by the DASL judge to discuss a particular participant. Prior to this, there was a build-up of tension around this participant's recovery, their participation in the DASL program, and their ongoing relationship with CYPS, who had removed custody of her young children. The judge described this meeting as one where 'we all learned from each other. We understood where they were coming from, what their reservations were. They could see that

perhaps the course they'd been on in respect to this person could be done somewhat differently'. In the words of another stakeholder:

The interaction with CYPS went from being really counter-productive and aggressive, and [the participant] was always on edge with them, to being, 'okay, they're on board, they understand,' and facilitated return of her children sooner than what she was expecting.

These discussions enabled a more harmonious relationship for the participant between their obligations to DASL and CYPS. The participant in this case also raised this episode during interview, acknowledging that inviting CYPS into the case conference changed the course of her relationship with this agency, noting at different points in the interview that the judge, their Health case manager, and Legal Aid solicitor were all very helpful:

In the beginning, with the CYPS stuff, when it wasn't moving ahead, and CYPS were telling me one thing and then Drug Court was telling me another, it was very difficult. Because if I went against Drug Court, that's ultimately my freedom, but then if I went against CYPS, it was my children. So, it was good [case-worker] helped me a lot with that...I'm pretty sure she went to a case conference with CYPS, so she helped in a lot with that.

The previous example highlights an instance where agencies which are not formally part of the TOT can make a positive contribution to the progress of a DASL participant. Our interviews revealed a number of other such people and organisations, including lawyers from Aboriginal Legal Services, the nurses who conduct urinalysis tests multiple times per week with participants, and staff from Winnunga Aboriginal and Community Health Services.

Furthermore, it was noted by a number of stakeholders that it would be difficult to maintain the current level of detailed discussion of each participant, as the number of participants increases. Indeed, as DASL has grown, team members find they have less time to discuss each case at conference. In 2021, team members expressed a concern with balancing the need and desire to expand the list, with ensuring that the conferences do not become perfunctory. In our 2022 evaluation, it was consistently reported to us that this continues to be a struggle. Case conferences usually begin at 9:30 in the morning, with check-in hearings commencing at 11:30. This means that, in the limited time the team has to discuss each case, priority is unsurprisingly given to discussing participant challenges. As one stakeholder explained:

In terms of how the conferences are going just generally...I've noticed there's definitely more and more discussion. There are still those participants that you can just move through really quickly, because their case workers say 'oh, they've had a great week, there's nothing that really needs to be discussed'.

This is understandable, as the reason the TOT comes together is to problem-solve collaboratively, but it also means that some participants do not get attention. As one stakeholder commented:

it's brutal on a Friday. 9.30 to 11, so with 20 people, there's not enough time...So, the ones that are doing well, it's like you get a 'good.' And then the ones that are falling apart take quite a while. So that kind of hasn't worked.

The DASL judge has also acknowledged that the program would benefit from having more time for case conferences and check-in hearings:

I think, if we got some more resources, with the participants you could justify making it a full-time job, with the recognition that there would be occasions where you would expect the judge to be doing some other stuff. For instance, if it was full-time, or even four days a week, the judge could do a bail list or some other sentencing. So I think it would be productive...I just think, at the moment, budgets are so tight that I think the resources are going to be very difficult to get. I mean, if we could increase our bed capacity and our counselling capacity, we could fill it.

Even with the time pressure, stakeholders reported strongly valuing case conferences as an important element of DASL. One stakeholder noted that case conferences also provide an opportunity for peer support:

There's a really good opportunity for case workers to feel that they're supported by the Court. A couple of months ago, we had one participant who was being particularly difficult, and really combative towards their case-worker and, as a result, she was really struggling. So, it was an opportunity for her to just feel like her concerns and how she was engaging with him was really justified and not necessarily that she was at fault.

Finally, it was noted by multiple members of the TOT that the team would benefit from staff meetings, strategic planning, and training.

This time last year we were going to have a DASL team planning day, that never happened. We don't really have staff meetings anymore...I think they were having them once a month. And then it just stopped, all of a sudden. There are a number of big issues that are sitting there and they just keep getting pushed to the side. But we really need to get in and tackle them.

Similar sentiments were expressed from stakeholders across a range of areas. As the list has grown and the team has been understaffed at times, there has been less time for these activities. We would concur that this would be a useful step for the program and ensure ongoing fidelity to best practice.

### 5.4 AOD Stakeholders

#### 5.4.1 Relationship with DASL

The DASL relies heavily on cooperation and input from the broader AOD sector, which provides a significant amount of the treatment that DASL participants receive. This includes through the residential rehabilitation programs, transitional housing, day programs, and group and individual counselling.

In general, we heard from AOD stakeholders that the sector could be better connected to DASL. When asked to comment on how the program operates, responses included:

[It's] a little bit mysterious in terms of how it all works and operates and all that sort of stuff there.

So I probably haven't had... a conversation like this with the team [to] find out what's going on, how many people are in there, what are we seeing? There hasn't been any of that since it was first introduced... it is a little bit separated.

...I haven't been to the courts and all that sort of stuff. I don't really know how it's running.

...I know with DASL, I think the whole roll-out of it we felt a little bit out of the loop in terms of process stuff. It was real learning for us in terms of going, OK, so what reports, and what papers do we need to do, and what's that like?

It would have been nice for the people that were working with these clients to actually understand what a DATO is, and how the court works, and how it's different to other orders that they're all over and they're used to dealing with. So, that would have been really good education to have, just so the sector kind of knows exactly what DASL is, and what a DATO is, and how it happens and why it happens, and the process, and Phase 1, Phase 2 and Phase 3 and all those sorts of things. We ended up doing that, from our information that we would get from – so we ended up training, educating our own staff, just on what we knew.

DASL participants present with AOD, mental health, and criminogenic needs, which need a different approach and training to address. As one AOD stakeholder indicated:

I definitely think some more education in the sector, and around working with people with dual drug and forensic issues, on criminogenic behaviours, and addictive behaviours. And dealing sometimes even with different sorts of psychology with that as well. So, certainly you've got some personality types, but you've also got other comorbidities on top of that as well. You might have some cognitive deficits, through accidents, trauma, those sorts of things.



It was suggested that this could be improved, with better communication between the DASL team and AOD service providers.

it's something the sector has advocated, we've been asking for a while, for the sector to be able to come together with Health and Corrections and talk about what's worked and what hasn't and do some thinking around what that means for future service provision...It would be nice to have a little bit more of that holistic discussion around each piece. We come together and we talk process/procedural type stuff, but not that big picture thinking. Not sitting back and going 'OK, let's look at what's happened over the last two years, one to two years, how has it gone? Where are we at? What resources are there? What have clients' experiences been like?'

This was also raised in our interviews with AOD stakeholders, who would welcome an opportunity to discuss service delivery and strategies to support participants. As noted above, a planning day, ideally including relevant AOD stakeholders for a portion of the day, would be of benefit to the program.

### 5.4.2 Constraints on resources

There appears to be a strong view that the AOD sector in the ACT is currently under-resourced and overburdened.<sup>73</sup> This impacts how the sector can respond to and support DASL participants. As one stakeholder explained:

What was highlighted from the very beginning was we were already full. The sector is full, full stop. There was nothing that we could offer, because we [don't] have spare anything...what can we offer was trying to find if we could squeeze a bed in here, or squeeze a bed in there, or do we have any available counselling slots, or an extra seat that we can put in a physical room where we already deliver a program? And I think most of the services agreed that we would push our limits to one more, because we couldn't be cancelling community clients' space for somebody that was going through the criminal justice system...What we had to do is, we had a gym for our women, we had to get rid of the gym and put a bed in that room. So, they no longer had a wellbeing space at all. And all of that was done free of cost, we didn't get any financial supports for infrastructure at all, so we had to change a gym into a bedroom, and then, because of the impact that was having on the residents, we then had to turn a shed into a wellbeing space. So that's how we managed it, to get that bed for the clients...we were bursting at the seams, structurally. There's nowhere else I could fit someone, if I wanted to.

Similarly, another stakeholder noted:

we were very clear at the start that DASL couldn't just be tacked on, as an extra thing,

---

<sup>73</sup> See eg the recommendation by the ACT Select Committee, n 10, Recommendation 7.

in terms of pulling on resources and meaning that other clients in the community miss out, because we've got to prioritise DASL, is the key thing. And we just want to make sure that that continues, that that's not drawn on our existing resources.

It was also noted that:

And I think this is something with the model of it being at a Supreme Court level, you have those people that have those entrenched histories and behaviours at that level, but we're sort of not matching the treatment to that.

Currently, DASL establishes contracts with specific facilities to provide a certain number of places in residential rehabilitation facilities and counsellors. One aspect of this that some AOD stakeholders identified relates to the challenges of a funding model that runs on relatively short contracts:

With the funding as well, and you've been [going] for 12 or 18 months and then you might not know until a month before, if you're going to get that extended. How do you maintain positive staff motivation and job security? People start looking three to six months out and leave and then you're back to square one to train a new DASL worker, when they appear, if you suddenly get told you've got funding for 12 more months. So, a lot of your resources is going back into retraining people, rather than being able to hold on to strong effective workforce.

A similar concern was expressed in the Inquiry into Community Corrections. In its submission, ATODA noted:

There is also an opportunity for better forward planning of the DASL, including clear timelines for contract negotiation and/or contract extensions. Without timely notification of contract extensions, services are unreasonably required to jeopardise their own financial security in order to prioritise client outcomes. Regrettably this occurred with the most recent contract extensions in June 2021 and is currently recurring...Specialist AOD services are keen to support the Justice and Community Safety Directorate in forward planning for the DASL. There should be a genuine co-design process with specialist AOD services a minimum of six months out from any new procurement processes, and a minimum of three months' notice for contract extensions and variations.<sup>74</sup>

Due to COVID-19 disruption, a number of places allocated for DASL referrals were not required by the Court and specialist AOD services participating in DASL were given the flexibility to use those places to support other participants. Given the likelihood of continued peaks and troughs in referrals and increased demand on services from the broader

---

<sup>74</sup> ATODA, n 18, 3.

population, services require ongoing flexibility to utilise available places as most appropriate. Such flexibility is welcome, though stakeholders have expressed a worry that under-utilised service will result in a pay-per-service model.

...But we've definitely got capacity to be able to be offering more. And I know there's talk about obviously we've got to do a tender for this program for a 12-month period, which is a little frustrating. And I'm mindful that there will possibly be an expectation that our service in particular moves to fee-for-service, because we're not being utilised by the DASL. And I guess there's just risk there, in terms of if they move to that model, that we won't necessarily have the capacity to respond as quickly as we do now. Our staff will be busy working with other clients, so we won't have that responsiveness. I totally get it, from a financial perspective, they're paying for a service that isn't getting used at the moment, but I don't know if there's some thinking to do there around how that model works.

In its submission, ATODA recommended that the limitations of the implementation process be addressed and DASL thoroughly costed, taking into account potential savings and costs for both the justice and health systems.<sup>75</sup> In particular, the submission noted that there was limited consultation with the AOD sector, during the establishment of DASL, and some of the issues raised by the sector had not been addressed. Specifically, the submission asserted:

these concerns included limited treatment capacity in the AOD service system, risks to existing service delivery and rushed implementation. Critically, the DASL was not thoroughly costed, nor the estimated proportion of preferred treatments clearly specified. The costings did not include infrastructure requirements (a particular issue for residential rehabilitation), and the program design did not consider the impact of limited capacity which effectively created competition between DASL clients and other individuals seeking treatment in some cases. The AOD sector nonetheless stepped up to support the establishment of the DASL, with the promise of proper costings which have not eventuated. ATODA notes that prior to the establishment of the DASL the justice sector ('corrections' and 'diversions' combined) was already a leading source of referrals to specialist AOD services in 2015–16, 30% of referrals came from that source, second only to self-referrals (47%). The DASL has contributed to the need for increased investment in the AOD sector...

Over the DASL's life so far, there appears to have been an evolution in the frequency with which different treatment types are used. It will be important that this is considered when procuring future services. Additionally, some treatment types which would be most appropriate for some individuals are not funded under DASL, and as the program matures the range of service types required to best meet individuals'

---

<sup>75</sup> Ibid, 2.

needs may further evolve. Flexibility for a 'step up step down' model to meet clients where they are will support the best outcomes for clients moving forward.<sup>76</sup>

Many of the themes raised by AOD stakeholders in our evaluation were reflected in various submissions and comments at the Inquiry into Community Corrections. Some were concerned about the lack of treatment options available to DASL participants and, in fact, people with substance use issues in the ACT community more generally, as the following comments from the CEO of ATODA highlight:

The ACT started [DASL] in 2019. That is commendable. Internationally, drug courts have not always been a success. We have had a good track record here in Australia, but the reason I raise that is to note that, just because you have started a drug court, you should not think: 'Ha, ha! The work is done here.' Internationally, the evidence strongly suggests that you need to focus not just on diverting people away from the criminal justice system but on the treatment system, to emphasise the therapeutic role that drug and alcohol services are going to play. This is especially important here in the ACT, where the overall number of treatment places available is completely outstripped by demand. To its great credit, the ACT government – when COVID hit, the number of clients going through the DASL at times was lower than anticipated – allowed the extra spaces that were basically freed up in the treatment sector to go to other people in the community. So that was really good. But what we would like to see is some improvement to the DASL, going forward. There are three broad areas where we think we can do this but, if I were to summarise, it would just be to shift the emphasis of the DASL more towards the therapy side and away from the court side....We should be addressing the limitations that came with the really quick implementation process that got it started, where, to be honest, I think the therapeutic side was not as emphasised as it could have been. Thirdly, we need to better involve the treatment sector in planning and evaluation, going forward.<sup>77</sup>

He elaborated on these issues, as follows:

Where drug courts have been successful internationally, they have been part of a suite of potential interventions for the justice system more broadly, ranging from a police officer saying, 'Do you want a referral to an AOD service?' when someone is caught with a small amount of drugs, through to something like the DASL. One of the good things about the DASL has been that a number of places were specifically funded for the DASL.

In the ACT, where waiting lists are often really long, that is important because it allows the court to act swiftly in getting someone the medical assistance or the health

---

<sup>76</sup> Ibid, 2–3.

<sup>77</sup> Bowles, n 43, 23. See also ADACAS (2021). *Inquiry into Community Corrections*.

assistance that they need. My understanding is that that is not the case for other diversionary programs, so people have to wait. And that, I think, is a real limitation. The sector, as a whole, struggles with triaging people all the time. One of the good things about the Drug and Alcohol Court is that it effectively increased the number of places that were available by adding funding.

One thing that will be really important, going forward, is that that funding remains block funding and not fee for service. Fee for service is like the court says, 'OK, we have someone. Health service X, can you please accept some money and take this person?' That is good for that person, but it effectively sets up a conflict between that person and someone from the community wanting to get in and access that service.

The bulk funding which we would advocate for increases the number of places and holds them for them, rather than putting people into conflict with each other. I think a really perverse outcome of the drug court is that it lengthens the waiting lists for people who are not going through the court and, because other diversionary systems do not have those mandated places, it can put people in the DASL in competition with people who are getting other forms of diversion.<sup>78</sup>

ACTCOSS was very explicit in calling for an expansion in the funding allocated to AOD treatment:

ACTCOSS strongly endorses calls for funding for the drug and alcohol treatment sector in the ACT to at least double. The expansion of drug and alcohol treatment orders through the Drug and Alcohol Sentencing List (DASL) needs to be accompanied by a significant investment in the treatment sector. Without this investment, the strain on the sector will mean that voluntary engagement (which could prevent interaction with the justice system) will be limited.<sup>79</sup>

Dr Bowles was also concerned about the lack of collaboration between the courts and the AOD sector:

that points to an opportunity for the court and the treatment sector to work more closely than I think they currently do. As an AOD sector, I think our visibility into the court's thinking is not always as high as we might like it to be. Similarly, regarding our ability to influence the broad thinking of the court, not so much on individual cases but on policy decisions, we feel that we have information to share that would be useful to the court but we have not really had the opportunity to share it. From that, I would say that there is a perception among some of our members – and, I would suggest, some of the clients – that the court process is perhaps, not surprisingly, very legally

---

<sup>78</sup> Bowles, *ibid*, 26.

<sup>79</sup> ACTCOSS, n 16, 13.

focused. I think that, with time, there is an opportunity to evolve that into a focus that is more therapeutically oriented. I hope I am not sounding critical of the court. I think it is completely reasonable to expect it in the first instance, and it could be something that improves with time.<sup>80</sup>

### 5.5 Conclusion

The DASL team's collaborative working relationship and interdisciplinary approach lend significant strength to the program, enabling a holistic and therapeutically-oriented response for participants. The TOT continues to show strength in its ability to collaborate and communicate effectively, though we acknowledge its increasing caseload and the lack of resources to support each participant to a greater extent. The team no longer uses the 'traffic light system' which was designed to help track a participant's status over the course of their DATO. As a result, team members reported that case management is largely reactive, and could benefit from a consistent overarching view of participants' progress. This also has implications for ongoing program monitoring and evaluation. There was also a desire expressed for ongoing training and planning meetings, that could also include members of the AOD community. While the AOD community continues to experience substantial constraints on its resources, it nonetheless is largely supportive of DASL and would like further integration and ongoing communication with the program.

---

<sup>80</sup> Bowles, n 43, 25. Although beyond the scope of DASL specifically, it is worth noting that another stakeholder made similar comments, indicating his support for magistrates 'com[ing] in...[to] do an hour chat about the services that are on offer, which I think would give them some confidence in referring people through': Dean, L (2022, February 16). ACT Regional Manager, Ted Noffs Foundation. *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf> 25.

### Case Study 3

Mr N was only 21 when he entered the program on a 3½ -year sentence with a 12-month DATO. He was sentenced for more than 20 offences, including driving matters, burglary and other property offences, which were committed in breach of a community service order. He had spent time in youth detention and has a significant criminal record.

Mr N's parents separated while he was a teenager. They remained supportive of him, but insisted that he attend residential rehabilitation before they would let him live with either of them again.

In spite of his criminal history, Mr N has had several jobs, completed a Certificate III and wanted to enrol in further study. Most of his socialising included people involved in drug use, though he had also played organised sport, especially soccer.

Mr N's substance use included alcohol and cannabis, but his main problem was methamphetamine, which he started using at the age of 15. Prior to entering remand, he was using up to 1.4 grams a day and he returned positive urine results while in custody.

He reported a number of mental health issues, including ADHD, dyslexia, depression and anxiety. He was receiving anti-depression medication at the time of sentencing. His father commented that his substance use treatment should be combined with treatment for his mental health issues.

Prior to entering custody, Mr N had spent some time couch-surfing. He was initially assessed as unsuitable for a DATO, because of his lack of suitable housing. He was later accepted into a residential rehabilitation facility, but was discharged because he used drugs and was found with a mobile phone on-site. He did not take responsibility for his actions and was not considered to be engaging constructively in his rehabilitation. His DATO was accordingly cancelled, after less than three months.

## 6 DASL in Practice

Consistent with international literature and practice, the ACT DASL is designed to support reintegration into a pro-social community. Facets of reintegration include:

- psychological, emotional and physical health, with the aim of reducing hazardous substance abuse and achieving abstinence from illicit substance use;
- encouraging positive lifestyle choices and assisting with the development of skills, to support this ability within the individual;
- strengthening or developing positive social connections within family and extended community relationships, including enhancing parenting skills, where applicable;
- supporting skills development, through education and employment readiness, with a view to ongoing employment, where possible; and
- developing pro-social attitudes and skills, to meet legal and social obligations and responsibilities, such as abiding by the law and maintaining and managing the participant's finances.<sup>81</sup>

These elements of reintegration are fostered both in court and outside of court, through the support and supervision of the TOT, and in collaboration with other relevant service providers, such as mental health, AOD, and residential rehabilitation facilities.

In what follows, we discuss how stakeholders and participants experience this supervision and support that encompass the DASL program. First, however, we describe the behavioural contract, which is the framework that underpins the program.

### 6.1 The Behavioural Contract

The framework through which the DATO is administered and enforced is a behavioural contract to which all participants agree. This provides a transparent structure of boundaries and accountability, where positive progress is rewarded (or 'incentivised') and negative behaviour is sanctioned. [Figure 5](#) provides some examples of the expectations of conduct and the potential incentives and sanctions that are associated with this.<sup>82</sup> The behavioural contract is not mandatory but is used to guide discussion among the TOT and the Court when assessing the imposition or removal of sanction points.

---

<sup>81</sup> ACT Supreme Court, n 51.

<sup>82</sup> See also Rossner et al, n 7, 12, 34–36.



Figure 5. Behavioural expectations, sanctions and rewards



Source: <https://www.courts.act.gov.au/supreme/law-and-practice/criminal/drug-and-alcohol-sentencing-list>

As described in Section 1.2, a DATO consists of three phases that reflect the evolving needs and requirements of a particular treatment program. As a person moves through the phases, the supervision may decrease, but the expectations around pro-social activities increase. This is reflected in the behavioural contract, where it is acknowledged that some longer-term goals

(such as abstinence) may be harder to achieve in the early stages of the program. As such, incentives and sanctions are adjusted, depending on a person's point in their DATO trajectory. For example, an initial positive urinalysis result while a person is in Phase 1 will result in a warning, while three positive results will contribute to a further day in custody. However, a single positive urinalysis in Phase 3 will send a participant back to Phase 2 conditions for four weeks, while three positive results will result in the cancellation of the order.<sup>83</sup>

Intermediate sanctions may include a curfew, restrictions on movement or associations, increased contact with the Court or community corrections, a reprimand or the requirement that participants offer a reflection about their actions to the Court. The judge also has the option of adding sanction points that culminate in a period of custody. The points-based system means that, at any given time, a person has a balance of sanction points they accrue, for positive urine tests, missing appointment, and so on. Once they reach seven points, the judge has the option to sanction someone to seven days of imprisonment (though the legislation indicates that the judge also has the power to sanction someone with a minimum of three days' imprisonment). If enough points are accrued, the maximum period short of cancellation is 14 days' imprisonment. These periods may be imposed more than once during a treatment order. Points may also be deducted, to incentivise positive behaviour. For example, if a person is in Phase 1 and they do not miss any appointments for four weeks, then four points are deducted from their balance. However, the same behaviour in Phase 3, where the expectations are higher, is rewarded with acknowledgement and praise, rather than the deduction of points.

Participants reported a general satisfaction and fairness with the points system in practice, though it was also acknowledged that the system can be difficult to understand:

I think it's [the point system] really good. Obviously, on paper, the sanctions are sort of different, but I think he's reasonable with the points.

I think they gave plenty of information about the sanctions and stuff like that. The points system, that was a little bit hard to work out,...but after they explained it to me a few times, I sort of picked up on it.

Participants are keenly aware of how sanctions and rewards are applied and were quick to point out what they perceive to be inconsistencies. There was a general sense that this system is at times applied inconsistently. Experiences of this include:

I missed two appointments to a meeting, because of – it was good reasons, like, my car tyre was flat, and there was another one, and I still got three points from him, or two points. And it annoyed me, because it's, like, so you're saying, doing drugs, which is what this court's meant to not be about, that's the main thing, to get off it, this guy

---

<sup>83</sup> For a full list of sanctions and incentives for different types of behaviours, see <https://www.courts.act.gov.au/supreme/law-and-practice/criminal/drug-and-alcohol-sentencing-list>.

did that drug, he pissed dirty, lied, and I can get the same amount of points for that for missing two appointments that I couldn't make. And I called up 10 minutes before, telling them that I couldn't.

I've seen him be real lenient with certain people and all that, you're thinking surely they'd be in jail by now, but then they've been out for a whole year and they're just doing the exact same stuff, over and over, and you're sitting there, like, I've been good for a whole year, I stuffed up once, and boom, I was straight in jail.

Some people, you can have seven different people do the same thing, but then have seven totally different outcomes for that same thing. Someone might only get one point, someone might get three points, someone might get sent back to jail.

I thought I was going to be able to talk my way out of it, because I've seen other people talk their way out of it, and I've seen them come in with way worse – way more points and they've missed a lot of appointments, they've had dirt[y urine]s. Because, I mean, I had no dirty and I only missed one and I was, like, I knew I was going to be dirty, so I owned up to the fact that I was going to be dirty. And that's what got me really sent in.

This was especially perceived to be the case with one of the former participants we interviewed in the AMC. Even though he considered the DASL judge to be 'pretty good, pretty reasonable', he felt that other participants 'have been given heaps of chances' and he was not afforded the same opportunity. This perception would likely be avoided, if the way that the behavioural contract is used by the Court were better explained to participants.

An AOD stakeholder told us:

So, even that's sometimes difficult for the client to get their head around. 'I had to go back to Phase 1, because I didn't show up for an appointment, but such-and-such, he's gone in Phase 2, even though he's used methamphetamines again'. So, that process can be confusing.... I just say, 'well, what can we run with today?' But in the back of my mind, 'I'm going, mm, sanctions for that, but not sanctions for that?'

Members of the TOT confirmed that the behavioural contract is not consistently applied and that this has implications for how participants view the program. One stakeholder explained:

I think that there's probably been a softer approach across the board. I think the reins got a little too loose, towards the end of last year. There was a changeover in Corrections workers and now they've come in with a hard line...So, I think now with Corrections, we're on the same line with that and there is consistency. Ultimately, still Judge does what he wants to do, which is fine. There was that sanction point document [ie, the behavioural contract]. When I started, we followed [it] to a T. And

then people started advocating for less impact for their clients and it just got out of control.

Interviewer: So, that sanction chart is not used anymore?

No.

Team members will raise concerns to the Judge when they think points are being inconsistently applied across cases. The evaluation team observed this happening in case conferences and observed the Judge respond positively to these suggestions.

Some stakeholders have told us that it can be unclear to some where and how participants' infractions are tracked, in order to ensure compliance with the behavioural contract. The weekly status reports include this information. However, without a centralised system of data collection, it is difficult to track participants over time. A member of the Health team reported:

If someone doesn't turn up for urinalysis, in the behavioural contract, first offence is this, second is this, third is this. [But] who's tracking whether it's a first offence or a second or a third? Is that [the DASL coordinator's] job? I think someone in my team said that it's our job, and I said 'no, that's not our job'. We can't keep a spreadsheet for that as well. So, I guess it's just where do processes start and end, whose job is it to do all these things? The points aren't being tracked or pushed through.

This speaks to the challenge the evaluation team has experienced with tracking progress. This has implications for ongoing monitoring and evaluation. The data issue was acknowledged by another stakeholder:

Our case load is with us for 12 months, two years, potentially longer, in some cases. Having the system that's supervising them be as consistent as possible in its methodology and approach I think is beneficial as well. The participants very much observe, they have their own sense of justice and right and wrong. They will voice, if they feel that sanctions are being imposed with discrepancy. So, having a fairly uniform approach I think is highly beneficial to the scheme.

However, it was also acknowledged that some flexibility is needed, in order to be consistent with a therapeutic approach. As one member of the TOT explained:

I think it does need to be a bit grey. And this is where it gets tricky. Someone who has been in rehab and has used three times and been allowed to get back in, may have gone into custody for a week, as their punishment for using. Someone in the community may have used once, and maybe their tenth time using, they may have had a stint in custody, they may have gone to rehab already. How do you judge? You can't just say it equals X. I think it does have to be a case-by-case sort of thing.

Someone who's had five lapses compared to someone who's having their first, you can't treat them the same. It's just a bit – I'm sure it's very confusing for new staff coming in.

The team has acknowledged that the behavioural contract is not consistently applied and that this needs revisiting. There is a body of research that demonstrates that the perceived certainty of sanctions is associated with reduced re-offending (and, one infers, other undesirable behaviours).<sup>84</sup> On the other hand, we recognise the need for flexibility, in how the behavioural contract is interpreted and applied, in order to ensure a therapeutic approach. This of course also aligns with the broader sentencing principles of consistency and individualised justice respectively.

The evidence presented above suggests that the contract may need revision. This should be informed by input from the TOT, with specific consideration to address the issues systemically. This could be undertaken as a part of a planning day. There also needs to be formal documentation of the contract's aims, purposes, principles and application, to inform both participants and staff.

## 6.2 Managing and Supporting Participants

As noted throughout the literature on drug courts,<sup>85</sup> the combination of supervision and support is central to a therapeutic approach. The way this plays out in the day-to-day operation of DASL is through the development and maintenance of positive relationships across staff, and between staff and participants. This was a clear theme in our interviews with stakeholders and participants and was apparent in our court observations. For example, one interviewee explained:

It's working more with the person in the system, rather than being part of that system. Even though we are in the court, we're very person-focused. We're recovery and treatment-based.

In the first phase of the program, participants build up a relationship with their case-workers and with the judge, through the sheer number of appointments and appearances. They participate in additional programs, such as SMART recovery.<sup>86</sup> All participants remarked on the intensity of this phase. The structure of the program recognises it as well: participants are asked to refrain from paid employment during this period, to focus on their recovery and their various obligations to the court and the TOT. As one participant described their schedule during Phase 1:

The intense part of it is that you're going to get up every morning. You're going to

---

<sup>84</sup> See eg Nagin, D. (2013). Deterrence in the twenty-first century: A review of the evidence. *Crime and Justice*. 42: 199-263, 204. For discussion, see also Bartels, L. (2017). *Swift, Certain and Fair: Does Project HOPE Provide a Therapeutic Paradigm for Managing Offenders?* Palgrave.

<sup>85</sup> See Gelb, n 1, for an overview.

<sup>86</sup> See generally SMART Recovery (nd). <https://smartrecoveryaustralia.com.au>.

have to go to a urine [test]. You're going to have to do a meeting for one hour. You're going to have to talk to your parole officer [at] some point, your counsellor, your case manager...and then you're going to go to court as well. And then just when you think you've got a weekend...then it all starts again. So, it is very, very intense at the start.

Another participant also acknowledged this intensity, while also reflecting on how this helps to build a structure of support:

Five days a week, I was busy. And that's exactly what you need in Phase 1 – Monday till Friday of support...And you need this, because it keeps your mind focused on what you're going through, and what you have to do...I loved it. I really enjoyed it. I think I knew it was my opportunity just to stay clean, stay focused, and that's exactly what I did.

This level of contact with the court and the TOT is significantly higher than other forms of supervision that participants has previously experienced:

I cannot do drugs and not do crime, and be under such scrutiny – that's what I saw at the start. People are looking at you all the time, and testing you for drugs, and asking you this, so it's going to be hard to do drugs. You're probably not going to be able to do drugs and get away with it.

These sentiments were echoed in our interviews with members of the TOT, who also pointed to the intensity of the early stages of the program as ways to ensure accountability. For example, as one interviewee remarked:

There's no room to hide for things, you can't get out of things. So, that regulation and routine has kept [the participant] really accountable, and [they] had to decide, no, actually, I'm going to do this, and be really structured...So, the constant check-ins, the reassurance, there's support there, 'what do you need? How are you going? I'm worried about you, or you're doing really well'. I think that's also been helpful to people.

This intensity can also help build a trusting relationship between participants and staff. As explained by one team member:

I think the frequency in talking to them so often, you build up good rapport. And the more you get to know them, they're more willing to share more information. Generally, anyway. Not always. But once they build up that trust with you, they're much more likely to let you know of any issues, as opposed to just pretending everything's okay.

Multiple people we interviewed compared a DATO with an intensive correction order (ICO), though all acknowledged that a DATO requires more of a participant, but also provides much more support. In the words of one participant, 'on an ICO you don't get the counselling, the case management'. Additionally, unlike other forms of supervised orders, in DASL, the Court has the ability to quickly respond to breaches/issues:

I think the intense nature of it, and the swift action to any issues, I think is what is hugely missed in a normal supervised order. If you breach a good behaviour order, for example, a normal one, we submit a breach and it would get listed two months down the track, whereas here, it's next Friday, you're going to have to face the judge. And the fact that they have to present their face each week – we can tell are they going well, or do they look bad?

While in general such supervision and support was welcomed by both stakeholders and participants, it was also recognised that this can be overwhelming for participants. As one member of the TOT acknowledged:

I understand it's the nature of the order, they need to be held accountable in that initial phase, but I also can understand how difficult it must be to get someone in addiction, who is also a criminal for whatever reason, to then all of a sudden turn their life around and be super-organised and committed to something, that must be really, really scary for them...all those obligations are just too overwhelming for some of our clients.

A few stakeholders we interviewed noted that, in the early weeks with participants, the practical work of developing a calendar and scheduling skills is vital. The creation of a 'DASL calendar' was suggested, a physical document for participants to keep track of all their commitments and obligations.

Case managers from Health take a variety of approaches in their meetings with participants, but universally see their meetings as an important space to build trust and rapport, to help identify specific immediate needs each week and practical approaches to addressing them, and then provide a space for thinking about larger or longer-term issues or goals. It was suggested by some interviewees that the TOT may benefit from a structured discussion about what the goals should be in terms of the relationship with the participants and what exactly should be covered in each phase.

As participants progress through the stabilisation of Phase 1 and move to Phase 2, their obligations to the court slowly decrease. This includes the number of times they need to attend urinalysis (three times per week in Phase 1, twice a week in Phase 2, and once a week in Phase 3) and the frequency of their court appearances (once a week in Phase 1, every two weeks in Phase 2, and once a month in Phase 3). Participants all expressed relief at progressing through the stages, and also recognised that this is in part possible because of the trust they have built up with team members, or as one participant described, 'you get that little bit of trusting sort of thing in Phase 3, which has been really good'. Participants in the later stages of the program all described positive and supportive relationships with their case managers from Health and Corrections, as well as with the various counsellors and addiction specialists they see. One participant said of their counsellor:

She's helping me a lot with all these little tools and things to battle addiction and problems and pain and relationships and life skills...They're not your best friends –

well, some of them are my best friends, really, because I talk to them that much, and they help me that much. But that's not what the primary thing is, we're not just here to talk about the flowers and the bees, they're helping you through these massive problems in your life, and the ways that you've lived your life.

This is not to say that progressions were smooth and easy for participants. Everyone we interviewed spoke of their struggles with addiction and with the demands of the DATO. Participants also identified moments where they felt at odds with their case managers or the judge, for instance, identifying moments where they were 'sanctioned' for not complying with part of the order. Even in these moments, participants reported that they were being supported and treated with respect. As one participant explained, 'they're willing to work with you, but if you're doing the wrong thing, they pull you up'. Indeed, consistent with the theory of therapeutic jurisprudence underpinning DASL, it is expected that participants will lapse in their recovery or may be involved in further (hopefully minor) crime. The flexible nature of the behavioural contract is designed to deal with this. For example, one participant was caught driving whilst disqualified in the early stages of their order. In their recollections, their case manager told them, 'This is a slight hiccup, we'll deal with it. This doesn't jeopardise anything, just keep going'. As one participant described:

This is such a good thing, you know, they let you mess up a couple of times, but it's a speed bump. You can't go back to your old ways. You can make a mistake, and then keep it moving, and keep doing the good things. This is a really good program.

Finally, participants regularly interact with the nurses who run the urinalysis testing facility at the court. These nurses are not a part of the TOT, but many of the participants we interviewed singled them out as being particularly supportive and friendly. As another participant described:

People don't take into account...the urine ladies, but you talk to them so much and you voice your problems with them sometimes just because you're always seeing them, and they help you as well...those people might be overlooked a little bit, but they are really involved in the drug court too.

Another participant brought flowers to their graduation to present to the urinalysis nurses, in appreciation of their support.

### 6.3 Identifying Further Support for DASL

#### 6.3.1 More Treatment Options

An unanticipated element of the DASL program has been the number of participants that require in-patient, residential rehabilitation for a period of time. The program has a number of rehabilitation beds on reserve with ACT treatment facilities, but multiple stakeholders identified a need for more beds as an ongoing issue; this is likely to increase as the number of participants grows.



The lack of suitable treatment beds emerged as an issue in two cases in which DATOs were cancelled. In *CF's* case, Refshauge AJ observed that there was no suitable residential rehabilitation program available for her, describing it as 'regrettable that resources prevent a suitable and willing offender from gaining access to a [DATO]...that is part of the hard reality...resources are not unlimited and access for such people may have to be denied' (at [38]). To similar effect, his Honour noted in *QV (No 2)* at [66] that 'it may seem unfair to cancel the [DATO] because the resources necessary for it are presently unavailable'. In that case, his Honour noted, before again cancelling the DATO, that 'the limited resources are preventing [QV] from accessing the rehabilitation that he is assessed to require' (at [70]). It is trite to observe that the effectiveness of the DASL program will be significantly impeded if there are insufficient resources allocated to ensure AOD treatment is available for those who need it, a point which of course extends beyond the DASL program to the broader community in need of AOD treatment.

Currently, the ACT does not have a residential rehabilitation facility for Indigenous people, though there is a day program at the Ngunnawal Bush Healing Farm.<sup>87</sup> It was further emphasised in our interviews that there is a need for such a specialised residential rehabilitation facility. There is a distinct day program for women, which was praised by participants and stakeholders alike.

Input from stakeholders since the process evaluation suggests that this is an ongoing issue and a report by the ACT Legislative Assembly recently confirmed that 'despite high levels of satisfaction with the quality of services provided by the AOD sector, a shortage of funding means that there is a significant lack of availability of these services'.<sup>88</sup>

Treatment is the foundation of a drug court and, as such, appropriate treatment is vital. Residential rehabilitation is underfunded at the best of times and it is currently difficult to support the needs of all DASL participants who need a bed. As one stakeholder said:

The drug and alcohol treatment sector has never [had], still does not have, enough resources, wherever people are coming from. So, I think this is one of the issues with DASL, is we're bed-locked. We've provided as many beds as we can, without taking them from the community.... There is no more space. If there's more demand for this program, the residential treatment is at its capacity.

Another AOD stakeholder made a similar comment:

And you've probably heard and read this, we've said this from day dot, but actually, we have people sharing bedrooms, sharing bathrooms. We are literally what we can

---

<sup>87</sup> For information on this, see ACT Health (2021). *Ngunnawal Bush Healing Farm*.

<https://www.health.act.gov.au/services-and-programs/aboriginal-and-torres-strait-islander-health/health-and-wellbeing-service-0>.

<sup>88</sup> ACT Select Committee, n 10, 17.

squeeze into this physical space. And staff. That's it. There is actually no more physical space to put any more beds in. So, we would love to. And there's some really good models around the place and this is the one thing we've been asked to, in terms of the workshopping type stuff, about what are those models that are out there, that are working, globally.

Many noted that the lack of adequate treatment is one of the biggest challenges participants face. As one put it:

From my perspective [the biggest obstacle has] been access to the residential [treatment] and that people are sitting in jail, because they're unable to access treatment. And look, that can be said across the board, but there's people that qualify for a DATO, who can't get a residential bed, who need residential treatment, you get more of those substance use dependencies, as well as the high-level criminogenic behaviours, they're not suitable to go into the community. They'll step down to the community care.

As discussed in Chapters 4 and 5, and exemplified by this comment, this is compounded by the lack of housing options in the community:

[A]t the moment, there's definitely not enough resources, because our beds – like DASL-appropriate beds at Karralika and Arcadia – have been cut off, effectively. So, the only place we can send people is CRS. But all of the DASL spots at CRS are currently filled, but by people who are in transition housing, because there's just no housing for them once they finish the CRS program, so they're not even doing the program anymore, they've finished it, but there's just nowhere else for them to go. And, as a result, that cuts off our ability to send more people to CRS. So, I think it's just a bit of a circular problem at the moment, with this lack of housing that we have.

The ability to provide appropriate treatment for each individual is necessary, in order for the program to succeed. The Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 recommended that the 'ACT Government should significantly increase its investment in alcohol and other drug services'.<sup>89</sup> We reiterate and strongly endorse this recommendation.

### 6.3.2 Mental Health and Disability Issues

Many DASL participants have trauma and other mental health issues in their background. In addition to drug and alcohol treatment, mental health support is a vital element to the recovery process. Many of the participants we spoke to pointed to how much such support has helped them (see Chapter 9 for discussion of participants' emotional growth). In addition

---

<sup>89</sup> Ibid, Recommendation 7.

to the one-on-one counselling, some of the drug treatment, including SMART Recovery, has clear therapeutic benefits for some participants:

Yes, it helped me, like, therapeutical. Also having some of the – what DASL will bring you is – they’ve got this thing called SMART Recovery, that was pretty good to go to. I had to go to that every week. That was pretty good, because you talk about your addiction, and if you’re someone like me, who’s not fond of your addiction, then it’s good to talk about it, because then the more you can talk about it, the more you kind of stay away from it. It was pretty helpful. In the middle of it, I was saying how bad it was, and how boring and stuff it was, but really, it actually probably helped.

Another participant said this about their counsellor:

I was going once a week and then it went to fortnightly. And now it’s sort of just like on-call. I’ve got a good friendship with her, so I can just call them up and have an appointment on-the-spot sort of thing, if anything is happening. So, it’s really good.

The ACTCOSS submission to the Inquiry into Community Corrections suggested that ‘[p]eople are often precluded from drug and alcohol treatment orders if they also have mental health concerns, despite high co-occurrence for mental illness and dependence on substance use’.<sup>90</sup> In fact, people with mental health issues are eligible to participate in DASL. ACTCOSS recommended that the ACT Government ‘commit to better integrated care for people who use drugs and experience mental illness’.<sup>91</sup>

The submission of the Canberra Mental Health Forum did not expressly mention DASL or DATOs, but likewise made a number of related points and recommended, *inter alia*:

- increased use of more intensive mental health supports and residential units as part of community corrections;
- increase[d] alcohol and drug treatment services, and increase residential places;
- integrat[ing] correction services, AOD and mental health services;
- increased resourcing in AOD and justice health; and
- improv[ing] pathways and cooperation between drug and alcohol and mental health treatment.<sup>92</sup>

In its submission to the Inquiry into Community Corrections, ACT Disability, Aged and Carer Advocacy Service (ADACAS) indicated that it had had limited involvement with DASL, but that it:

---

<sup>90</sup> ACTCOSS, n 16, 13.

<sup>91</sup> Ibid.

<sup>92</sup> Canberra Mental Health Forum, n 66.

ask[s] for close consideration of the additional needs of people with disability (or mental ill health) who also have co-occurring substance use issues. We highlight the importance of options such as the DASL being equitably available to people who, for example, might need an alignment of their NDIS (aged care or other) support services and other justice related supports, to be able to engage equitably with the DASL.<sup>93</sup>

AFI was concerned that Item 2 of s 46K 'may lead to the exclusion of people with disability from the intensive support provided under DATOs'.<sup>94</sup> The submission made specific reference to a redacted judgment. AFI commended the judge's 'heightened awareness of disability support needs', but felt that:

the facts of the case nevertheless reveal the systemic issues for people with disability in the DATO process. Specifically, this judgement clearly reflects how people with disability with complex needs may be excluded from support services, and therefore are at a greater risk of entering, and remaining, within the criminal justice system. This is as, while the judge recognises the need for disability supports in the assessment process...is still required to demonstrate that he can 'perform adequately in the rehabilitation processes'.<sup>95</sup>

AFI suggested that the wording of s 46K 'may lead to the exclusion of people with disability from the intensive support provided under DATOs'<sup>96</sup>, and perpetuate their criminalisation'. It was suggested that:

universal design principles and disability supports must be embedded throughout DATO processes. Furthermore, accessible rehabilitation programs must be developed to ensure that people with comorbid conditions can participate effectively in necessary treatment.<sup>97</sup>

The evaluation team considers that significant efforts are already being undertaken to support participants with mental health issues. Accordingly, there appears to be some confusion about the extent to which DASL is able to support participants with such needs and steps should be taken to address any misunderstandings. There may also be scope for expanding this kind of support. We acknowledge the need for DASL's work with participants with mental health and/or disability issues to be well-integrated and appropriately resourced. We return to this issue in Chapter 9.

---

<sup>93</sup> ADACAS, n 77, Submission 27, 15.

<sup>94</sup> AFI, n 67, 16.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid, 17.

<sup>97</sup> Ibid.

#### 6.4 Managing Caseloads

In our process evaluation, we noted that, as the DASL caseload grows, care would need to be taken, to continue to allow sufficient time for in-depth discussions of each participant's case. In order for this to be achieved, we also recognised the need for more resources, as the list grows, including more sitting days, more time at court for the DASL coordinator, and more rehabilitation options.

DASL was initially intended to have a capacity of 35 participants. However, as the caseload has increased, it was determined that a more realistic caseload with the current resources, and taking into account participants' complex needs, was 30. The program reached this towards the end of February 2022 and, since that period, has not accepted any new referrals. Discussions with stakeholders during this period suggested that that it has been a challenge to provide consistent and timely support for participants, both during case management and in court. As one stakeholder explained:

They do become strained on days where there's a big list. Judge's capacity to engage the participants and build that level of rapport is slightly reduced on the larger days. It is the case that more time to be invested, [equals] more time returned. But there is still the benefit, as a whole, for their participation. So, comparing the physical attendance, even of the large list, as opposed to WebEx attendance or phone attendance, a lot more is gained from the participants' physical demeanour, their behaviour, there's more context to their appearance, as opposed to just hearing a check-in from their report.

The DASL judge sits three days per week, but the lengthy time commitment involved with writing judgments and conducting case conferences and sentencing, check-in and other hearings mean that this is not an accurate reflection of their workload. As his Honour acknowledged:

And so it is becoming, some weeks, almost full-time. I think if we got some more resources you could justify making it a full-time job, with the recognition that there would be occasions where you would expect the judge to be doing some other stuff. For instance, if it was full-time, or even four days a week, the judge could do a bail list or some other sentencing. So, I think it would be productive. At the moment, budgets are so tight that I think the resources are going to be very difficult to get. I mean, if we could increase our bed capacity and our counselling capacity, we could fill it.

The Court is seeking to develop a strategy to increase the capacity of the judge to engage in a range of ways:

Some of the approaches that we've been looking at, like whether or not we break the eligibility and suitability assessment steps and the sentence steps away from the review day, so that the review day is purely for the purpose of reviews and we can

maybe stagger our list slightly better, which allows a greater amount of time for judge to engage with the participant. It's not necessarily the methodology of the judicial supervision, that's more of a case of a court process of how we manage the various aspects of the scheme, from a process side, to allow each step to get the time that it needs and deserves to have the best effect.

Case managers are also struggling to spend adequate time with each participant:

Everything leads up to that court appearance at the end of the week and I can't give the [participants] the time that I ordinarily would. I mean, I spent an hour at least face-to-face, on top of text messages and phone calls and things, with every single client, ordinarily, to try and support them to get through their DATO, but at the moment, it's just check-ins, which is a brief phone call, trying to put out the fire and then on to the next thing. So it is temporary, but it's very frustrating.

The participants we spoke to acknowledged that the judge has a lot to get through at check-in hearings, which can sometimes mean a long wait for a very quick check-in. As one participant explained: 'you get to court and then you're spending an hour just watching everyone else go through, and it's, like, "when is it my turn to go first?">'.

A stakeholder also noted this:

One issue that comes up, would be a conflict between coming to the check-ins and the time it can take, especially if they have work commitments or something like that, they can get a little bit frustrated. And obviously in the past, if someone has been struggling with their treatment or they're feeling massive withdrawal symptoms, they can get really frustrated if they're made to wait. If there's delay in the list and they're called a bit later. And, as a result, that might influence how they check-in with judge and just make them a bit more combative, almost.

But every participant we spoke to was still largely positive about their interactions with the judge. For instance, one participant told us:

The judge, I feel like he's not too bad. He's got so many people to look over, if you know what I mean...Just looking at it from his spot, it's normal for a person to not know everything about every person. So, even if it's written down on paper, you're going to miss one or two things.

## 6.5 Check in Hearing and Communication from the Bench

The weekly check-in hearings are the main interface through which participants interact with the judge. This is where the philosophy of individualised justice is on display, for instance in the habit of one judge who would regularly read a quote each week for each participant that helped to illustrate their particular strengths and struggles. As another judge told us:

They're all individuals and you deal with them as best you can. Yes, each of them has to be approached as an individual...[x Participant] on a good day is quite chatty, I just say 'how was work and what are you doing?' and they're off and telling all about their work and what they're doing, and that's lovely. That creates a connection, which is important. I try to just be, I guess, friendly, supportive, guiding, helping, doing what judicial supervision should be.

This came across clearly in our observations, in the respectful nature of the communication with participants in the check-in hearings, as the following examples illustrate:

Judge: 'I'm very impressed with you, but I am troubled to hear about your health problems...that's exactly the sort of thing we can help you with.'

X: 'In the last couple of days, I feel I can do it. I feel a lot better.'

Judge: 'You're a bit of a role model for others. You're bouncing in. I couldn't be happier. You're engaging well. I hope that's helpful for you.'

Judge: 'you're coming out of a bad situation. You want to surround it all with goodness...you've really achieved something. It's not only an opportunity, but also a risk. Keep loyal and true.'

X: 'CYPS have been really good.'

Judge: 'don't hesitate to call out for help. And be careful of your finances. Thank you for bringing [your kids] in. They're very cute.'

X: 'Thanks for letting them come.'

Judge: 'is work going well?'

X: 'yeah, I'm doing volunteer work.'

Judge: 'congratulations. I have nothing but congratulations...You're going well. Well done! Go well and have a great week.'

We regularly observed the DASL judge use respectful language in court and listen to participants when they spoke. We also observed, when appropriate, hearings take on a light-hearted and jovial tone, as the following example demonstrates:

Judge: 'X, it's boring, you just keep doing well.'

X (grinning): 'I can change that, if you like.'

Judge: 'no, that's excellent, you just keep on going.'

The DASL judge is widely recognised by participants and stakeholders to be fair, thoughtful, and committed to participants' best interests and TJ principles. This general sentiment was articulated by one participant when asked about how DASL is different from other times he has been to court:

when you're doing your [standard] court, you don't know what the answer is. You'll be sitting there, just praying, hoping that it's not five years in jail. Because, if that's the case, then you've got all this stress on your family, stress on yourself, a life that you've just lost. Where, with this court it's not – it's sort of just like a check-in. You go in there,

tell them everything's been going good, if everything has. With any hiccups, just tell him that there's been a hiccup...Now, it's just like normal, now that it's happened so many times. As everything, if you do everything weekly or daily, it all becomes second nature.

Other participants explained:

He's a good bloke. Obviously, now that we've formed a relationship, and obviously I've had a couple of hiccups along the way. He's not there to punish you, he's there to make life better.

it's hard to say about a judge, but I think he's on my side. He's got my best interests, and he believes that I can do it and that means a lot to me.

One of the former participants, whose DATO was cancelled, conceded that, although it was hard being told he needed to change, this was acknowledged when he did:

[Then] he was more, like, I've heard you're doing well this week, keep it up...I felt like he was seeing I was trying harder. I also talk to people who are later in DASL, or graduates, and they genuinely think he's on their side, and that he's helping them. But it's a bit tough to hear at the beginning, mate, you've got to shape up.

Participants acknowledged that it was at times more difficult than 'regular hearings' as they were asked to speak more often. For instance, one participant described the best thing about DASL as:

Being able to talk to the judge. You've got the lawyer in court, but you've got to do the talking for yourself. I think it's really good to get up there and be able to talk. Gives you also those skills to be able to communicate properly...When you go to court in Magistrates or Supreme, you sit in there, the judge is talking to a lawyer, the DPP is talking to the judge, you just sit there, and whatever happens, happens. With this court, you're expected to come in and talk to the judge, whether it's good or bad, you talk to the judge. And they work through those things with you.

Members of the TOT are not required to attend check-in hearings, but in practice they are usually present. The team members we interviewed also acknowledged the benefits of the respectful and open tone of the judge, even when administering a sanction:

[Participants are] not used to having good relationships with a lot of people, let alone a judge. I think that that breaks down a few barriers for them.

For some of them, going to court and having a judge call you by your first name and show interest in your life and know your kids' names, and know the struggles you're going through – some of them actually really respond well to that. So, I think, for some



of them, when they've gotten into trouble, they're, like, 'oh yes, he was pretty stern with me, but that was fair'.

Combined with the development of rapport and trust between participants and members of the TOT, check-in hearings have the potential to increase participants' confidence and resolve needed for their recovery. As one participant described coming to court:

So you're, like, hey, all these people want me to do well, a lot of people really want me to do well, so maybe I'll just do well, because it'll help them, it'll help me, and it would help everyone...You start wanting to do well, because you go to court, and everyone's, like, [participant] did so well this week, he's done all clean urines, he's nice to these people, he goes to all his meetings. And, like, yes, I did, and I'll do it again next week. And so, it starts to become, like, you want to do it.

In case conferences, sometimes the members of the TOT would discuss the order in which participants would appear at the check-in hearings, so that others could see their peers being given rewards or sanctions. This was seen to be a way to motivate some participants. As one judge described:

I like to think about if I'm going to be tough on someone, it can be useful for the others to see. If it's sensitive, [I] put them at the back, right at the end, so that they don't have to spill their guts to everyone. If someone's going really well, put them up the front so that others can see...Because it is a kind of theatre, in a way. And in a way, that's significant, because the point of the exercise is to teach, encourage, warn, and what you do with number one is important for the others as well.

Participants valued seeing the success of others, for example with a member of the TOT remarking that one participant mentioned that they were waiting for the day that they would do something good enough to get applause. One participant described a similar sentiment during their interview:

We're all doing it and we're all trying to better ourselves, sure. And it's cool to see, if other people are doing good. Last week [a participant] graduated, that was good, watching them graduate and that. So hopefully, one day, I'll be there.

Some participants regularly see each other in court, in group therapy, and in addiction meetings, and have grown close as a result of their participation in DASL:

Yes, so the other participants are there and that's great. I think having the participant support is a big aspect, just talking about their journey. Being able to see them outside of the court, because we're able to speak more honestly with each other, about how we're feeling, you know, sometimes they might say they've felt like using...Because we do, we get so close with one another, we hear each other's story.

In terms of specific strategies that a judge may use during check-in hearings, it was regularly voiced in interviews that a method of open questioning and discussion with participants was the most effective approach. As one judge described:

It's about getting the person to identify what the issues are and to some extent identify what the solutions might be. So, it would be a fairly questioning approach with the person...What I found is people always knew what was good, what was bad, and what the likely outcome was going to be. It never really took them as a surprise. And particularly where a person was going to be going back into prison for a period of time, they almost said it themselves. And I can think of a number of occasions where someone would come in and I'd say, 'Okay, so how has the week been? What's been good? What's not been so good? And what do you think is an appropriate way to address that?' And they would say, 'Well, I've got to go back in, don't I?' We'd go, 'yes, you do.' So I wasn't saying to them 'You must go to prison because of this.' They would recognise it. There were a couple of times where the person was saying 'I think I have to go in' and I said 'No, we've found something else that can be tried this time'. So, really, it's about empowering them, so that they've got determination within that process.

Both stakeholders and participants remarked on the positive benefits of structuring the interaction in a way that allows time for participants to articulate their experiences, struggles, and intentions, rather than the judge guiding the conversation by summarising what happened the previous week. As one stakeholder described this approach:

I think there would be much more to gain, and build on their confidence too. For anyone in the judicial system, to sit and talk directly to a judge is just so unheard of, and it's so uncomfortable for these guys. And you see them building their confidence, but I think you need to really throw the ball in their court. 'You tell me what's happening, what's going on?', as opposed to driving the questions.

This is consistent with what we observed at check-in hearings. In our process evaluation, we recommended that it may be useful to include more open-ended questions at the beginning of a hearing, for example, 'what was the best thing about the last week? What was a bit of a challenge?' to allow a fuller narrative to emerge. This is consistent with the therapeutic jurisprudence literature. For example, King suggested that:

For therapeutic purposes, questions that make a participant comfortable and open to sharing her thoughts, feelings and experiences are ideal...Open questions – 'How are you?', 'What has been happening since you were last in court?', 'How have you been coping?', 'What have you been doing to prevent relapse since you used?', 'How has this helped?' – are the ideal way to encourage participants to communicate freely with judicial officers.<sup>98</sup>

This recommendation was readily taken on board and feedback both from the judge and the other stakeholders was that this has resulted in more communicative hearings:

---

<sup>98</sup> King, M. (2009). *Solution-focused judging bench book*. Australasian Institute of Judicial Administration, 124–125.

I think he manages them really well. Obviously, I think it's such a unique court environment, with that really personable interaction, and I think that, for these participants, I think they really enjoy that. He manages them well, in the sense he always gives each participant the opportunity to speak and raise stuff with him, if they want to. He always, as well, really manages the language he uses, and the topic he covers, with the whole DASL team. So, if he's concerned about how he should approach something, he might voice that to everyone and really perhaps even mime out how he will address something, just to be sure.

One stakeholder observed, however, that there is a tendency to revert to more closed-ended questioning, when pressed for time:

You could see that...he put a lot of effort into changing that [asking more open-ended questions]. When we're a bit strapped for time and he's a bit rushed, he just goes back to the old way, and they're in and out, and I think, we do all this work all week, to get to this point, we give [the judge] all of this information, let's spend a bit more time with them.

This goes to the issue of the program's resources and ensuring that these grow with the program.

Stakeholders have also told us that the judge responds well to direct constructive feedback, regarding their approach in check-in hearings, for instance, in the way they begin their discussion with a participant. Initially, the judge would start with a positive statement and then identify the challenges and problems a participant might be facing. According to one stakeholder:

We workshop what he says...and the way he says it. There's a real issue with saying 'you're doing really well, but...'. It undermines any positivity that you've given that person. That's a counselling technique. So, we've workshopped with him...we tried to get him to stop doing that a bit. And just be a bit more even [in] how he's presenting to them...he was really responsive to that.

Other stakeholders noted that, at times, the judge will 'shame' participants for certain infractions or behaviours. For instance, in response to a particular incident, a stakeholder noted:

So, I guess, instead of my client being left with what he's achieved, including sobriety from methamphetamine, which is not an easy achievement, he was left with how he fell short. At times I have been uncomfortable sitting in the court. I have empathy for the judge, he's done a hell of a lot in that court. Not only is it new, he's trying to satisfy legal requirements, he's trying to maintain consistency. He's human. But there have been times, when I've physically felt uncomfortable, because he's chastised a client like that. They're already in the hot seat, they have to front up before their peers and

the judge and their workers, and account for their time, for their stuff-ups, for their gains. So, it's already nuanced for the client. And they're trying to learn how to be an adult. Sometimes they're not treated like one, that needs to be worked on. Because without that self-empowerment as an adult, how do they make safe choices when DASL's finished? Sometimes those parameters are really helpful, because the client is used to maybe a lot of institutionalisation and needs the guidance. But that guidance, again, won't be there. So, if we want sobriety to be long-term and ongoing, we have to shine lights on the strengths that sobriety brings, for example, employment...[or] when the client has tested clean four weeks straight. Or if they've come back from a relapse and they've actually shown up and followed through.

There was also a desire to see a recognition about some of the pressures in participants' lives:

when Judge says – and I've heard him say this more than once – 'you don't have a job, don't worry about that, just focus on DASL' – to a bloke who gets identity from at least bringing home a pay cheque, or that's part of his life somewhere and he wants to reconnect with [that]. That doesn't sit well. [and they're thinking] 'I'm getting anxious now, because I don't have a house that's permanent and Centrelink is...not very much', especially, if they've got a tobacco addiction. And Judge – who's on how much a year? – is telling him not to worry...

Another stakeholder recognised that that it would be difficult for a judicial officer to change from their usual approach, but was keen to see:

something a little bit more reflective and strength-based – like he could even say 'I really hear that work's going well for you and I'd love to hear about the best part of your job'... So that the client sees ... that recovery is [their] whole life...[and t]hat's about ownership, taking ownership of that.

As noted above, there is overall significant support from both participants and stakeholders for the dedication shown by the DASL judge, but these suggestions highlight opportunities for small changes that may further improve the positive impact he is able to have with participants.

Since our process evaluation, a second judge, Associate Judge McWilliam, will also occasionally sit in the program. The feedback we received is that her Honour demonstrates an openness and commitment to a therapeutic approach. As one stakeholder noted:

I think one thing that I've really enjoyed from [her Honour],...which I think is something that perhaps could be implemented more regularly, is that she would always ask the participants – she kind of really encouraged them to speak...She will put to them 'I want you to tell me a goal that you have for the next time you come to court'. And, in doing that, she really encourages them to think about what *they* want

to achieve. I think it was really effective for some of the participants to have them speak that way.

This comment is instructive; adopting this approach more widely would involve only a subtle – and cost-free – adjustment, which may further empower participants and foster their own agency or self-determination, which is conducive to desistance.<sup>99</sup>

Clearly, there is much that is going well in the course of communication from the bench. This includes a genuine willingness to respond to recommendations from the process evaluation. The comments in this section also demonstrate some modest scope for further improvement, to ensure that it is reflective, strengths-based and trauma-informed. The comments of the late Peggy Hora, a drug court judge in the United States for over 20 years, are particularly relevant here:

Communicating effectively and respectfully with treatment court participants [and] eliminating unnecessary court procedures that could be perceived as threatening... to create a sense of safety can help to ensure that trauma survivors benefit from judicial interventions.<sup>100</sup>

A final issue worth noting is that check-in hearings take place immediately after case conferences. This means that the judge must digest any relevant information they have learned about a participant in the conference, and adjust their approach and any plans for rewards or sanction accordingly. According to one member of the TOT, the judge does a very good job of synthesising relevant information for the hearing, noting, 'I'm always impressed with how he pulls it all together, it's phenomenal'. This is a challenging task, especially on days where complex issues are discussed at case conference. It was indicated in our interviews that the judge may benefit from more time between case conference and check-in hearings in order to prepare. Related to this, multiple stakeholders suggested that more time be allotted after case conferences and before check-in hearings to allow for Legal Aid to consult with their clients. At present, there may only be few minutes between when the case conference concludes and check-in hearing commences. Routinely scheduling a brief recess would ensure that Legal Aid can adequately consult with and take instructions from their clients, thereby ensuring due process requirements are maintained, even in the face of an increasingly busy DASL program.

---

<sup>99</sup> See eg McNeill, F., Farrall, S., Lightowler, C. and Maruna, S. (2012). *How and Why People Stop Offending: Discovering Desistance*. Institute for Research and Innovation in Social Services.

<sup>100</sup> See Hora, P. (2020). The trauma-informed courtroom. *Judicial Officers Bulletin*, 32(2): 11-13, 13.

## 6.6 Marking Progress

### 6.6.1 Progression hearings

When a participant is doing well, drug court hearings are designed to be affirmative rituals that recognise and reward their progress. This can be seen in the use of applause during hearings, as well as the progression and graduation ceremonies.

While the idea of applause may seem inconsistent with the formality of a traditional court, it was noted by many interviewees as a beneficial element of the drug court. As one stakeholder described:

The one thing that I struggled with early on was this notion of kinds of rewards that seem inane to people who probably have more privileged lives and the classic one was the applause. We had a real debate about do we have applause or not and the thing that clinched it for me was a couple of stories we heard, one in Sydney and one in Melbourne, about how significant the participants found the applause to be. And one was a guy in Sydney, who never had anything positive, and was thrilled about being applauded at all. The other one was a really tough guy in Melbourne, [who was upset] because somebody got a couple more claps than he did. And that made me realise how important those things can be.

At the same time, applause may at times highlight the inconsistent cultural codes that a participant may be struggling with during their recovery. What is deemed 'good behaviour' in a court and what is expected of them by their family and friends may not overlap. For example, one member of the TOT described a particular time that applauding a participant for 'pro-social behaviour' (calling the police during the commission of a crime) may have had unintended consequences:

One of my clients got upset in the last court appearance, because of how the judge worded something...everyone was kind of saying 'You did well, you followed through on the appropriate actions.' But when I got the client's perspective, he was, like, 'I felt like a real dog'. He felt like he was a dog in front of the peers...And he saw that as 'oh God, I got clapped for being a dog'...So it's really conflicting for him. But it was kind of straightforward for the DASL judge. [The participant] was almost in tears after court...he felt like the other participants were going to judge him for doing that. So, there's a whole other layer that we as workers have not thought of.

When a participant progresses to a new phase, a small progression ceremony is held at the end of their hearing. The judge will acknowledge their progress and present them with a certificate. They will come down from the bench and stand next to the participant for a photograph, while the rest of the court applauds. It was noted earlier that participants expressed relief at their progression. They also acknowledged the thought that went into having a ceremony. When describing what was good about their progression, one participant said:

That acknowledgment, I guess. And it might sound silly, like the certificate's actually framed, like they actually put a lot of effort into it, by the looks of things. So, it's nice to get that recognition. Because especially Phase 1, it's hard.

Another participant told us, in relation to a ceremony marking his progression from Phase 2 to Phase 3:

But I tell you what, when I completed Phase 2 and they took a photo of me with the judge and I sent it to my family and friends, they were, like, 'oh my God'.

Interviewer: How did you feel?

Yes, I felt good. It was good to be working my way towards being just a proper member of society and that's the goal, at the end of the day.

Stakeholders were generally positive about progression ceremonies, while also acknowledging that it was an adjustment from what they might normally expect at court:

Some of these people have never been praised for anything in their life. So, I think that's important to probably push their motivation for them to keep going for a little bit longer.

I think they're wonderful. At first, with the clapping and stuff, I didn't understand quite how big the impact of that would be. And the encouragement really, really works...Yes, it's really wonderful, seeing them be so proud of what they've done.

However, some improvements were suggested. For instance, by including the members of the TOT in some way:

I think it would be nice for the case manager to be involved as well, since everyone who's worked with that person, so the case managers from both sides [ACTCS and Health], because we've really worked to get them there, and they have such good working relationships with us, I think that would be really nice for them. Maybe that could happen right at the end.

Similarly, it was suggested that the progression ceremony include more discussion of the participant's journey and treatment plan:

you've got to acknowledge [progression], but it just feels clunky and awkward... I think more can be done to tie it back to the overarching treatment plan, the overarching plan for this person, like a reminder, like, 'hey, this is the 12-month journey you're on, and you're at this stage, and you've ticked all these boxes, and you've done really well, here's your applause and here's your certificate. And now the next three months, this is what we're going to be focusing on, and what do you think it's going to be like?' Just keep it a bit more formal, because it still is part of a court order. I think applause is good, having people being acknowledged for that is great. They can just be uncomfortable to sit through.

The progression ceremonies that we observed were quick and relatively informal. Participants smiled for their photograph and seemed pleased with their certificates.

### 6.6.2 Graduations

A highlight of DASL is meant to be the graduation ceremony, when participants are formally recognised for their achievements. These ceremonies start like an ordinary DASL check-in hearing, where the participant is called up to sit in the witness box near the bench. The judge reads a prepared speech, summarising the participant's history in the DASL program and highlighting their achievements. It finishes with applause, the judge coming out from behind the bench to hand the graduate a certificate, shake their hand and pose for a photograph. There is then a short break, where a cake is produced (COVID restrictions permitting) and shared among those in attendance. This is a communal affair; the graduate will cut the cake up, while other participants will help pass plates around the room. Often, the urinalysis nurses will leave their station to come and cheer on a graduate and AOD counsellors who do not normally attend court will attend graduations, to mark a participant's achievements. Families are invited, though they do not usually attend. If the participant has children, the DASL team will buy a larger cake, so there is enough left over to send home. In one instance, a participant indicated in advance that they didn't want cake, due to their restrictive diet and instead the team found some diet-appropriate celebratory food that they gave to the graduate. At another graduation, a participant told a member of the evaluation team that he was very excited about when it would be his turn getting a certificate and cake. Receptions last for about 10 minutes, at which point the cake is cleared, the judge returns to the bench, and the rest of the day's check-in hearings are completed.

Participants reported a combination of embarrassment and pride about graduation ceremonies. As one put it, 'It's a bit awkward, but I think it's, you know, all like this hard work that you need to put in, I think it deserves something'. Another participant offered the following reflection after their graduation:

Participant: It was amazing. Like, I was starting to get a bit teary out there. I'm, like, 'hold it in, hold it in – can I reach for a tissue without anyone noticing?' Dab my eyeballs. But it was hard.

Interviewer: So what did you feel?

Participant: They made me reassure myself, and to be proud of what I have done, the accomplishment that I've made in the last 12 months. Because...looking back, I've come a long, long way. I'm getting chills just thinking about it.

All the participants we interviewed thought that the graduation ceremony was important and looked forward to their own. We acknowledge, however, that one participant who was eligible to graduate, chose not to have a ceremony. This participant also did not consent to take part in an interview, so we are unable to draw any conclusions on their perceptions of the program.



One stakeholder we interviewed told us that, consistent with other jurisdictions around Australia, the ACT DASL was hoping to identify a small gift for participants at graduation, as a token of their success. However, we did not observe any gifts outside of the certificate. We would suggest that the Court further consider whether to incorporate graduation gifts into its practice and what may be an appropriate gift under these circumstances.

A number of stakeholders have suggested that graduation ceremonies could be more positive and future-focused. In particular, there is an ongoing discussion among the TOT, about the extent to which the judge should emphasise the (often violent) offences that brought a person into a program. Judge has made the argument that it is important to acknowledge a person's past, in order to highlight their progress and positive future. Others have offered the following responses:

I just feel that we shouldn't mention their list of crimes that they committed. It gets me in the gut. We've gone through all of this, they're not who they were then, why are we referring back to what they did? Who cares what they did? Let's talk about who they are now...[one graduate] had his whole family there, he had his child there and they're discussing his offences that he committed. It's horrible. Let's talk about what they've achieved on the program, let's talk about their goals and what they're moving forward to. Let's not refer back to what they did. Sure, say they got sentenced to a DATO, because they committed offences, OK. But you don't need a list-by-list of everything that they did...And it must be humiliating to sit up there and go through that. We spend hundreds of hours telling them 'you are not your crime'.

It should be more a celebration of 'circumstances brought you to the drug court, but wow, look at what you've achieved. You're now working, you've got stable accommodation, you've got all your kids back'. Highlight the good things.

These guys have come so far. I don't think I could get through a DATO. The mental capacity that it would take to keep showing up and getting through these appointments and doing all that they do, putting all the crime and drugs aside, just that, that commitment that they have, let's talk about those things, I think.

According to one stakeholder:

I definitely think the [graduations] need to exist. But maybe it could be more informal. Maybe it could be outside at the atrium. And the judge stands there and says his little piece and they cut the cake. It's a celebration. Rather than another court attendance.

We suggest that these comments are worthy of further consideration, so that the full potential of graduations is harnessed, as an opportunity for everyone to celebrate the graduate's success, in a way that is most therapeutic and effective.

The evaluation team analysed seven out of the eight graduation speeches, which are published on the Court's website.<sup>101</sup> [Table 7](#) summarises the key details of each graduate's case, drawing on the graduation speeches and other relevant information. Other aspects of the graduation speeches are excerpted and discussed below.

As noted by some of the stakeholders we interviewed, we found that the DASL judge would describe the offences that brought the participant to the DASL. These descriptions ranged from brief mentions to including significant details. For instance, what follows are descriptions of burglary offences from two different graduations:

I sentenced you for two offences of aggravated burglary and two other offences.

After a long history of serious and other crime, you faced a charge of aggravated burglary, three charges of burglary, four of theft and one charge of dishonestly taking a motor vehicle without the owner's consent. These were serious offences which disrupt the peace and prosperity of the community and harm the victims who suffer from your actions. You were indiscriminate in your burglary targets – [goes on to detail targets]. You stole people's property from these premises and took a motor vehicle that did not belong to you.

It was more common to include more detail (in five instances) than less detail (in two cases).

Also included in all speeches were examples of the challenges and setbacks participants had faced. However, in all instances, these were situated in a narrative about overcoming these challenges and coming out stronger. The following are some illustrative examples of this:

There have been some hitches along the way. As [a] result of the most recent and serious one, the Order, which had originally been made for 12 months was extended to today. You accepted that and got on with the job of working through the relevant issues. As we now know, of course, you then succeeded to reach this day of graduation and celebration.

You also spent some time in the Alexander Maconochie Centre when things got too much and you failed to comply with the obligations of the program. You accepted that and got on with the job of working through the relevant issues. Indeed, you came back with a renewed commitment though you encountered some bumps.

---

<sup>101</sup> The eighth speech was not available on the Court's website during the data collection period.

Table 7. Key details of DASL graduates, 2020–March 2022

	Offences on entry to DASL	Offending history	Substance issues	DATO length	Comments on exiting DASL
1	Assault, traffic (n=3)	Not stated	Amphetamine, methylamphetamine, up to 1g daily	12m	Some hitches and DATO was extended, but overcame those issues; was able to get kids back from care and protection system
2	Robbery (n=3)	Minor	Heroin, \$150 per day	12m	Started CIT course and shared their cooking with the DASL team
3	Theft, possess prohibited weapon (n=2)	Significant	Cannabis, methamphetamine, heroin drug of choice; currently on methadone	14m	Success includes forming a 'boys club' with other DASL participants. Planning for the future, including a holiday, and ambitious target of 90 Narcotics Anonymous meetings in 90 days, but judge tells him not to think it's a failure if he doesn't meet that. 'You are good at your work and perhaps you can also put your artistic talent to legal and worthwhile use' (2021: 2).
4	Burglary and theft (n=9)	Significant	Cannabis, methamphetamine, heroin, methadone	12m	Has reconnected with daughter and has taken on a carer role. Gained an asbestos certificate, participated in a course at CIT, secured a job and mostly avoided old associates. Has agreed to aftercare, which is 'a real sign of your insight and maturity' (2021: 3). Had some setbacks, including cannabis use and also accepted penalty for this with insight and maturity.
5	Burglary, theft, property damage, traffic (n=11)	Significant	Cannabis, methamphetamine; some past success in rehab	12m	Has reconnected with his Indigenous culture, including weekly meetings, and has been working on parenting and completed Circle of Security program with partner. Has made amends, in line with Step 8 of Narcotics Anonymous, with people from his past. Suffered from COVID.
6	Burg, theft, property damage (n=4)	No record	Benzodiazepines, costing \$300 per week	15m	'You threw yourself into rehabilitation... committed to your therapy, from which you obviously gained much'; 'I always found you showed the honesty, even about your failures, that is fundamental to success in addressing drug dependence, as it was with you'.
7	Burglary, fraud, traffic (n=19)	Significant	Cannabis, methamphetamine, methylamphetamines; some rehab	12m	Had initial difficulties in rehabilitation – discharged for drinking within five days after admission. Spent week in custody as a sanction then entered new rehabilitation program. He also learned various skills, especially managing family relationships, developed an introspective view into situation and motivations.

Source: DASL graduation speeches

As almost always happens, you met – and overcame – some hiccups from time to time. At one time, you wanted to leave Canberra and follow employment interstate, which is not possible on this Program, and you found that a difficult decision to accept, which made you angry; as with many other people, you had great difficulties with the COVID-19 caused-lockdowns, especially the effect it had on your mental health; you did, a couple of times, fail to comply with all your urinalysis obligations; finally, worst of all, was your usage of cocaine last year, by which time you were well into your Program, when you should have been able to say ‘no’ and prevent any relapse. You did, however, overcome each and every one of these hurdles, and have now graduated. To overcome these also made you stronger and gives you, the Team supporting you and the Court confidence that your journey of rehabilitation and growth will continue to be successful.

A significant proportion of each speech highlighted the participant’s personalised accomplishments. Examples of this include:

You have made a real contribution back to the community by your volunteering work at the Salvation Army. You are now working, have finished your opioid maintenance treatment and have put some effort into raising tropical fish.

One of the great contributions you have made is in your art, the wonderful paintings you have been able to create. I am proud and affirmed weekly by photographs of four of them, which grace the inside and outside covers of the folder that I use every week to hold the regular Status Reports I receive about progress of each participant being then reviewed. I still have and also value the 27 photos that you sent of your restoration of a utility vehicle into what is now also quite a work of art.

When entering [residential rehab], you had received some peer support from, as it happens, another participant in this program and, over time, you became yourself a very impressive supporter of others, graduating to a senior peer mentoring role. You also learned various skills, especially the management of your family relationships. You developed an introspective view into your situation and to your motivations. I always found that you demonstrated the honesty, even about your failures, that is fundamental to success in addressing drug dependence, as it was for you.

Six of the seven graduates had children and, in five out of six cases, the judge commended the participant for demonstrating an improved relationship with their children and acknowledged the joy and pride that this brought.

As some stakeholders expressed, it is possible that mention of ‘negative’ elements of a participant’s life, such as their offending history, may be experienced by them as outweighing any mention of ‘positive’ elements. However, taken as a whole, these speeches do reflect a careful consideration of the challenges participants face and progress they have achieved. In

light of some stakeholders' concerns, we suggest that consideration be given to minimising the emphasis on the offences that brought participants into the program and instead focusing on the participants' achievements, leading up to their graduation. This minor adjustment would increase the therapeutic and strength-based elements of the graduation ceremony.

### 6.6.3 Cancellation hearings

Orders are cancelled when the participant is unable or unwilling to comply with the conditions of the DATO. The cancellation hearings that we observed were markedly different in tone from check-in hearings and progression and graduation ceremonies. Like the sentencing hearing marking a participant's entry into DASL, this was a formal legal hearing, with the judge primarily addressing counsel. In interview, one judge described this shift as necessary:

That's back into the judicial mode rather than the DASL mode, if I could put it like that. But there are two things about that. One is that there is no engagement directly with the participant in those cases, so you are talking in the legal sphere. The second thing is that it becomes formal...and that gives you the change of pace and the change of atmosphere to put you back as a judge. Now, I think that's right, because the review is important, and I've talked about the difficulties, I mean, if someone says I didn't use, notwithstanding the urinalysis, and I've got to send them to gaol, that's a judicial act. Sentencing is the exercise of the power of the state to affect an individual and their life, and so I think there is an important degree of formality about that.

Cancellation hearings can be long and detailed. In interview, this judge acknowledged this, explaining that it was important to be so meticulous in order to develop a drug court jurisprudence:

And so, for instance, my first cancellation, I really worked quite hard on, getting some of the legal parameters right and so on, how you do it and so on, and that leaves, hopefully, a bit of a legacy for someone else to build on. I might be wrong, but at least they know where to start.

## 6.7 Conclusion

The day-to-day operation of DASL appears to be working well and in a manner that is consistent with the principles of therapeutic jurisprudence. The supervision and support offered as part of the program are generally viewed favourably, particularly the positive relationships that have developed among staff and between staff and participants. This chapter also highlighted the perceptions among participants and stakeholders about the inconsistent application of the behavioural contract protocol and the issues that this poses. We therefore suggest that this be the subject of review by the DASL team, with better communication detailing how the contract is used in practice.

We identified some challenges in managing caseloads, which suggests that DASL may need additional resources to continue to meet participants' complex needs. This is especially

important, in light of the issues we identified around the work members of the team are doing to address participants' housing needs.

This chapter also identified the need for more – and more varied – treatment options, as well as considering mental health and disability issues. It is clear that significant efforts are being undertaken, to support participants with mental health issues. However, there appears to be some confusion about the extent to which DASL is able to support participants with such needs and steps should be taken to address any misunderstandings. There may also be scope for expanding this kind of support and we acknowledge that DASL's work with participants with mental health and/or disability issues needs to be well-integrated and appropriately resourced.

In our analysis of communication from the bench, we identified many aspects of TJ practice. However, there were also some suggestions about how the judge could adopt a more strengths-based approach, especially in relation to graduation speeches.

## Case Study 4

Ms P was nearly 30 when she entered DASL on an 18-month sentence, with a 12-month DATO. Her offences included trespass and being equipped for theft and were committed in breach of a good behaviour order. She had a lengthy criminal history, including many periods in prison, but much of the offending was in fact fairly minor. She has had issues complying with community-based orders in the past.

Ms P's drug use began at a very young age, with cannabis, alcohol and methamphetamine use. She began daily intravenous heroin use from the age of 19, although she later commenced methadone. Ms P said she used cannabis every day, to deal with trauma-related nightmares. She also used alcohol. She was keen to address her substance use issues and had limited opportunity to do so. She was considered to be developing insight into the harm her substance use was causing and was open about her drug use. It was also considered to contribute substantially to her offending.

Ms P had a very traumatic upbringing, including significant emotional and physical abuse and seeing her mother commit suicide. She is no longer in contact with her father or siblings. She left school early and has not been in stable employment, although she has done some volunteer gardening and would like to do more volunteer work. Her mental and physical health were poor, including chronic pain issues, past attempts at suicide and an intellectual disability. She had no stable housing at the time of sentencing, but had recently been offered a place to live.

Ms P's progress on the DASL program was patchy. Ms P sometimes missed her appointments and she used methamphetamine twice. Even more significantly, she continued to use cannabis sometimes, which she said was to help her manage her chronic pain condition. There was also concern about her cognitive function and whether she was fully able to understand what was required of her on the program. However, she also participated actively in drug rehabilitation programs, re-engaged with family members and her health and housing situation improved significantly over the course of her time in DASL.

Due to her ongoing occasional cannabis use, Ms P did not progress beyond Phase 1 of the program. Nevertheless, she was considered to have substantially completed the program having showed significant improvements in her drug use, attitudes, pro-social activities, health and housing.

## Part II: Outcome Evaluation



## 7 Description of Outcome Indicators

Drawing on our earlier research,<sup>102</sup> it is clear that outcome indicators of ‘success’ are complex and varied. This was also recently articulated by Shane Drumgold SC, ACT DPP, who said the following, in evidence before the Legislative Assembly, in reference to the DASL:

As for effectiveness, that is a really difficult question to answer. Most people talk about recidivism. Recidivism is a very blunt tool. If you are a lifelong criminal career and you commit a drink driving offence a year later, you are a recidivist. If the question is how effective is it, I do not know that; we do not have the review data on that as yet. In principle, I think that addressing the criminogenic factors has to make sense. We support the Drug and Alcohol Court because it does home in on criminogenic factors.<sup>103</sup>

Recidivism is an important indicator of success for many criminal justice interventions. However, as noted above, it can be a blunt tool that obscures a more nuanced understanding of both addiction recovery and desistance from crime. Drumgold pointed to other ‘criminogenic factors’ that DASL seeks to target. In line with this, and the international literature on drug court outcomes, the research team has identified four ways to examine the outcomes of a drug court. The following outcomes are introduced here and discussed more fully in subsequent chapters.

### 7.1 In-program Outcomes

Measuring in-program outcomes includes short-term measures of a drug court’s success. Best practice guidelines suggest that drug courts continually monitor participant outcomes during enrolment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program violations and new arrests. These in-program outcomes not only reflect clinical progress, but are also significant predictors of recidivism following program completion.<sup>104</sup>

Measuring in-program outcomes is also important as a way of capturing partial progress. As some participants may make substantial progress before disengaging from the program and/or re-offending, measuring even partial progress acknowledges small steps in people’s journey towards desistance.<sup>105</sup> Recent analysis<sup>106</sup> of data from the NSW Drug Court provides comparative Australian information indicating, for example, instances of drug use since the previous check-in (i.e., sobriety); the number of custodial sanctions imposed for program

<sup>102</sup> See Gelb, n 1; Rossner et al, n 7.

<sup>103</sup> Drumgold, S. (2022, February 23). Legislative Assembly for the ACT, *Inquiry into Annual and Financial Reports, 2020-21. Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs16a.pdf> 100.

<sup>104</sup> National Association of Drug Court Professionals (2018). *Adult Drug Courts: Best Practice Standards – Vol. II*.

<sup>105</sup> Hill, M. and Moore, L. (2018). *Reflections From the ‘Double Figures’ Milestone: A Decade of Therapeutic Jurisprudence in Tasmania*. University of Tasmania.

<sup>106</sup> See Clarke, n 13.

breaches (i.e., recidivism, in the form of technical violations); and sentences imposed for offences committed by participants after commencing the program (ie, recidivism in the more traditional sense, including the types of offences committed).

### 7.2 Social Integration Outcomes

The research on desistance has been criticised for traditionally limiting its focus to binary measures of recidivism, with some arguing for a more complex and broader understanding of the multiple ways desistance can influence a person's behaviour, social relations, and health.<sup>107</sup> Such 'social integration' outcome measures can include exploration of a person's integration within their social networks, employment, accommodation and physical and/or mental health.

In a drug court context, given the complex histories and trauma seen among many participants, broader measures of social, emotional and psychological wellbeing add substantially to our understanding of the effectiveness of a particular program. Indeed, research that has included these broader measures has shown that drug court participants reap psychosocial benefits in other areas of their lives, including significantly less family conflict. They are also more likely to be enrolled in school and are less likely to need assistance with employment, education or financial issues.<sup>108</sup>

The importance of these indicators was raised in the ACT Community Corrections Inquiry, where ATODA made the following submission:

As the DASL is intended to be a therapeutic alternative to incarceration, therapeutic outcomes should be considered as an indicator of success along with recidivism outcomes. Any evaluation must incorporate a health perspective as well as a justice perspective. Evaluations should also consider outcomes for individuals who are not retained in the DASL.<sup>109</sup>

### 7.3 Recidivism

As discussed by Gelb,<sup>110</sup> one of the major aims of any part of the justice system is to enhance the safety of the community, by reducing re-offending. This needs to include a consideration of definitional issues (types of re-offending to 'count' as an indicator of recidivism) and the unit of measurement selected to count recidivism (for instance prevalence, frequency, type

---

<sup>107</sup> While Shapland and colleagues were writing here in relation to offenders on probation, the point is relevant to all people involved in the justice system in any way – particularly for drug court participants, for whom desistance is very much a journey, rather than a 'sudden cessation': Shapland, J., Bottoms, A., Farrall, S., McNeill, F., Priede, C. and Robinson, G. (2012). *The Quality of Probation Supervision – A Lit Review*. University of Sheffield Centre for Criminological Research, 11.

<sup>108</sup> Rossman, S., Roman, J., Zweig, J., Rempel, M. and Lindquist, C. (2011). *The Multisite Adult Drug Court Evaluation: Executive Summary*. Urban Institute. See also Rossman, S. and Zweig, J. (2012). *The Multisite Adult Drug Court Evaluation*. National Association of Drug Court Professionals.

<sup>109</sup> ATODA, n 18, 3–4.

<sup>110</sup> Gelb, n 1.

of offending). Undertaking such an analysis will link more broadly with the ACT Government's commitments to reduce recidivism.<sup>111</sup> However, given the short amount of time that DASL has been operational and the small number of participants to date, our findings on this should only be regarded as provisional.

### 7.4 Complying with the Principles of Therapeutic Jurisprudence

A further key element of success in a drug court is for all members of the court to be committed to the principles of therapeutic jurisprudence (TJ), including having an understanding of drug addiction, rehabilitation and relapse, and be committed to the role of the program in assisting participants to complete their orders successfully. At the same time, members of the treatment team need to be able to hold participants to account for their behaviour. An important component of this is through the cultivation of positive relationships between the team members, and participants and staff.<sup>112</sup> Other elements may include structure and accountability; court capacity; and rewards and sanctions.<sup>113</sup> In 2019, the research team produced a comprehensive literature review for the Court, where we summarised the key best practice principles and standards for a successful drug court.<sup>114</sup> These indicators can be taken to represent the values of therapeutic jurisprudence and fidelity to these principles represents best practice. A summary of the components and principles is presented below.

#### 7.4.1 Key components to a successful drug court

1. Drug courts integrate AOD treatment services with justice system case processing.
2. Using a non-adversarial approach, prosecution and defence counsel promote public safety, while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug courts provide access to a continuum of alcohol, drug and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent AOD.
6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participant is essential.

---

<sup>111</sup> See ACT Government (2020). *RR25by25: Reducing Recidivism in the ACT by 25% by 2025 – 2020 to 2023*. Members of the DASL evaluation team are involved in assisting the Government with evaluating the effectiveness of its Reducing Recidivism Plan.

<sup>112</sup> Kuehn, S. and Ridener, R. (2016). Inside the black box: A qualitative evaluation of participants' experiences of a drug treatment court. *The Qualitative Report*, 21: 2246–2267. See also Shaffer, D. (2011). Looking inside the black box of drug courts: A meta-analytic review. *Justice Quarterly*, 28: 493-521.

<sup>113</sup> See Clarke, n 13.

<sup>114</sup> See Gelb, n 1, for a fuller discussion.

8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
10. Forging partnerships among drug courts, public agencies, and community-based organisations generates local support and enhances drug court program effectiveness.

### 7.4.2 Best Practice Standards

1. *Target Population.* Eligibility criteria for participation in the drug court are based on empirical evidence about the types of offenders for whom a drug court is likely to be effective. Potential participants are assessed for admission using evidence-based assessment tools and procedures.
2. *Historically Disadvantaged Groups.* The drug court ensures that it offers the same opportunities to participate to people who have historically experienced sustained discrimination, because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion or socio-economic status. The drug court offers appropriately responsive programming to these groups.
3. *Roles and Responsibilities of the Judge.* The drug court judge is knowledgeable about current law and research on best practices in drug courts. The judge participates regularly in team meetings, interacts frequently and respectfully with participants and gives due consideration to the input and advice of other team members.
4. *Incentives, Sanctions and Therapeutic Adjustments.* Consequences for participants' behaviour – both positive and negative – are predictable, fair, consistent and administered in accordance with evidence-based principles of effective behaviour modification.
5. *Substance Abuse Treatment.* Drug court participants receive tailored substance abuse treatment, based on their assessed treatment needs. Treatment is not used as a reward or punishment. It is delivered by appropriately trained and supervised practitioners, who employ a continuum of evidence-based interventions that are documented in treatment manuals.
6. *Complementary Treatment and Social Services.* Drug court participants also receive complementary treatment and social services for conditions that are likely to interfere with their drug court compliance, increase the risk of recidivism or diminish treatment gains.
7. *Drug and Alcohol Testing.* Drug and alcohol testing is used regularly throughout people's participation in the drug court.
8. *Multidisciplinary Team.* A dedicated, multi-disciplinary team of drug court professionals manages the operation of the drug court.

9. *Census and Caseloads.* The drug court serves as many eligible people as possible, while maintaining program fidelity to best practice standards.
10. *Monitoring and Evaluation.* The drug court routinely monitors its adherence to best practice standards and employs scientifically valid and reliable procedures to evaluate its effectiveness.

In Chapter 11, we draw on data from the process and outcome evaluations, to assess fidelity to these principles and practices. We use this as an indicator of compliance with the principles of therapeutic jurisprudence.

### 7.5 In-depth Case Study of a DASL Graduate

In what follows, we provide a single case study of a DASL graduate, Matthew. This is to demonstrate the different outcome indicators used in this evaluation and show the complex and dynamic journey that participants undertake. It is clear that success on this program is predicated on supervision by the Court, support from Health and other services, and on the participants' own commitment to change and determination to reform. Elsewhere in this report, we also highlight brief case studies of DASL participants, to demonstrate the variety of cases and issues facing participants.

#### 7.5.1 Case study methodology

For this case study, all of Matthew's reports from his time on the program were analysed. The program reports included ACT Health's status reports – provided for each court check-in hearing – and treatment provider progress reports. These reports were detailed and contained information about Matthew's progress on the program, including updates and descriptions from his case manager and other ACT Health staff, treatment staff, drug testing, corrections officials, and police (if applicable). The reports were analysed, in relation to Matthew's progress, with content summarised into three simple categories: positive, negative and general updates.

A progress score between one and seven, corresponding to negative and positive progress respectively, was then determined, based on this information. Additionally, a brief qualitative summary was written for every three months of Matthew's reports, noting consistent or significant themes, and outlining his overall progress. The qualitative summaries form the basis of the timeline in [Figure 6](#) below, while the progress scores are reflected in the graphical representation of his time on the program, in [Figure 7](#) below.

We also draw on two interviews we conducted with Matthew: one towards the beginning of his order and one immediately after graduation.

#### 7.5.2 Case study: Matthew

Matthew began on DASL in late 2020 and graduated after just over one year. In both of his interviews, he described feeling 'ready' to commit to the program whilst in jail, prior to

commencing the program. Matthew had previously been placed on a similar drug court program in Victoria. He was removed from this program, after returning a number of positive drug tests.

Matthew recalled feeling that he was at the 'right point in my life now', to make a change on the DASL program. Later, he said that the difference between his time on this program and the earlier Victorian one was that 'this time I took it seriously' and 'it worked, because I wanted it to work'. He also had a strong desire to have his son back in his life and, throughout his time on the program, Matthew's son was a point of focus. Matthew spent significant time with him and often reflected on his son being a source of motivation to continue and that he looked forward to spending time with him. Towards the end of the program, Matthew expressed some anxiety about a dilemma he faced: he had the opportunity to work full-time, but this could affect the time he was able to spend with his son.

Matthew's motivation and commitment to change was a consistent theme throughout his time on the program, emerging early through his active engagement with counselling and case management staff. He did not miss appointments and was described as being prompt, organised and motivated. Matthew recalled that he knew what to expect from the program, based on his previous Victorian experience. He experienced the intensity and demands of the program as challenging, but helpful. He also described the transition between the first and second phases – where appointment and urine testing frequency decreased – as a time of knowing whether or not it was going to work. Matthew said that the intensity of the program requirements was something that you get used to and that the transition between Phase 1 and Phase 2 was a reflection of his success.

Despite this positivity, Matthew had a setback approximately two months into the program. While in the company of a friend, he was involved in a shoplifting incident. Matthew initially downplayed his involvement to program staff, before the full story came to light, as further police evidence emerged. He was fortunate to escape a police charge – an outcome that would have seen the end of his time on the program. Ultimately, the incident was dealt with in-program, with Matthew receiving a significant sanction of six penalty points. Matthew expressed significant remorse and anxiety following the theft, worrying that it would result in the end of his time on the program.

This event highlighted a difficult aspect of the program for Matthew. In his interviews, he spoke about how he deliberately isolated himself from people, to avoid influences that might negatively affect his progress. The shoplifting incident resulted from such influence; Matthew recalled how he did not want to appear weak to the friend he was accompanying. Separately, program staff at times noted that Matthew was challenged by feelings of loneliness and had difficulty in expressing himself with confidence to others. Hence, the theft incident underscored how the program can present social challenges to people who want to make positive change, but whose existing social networks may provide unhelpful inducements.

Matthew's efforts on the program – while concerted, genuine and consistent – were almost undone by a degree of passivity and the difficulty of balancing its strict requirements with his existing social life.

Some time later, Matthew also used cannabis on a single occasion. Staff discussed his peer associations with him, as it appeared that this incident was again related to spending time with friends. Unlike the shoplifting, one instance of cannabis use was not a threat to his participation in the program. However, cannabis use is not permitted, and it was not consistent with Matthew's aims of abstinence from drug use.

In his first interview, Matthew regarded the intense program commitments positively, suggesting that he would otherwise be bored at home. He said that he stuck to himself during the week – not spending time with anyone – and focused on the weekends, when he saw his son. Matthew found the counselling particularly helpful, in centring and clarifying his efforts on recovery and commitment to a new lifestyle. Matthew built a strong therapeutic relationship with his counsellor, over the course of the program. The DASL program provided a routine and structure that Matthew actively engaged with and utilised.

Matthew did not enjoy talking to the judge and even deliberately tried to keep interactions brief at the check-in hearings, to minimise discussion with him. However, he thought positively of him, describing him as funny and fair, and favourably describing his Honour's demonstrated leniency with some participants. Matthew seemed satisfied with the judge's response to the shoplifting incident, expressing an approving acceptance of the sanction imposed and describing it as a 'consequence' of his actions. Additionally, like many other participants, Matthew favourably differentiated between the DASL judge and other judges in mainstream courts.

Figure 6. Case study: A timeline of events and themes described in Matthew's status reports

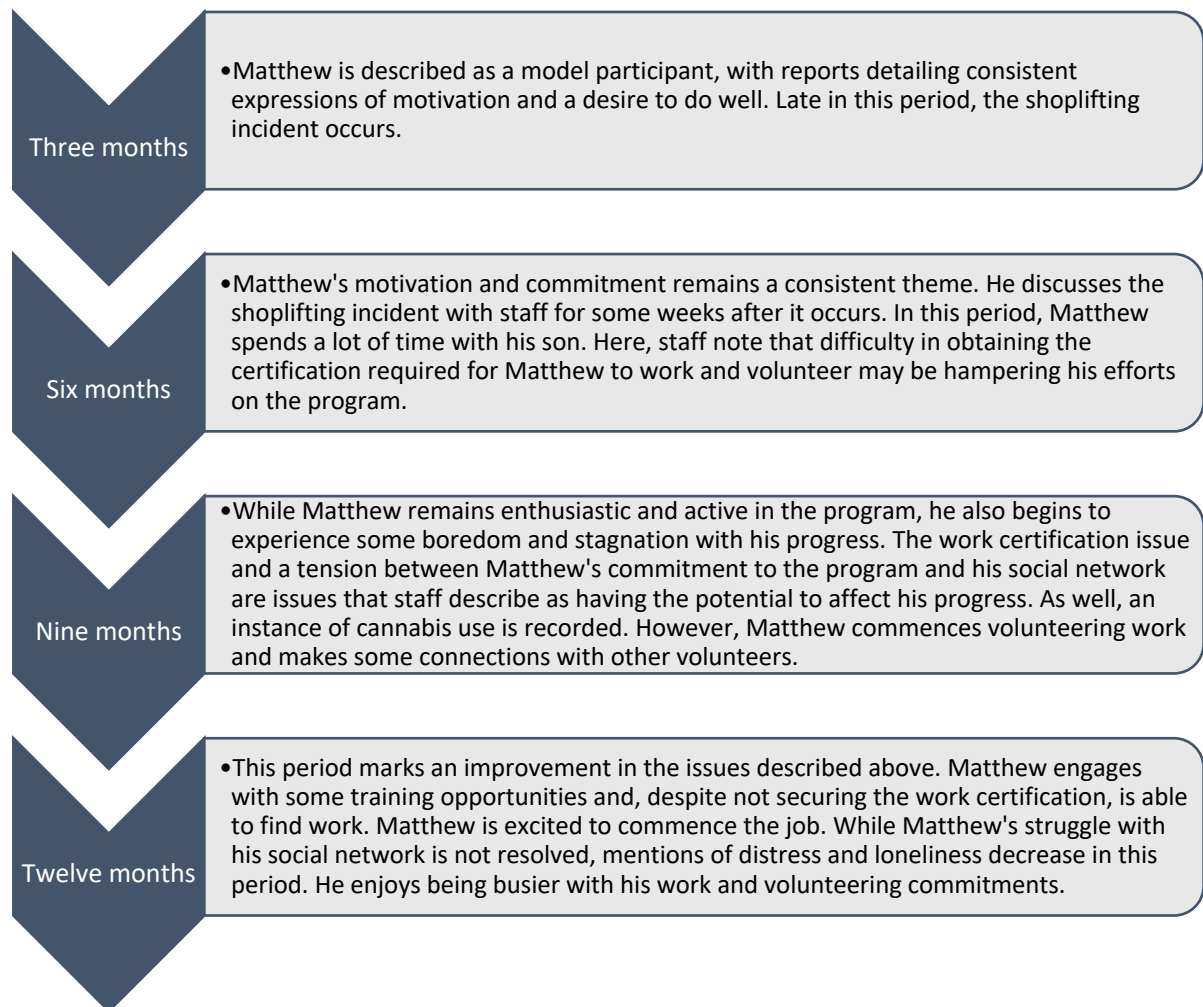
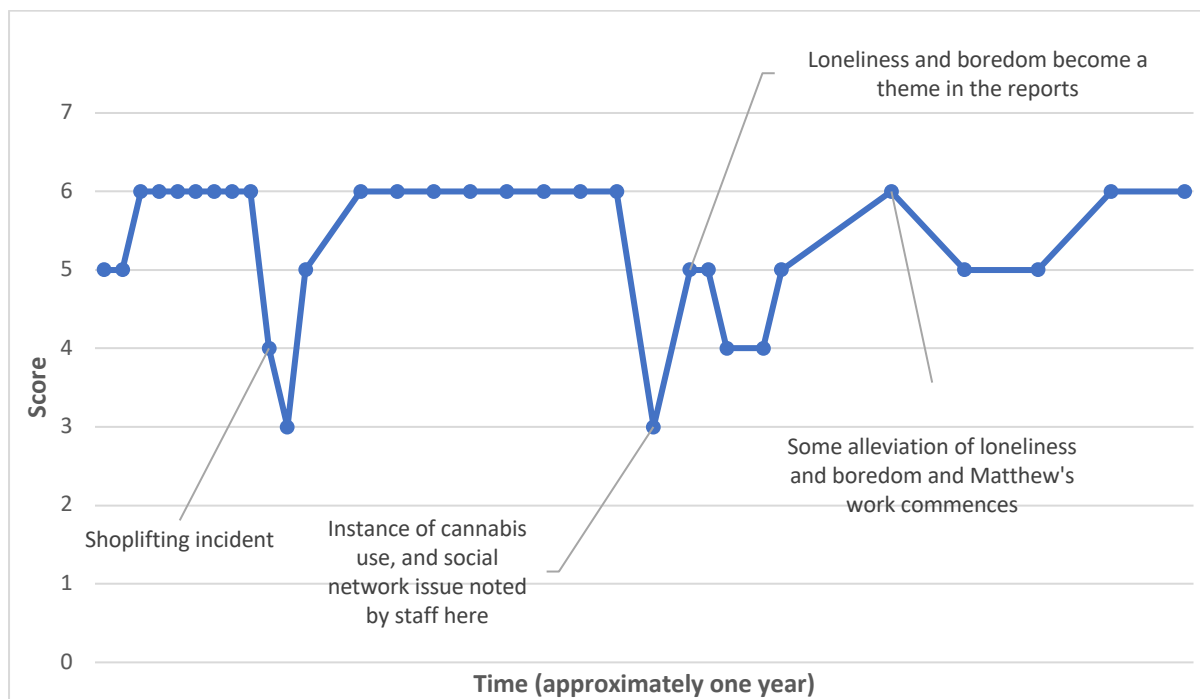




Figure 7. Case study: Matthew's status reports, plotted as scores over time



Each of Matthew's reports from his court appearances were analysed and assigned a score that was judged to reflect progress; 1 = negative, 3 = mostly negative, 5 = mostly positive and 7 = positive.

Figure 7 draws on an analysis of the weekly status reports developed by the TOT to chart Matthew's progress over time. This reveals the dynamic nature of his recovery, which includes ups and downs. This is consistent with the addiction recovery literature; it is a positive indicator to see tolerance for this type of trajectory in a court context.

While Matthew remained committed to abstinence from drug use and consistently engaged with the program throughout, some further challenges emerged approximately halfway through his order. Matthew undertook volunteering and other work, for which he required a certain government certification. Despite assistance from program staff, this process was continually hampered and delayed for a number of months, due to bureaucratic requirements and the impact of his previous offending on his eligibility. This meant that, for some time, Matthew was unable to volunteer or work in certain positions. At the same time, he described feelings of boredom and isolation, and staff noted that loneliness may have been affecting him at various points. The shoplifting incident – and the significant scare that it presented – renewed his efforts to isolate himself from his old networks. However, the difficulty in acquiring the government certificate was a barrier to Matthew engaging and integrating with the community, through voluntary and paid work. Nevertheless, upon graduation, Matthew was proud to have secured employment and was entering full time work.

Despite the bureaucratic challenges, Matthew was able to secure employment. Towards the end of his time on the program, Matthew was excited to be able to work more hours, as he

would no longer have all of the DASL program's requirements to fulfil. He felt positive about the future and readily agreed to three months of aftercare, where the program counsellor and case manager would remain available to him as avenues of support.

### 7.5.3 Matthew's outcome indicators

Matthew's consistent appointment attendance, active engagement with staff, and single positive drug test throughout the program suggest success in the **in-program outcomes** domain. While this could be described simply as compliance – and this would be correct – it also extended beyond this in some ways, as Matthew was eager and volitional in relation to certain in-program aspects, such as counselling.

His **social integration outcomes** were more evident. On the one hand, Matthew's son contributed to his motivation and appeared to provide structure to him, as he was a source of joy and Matthew looked forward to spending time with him on weekends. On the other hand, Matthew opted for a strategy of avoidance from old social networks, thinking that their influence could threaten his progress. On two occasions, this approach proved ineffective. Bureaucratic processes also hampered his ability to engage with the community and may have prevented Matthew creating new, positive social networks. Employment was also a source of integration for Matthew, who entered full-time work upon graduation.

While Matthew was reserved with the judge, he indicated a liking for him and appreciation of his style and efforts. His approval of the shoplifting penalty points that he received and acknowledgement of the judge's 'leniency' towards other participants indicates that the principles of **therapeutic jurisprudence** positively affected Matthew's experience with the program. Matthew also had a positive relationship with other program staff members as well.

Finally, there was some limited evidence of **recidivism**, early in Matthew's time on the program. However, when the context in which the offence occurred is taken into account, it is reasonable to conclude that it was not consistent with Matthew's overall approach to the program and constituted a genuine misstep. Matthew applied a deliberate – if passive – strategy to avoid the influence of others in this regard. An overall commitment to making positive progress and a positive attitude toward the program suggest success in this domain. Indeed, this episode demonstrates the dynamic nature of desistance and recovery. While he is still a fairly recent graduate of the program, he has not appeared at court for any further offences. It therefore appears that his re-offending was both isolated and minor.

## 7.6 Conclusion

This chapter has briefly outlined the four outcome indicators that will be used to guide the balance of this report and the justifications for their use. We then presented a detailed case study of a graduate, 'Matthew'. This enabled us to demonstrate the meandering path that DASL participants may experience, even though this participant was ultimately successful in

his DATO. This case study also provided an opportunity to consider each of the outcome indicators that will be used in the balance of the report in context.

Finally, we note that, under s 80ZQ(1) of the Act, the Minister must review the operation and effectiveness of provisions of this Act (and any other territory law) relating to DATOs, as soon as practicable after the end of three years after that section commenced (i.e., December 2022) and present a report of the review to the Legislative Assembly by December 2023. This statutory review will enable a further opportunity to review the effectiveness of DATOs, using the outcome indicators described here, as well as other possible measures of DASL's effectiveness.

## 8 In-program Outcomes

This chapter explores a set of measures that focuses on the short-term success of drug courts. In the long term, the principal outcome of interest to policy-makers and the public is typically the program's ability to reduce crime, incarceration rates and financial costs to the taxpayer. This focus on crime, however, fails to capture other important outcomes that take place within the program itself.

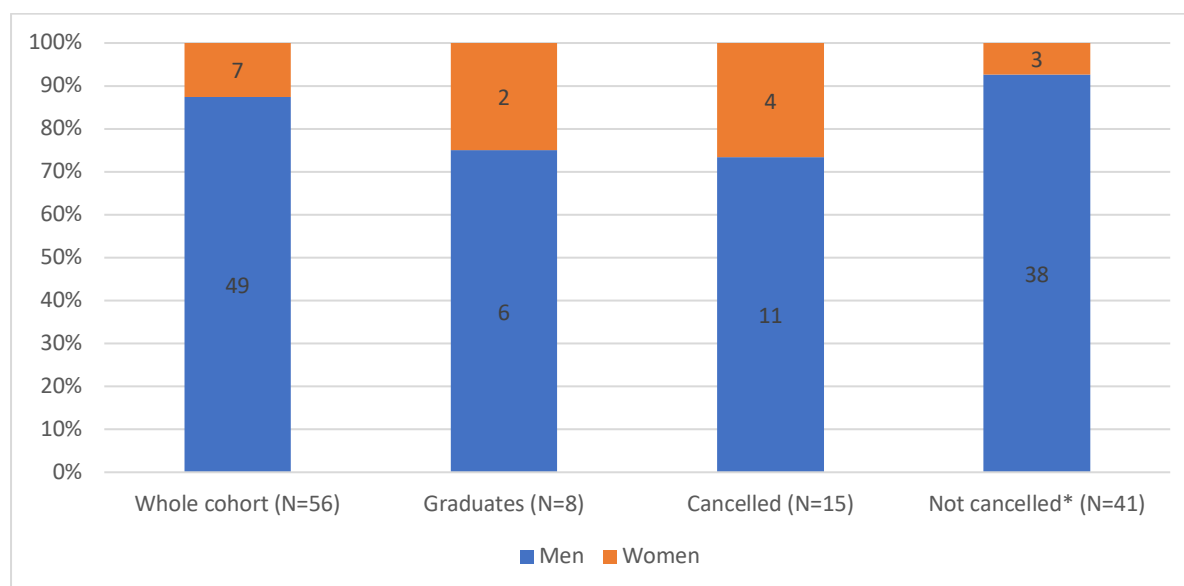
Chapter 3 presented a snapshot of case-flow in and out of DASL and some demographic characteristics of the DASL population. This chapter provides further information about DASL participants' progression during their DATO, including an analysis of cancelled cases and graduations, a survey of DASL participants, ACT Health data about drug dependency, drug use, and self-reported offending during DASL, an analysis of status reports collected by the Court, and an estimation of costs saved by not incarcerating people who are sentenced to a DATO.

### 8.1 Analysis of Cancellations and Graduations/Completions

The raw number of cancelled cases and graduations/completed cases is relatively small (15 and 11 respectively, out of a total of 56 cases that came into the program during the evaluation period). However, it is instructive to see if there are any consistent differences across the demographic groups described above. We do not propose any statistical significance testing here, due to the small sample size. However, indicative trends may be useful for the program.

In what follows, we compared the cases that were cancelled with the rest of the cohort and specifically with those who graduated. Of the 15 cancelled cases, four (27%) were women and 11 (73%) were men. This is a similar proportion to the distribution of graduates: two women (25%) and six men (75%). Both of these groups had a higher proportion of women compared to the cohort as a whole (see [Figure 8](#)).

Figure 8. Gender distribution, by case status, 2020–March 2022



Source: DASL program data \* Not cancelled cases includes all graduations, completions and active cases

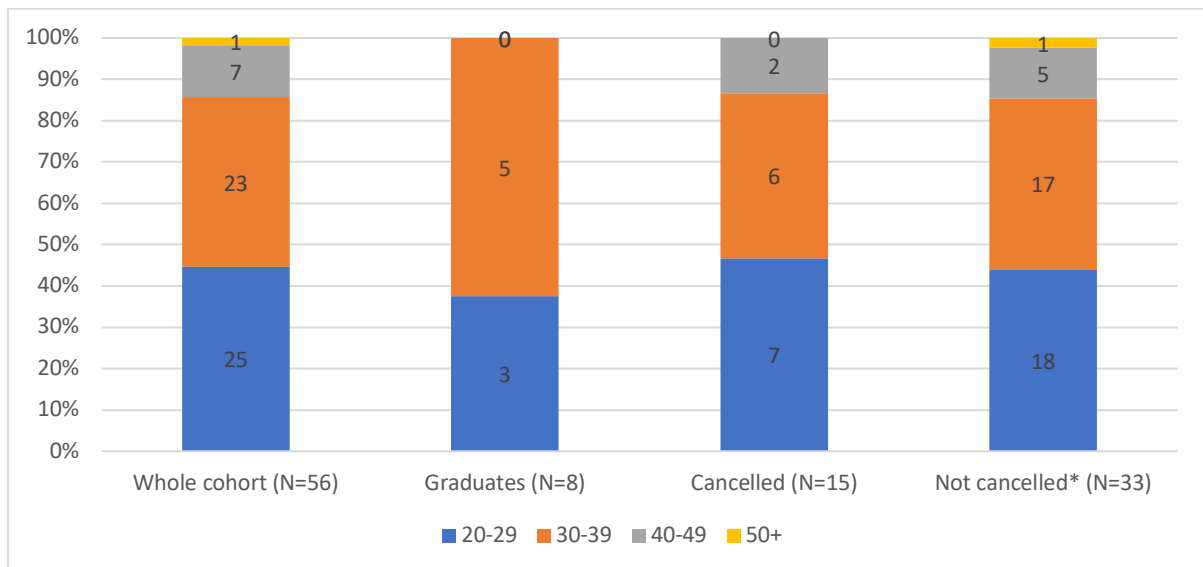
On average, cancelled cases tended to be younger (average age 31.1, SD 8.4) compared to graduates (average age 32.7, SD 5.5) and all non-cancelled cases (average age 32.5, SD 7.6) (see [Table 8](#)). Looking at averages alone may be misleading, but the data on median ages demonstrate that graduates were older than the other cohorts (33 versus about 30). Examining the distribution of ages across case status ([Figure 9](#)) indicates that 37% of graduates were under 30, while 47% of cancelled cases were under 30. This age difference may suggest they are more mature and ready for change, although a larger sample size is required to confirm this indicative trend.

Table 8. DASL participant ages, by case status, 2020–March 2022

DASL participant ages	Min	Max	Average	Median	SD
Whole cohort (N=56)	20.2	50	32.1	30.4	7.5
Graduates (N=8)	24.4	38.8	32.7	33.0	5.5
Cancelled (N=15)	20.2	48.2	31.1	30.0	8.4
Not cancelled (N=33)*	20.3	50	32.5	30.3	7.6

Source: DASL program data \* Not cancelled cases includes all graduations, completions and active cases

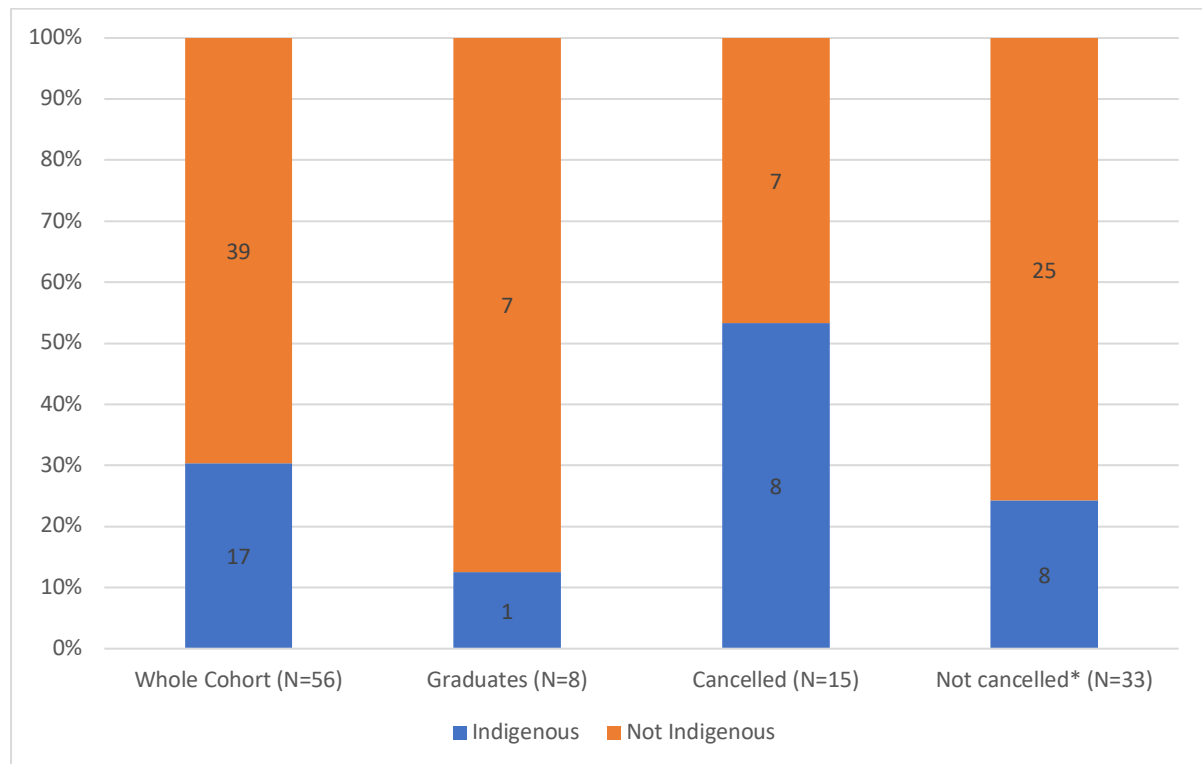
Figure 9. Age distribution, by case status, 2020–March 2022



Source: DASL program data \* Not cancelled cases includes all graduations, completions and active cases

Unfortunately, there is clear evidence that Indigenous participants are overrepresented in the cancelled cases. [Figure 10](#) shows that, while 30% of the entire cohort is Indigenous, 13% of graduates and 53% of cancelled cases involve Indigenous participants. Put differently, of the 17 Indigenous participants to date, only one has graduated (6%), compared with seven out of 39 non-Indigenous participants (18%). Conversely, eight Indigenous participants have had their order cancelled (47%), compared with 18% of non-Indigenous participants. We will return to this issue in more detail below.

Figure 10. Indigenous status, by case status, 2020–March 2022



Source: DASL program data \* Not cancelled cases includes all graduations, completions, and active cases

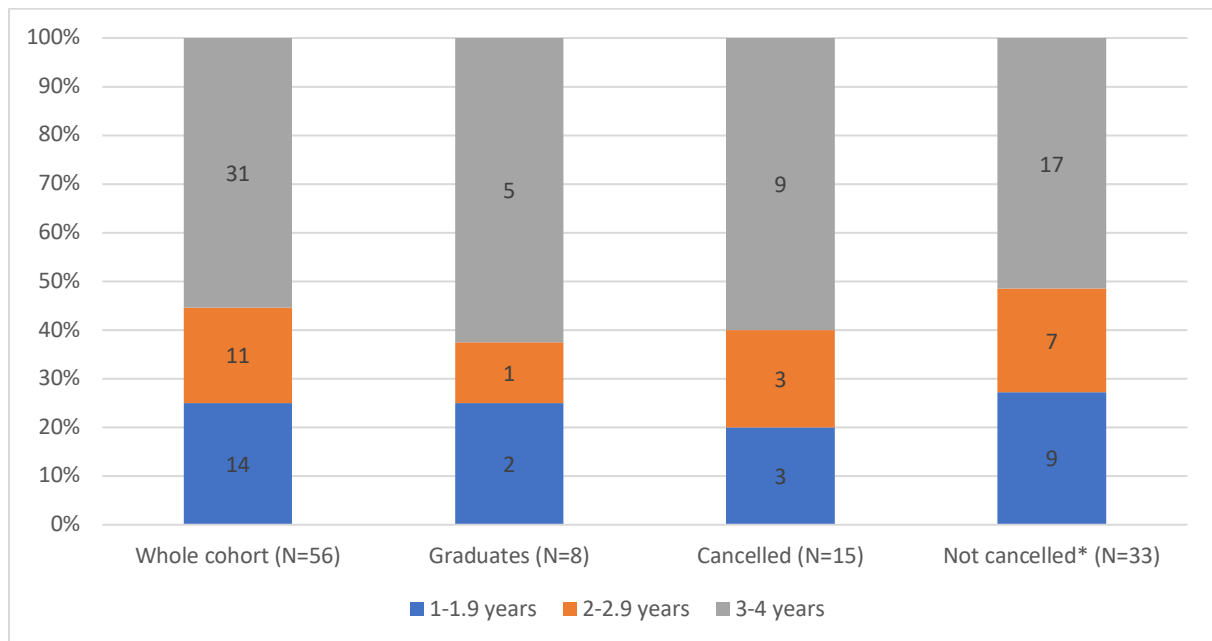
In terms of sentence length, people whose cases end up cancelled were originally given slightly longer sentences than those who graduated, with average lengths of 3 and 2.92 years respectively and median lengths of 3.66 and 3.25 years respectively (see [Table 9](#)). This may suggest that their original offending was more serious and/or they had more significant prior records. However, the overall distribution of sentences does not look substantially different among different case statuses (see [Figure 11](#)).

Table 9. Sentence length, by case status, 2020–March 2022

Sentence length	Min	Max	Average	Median	SD
Whole cohort (N=56)	1.12	4	2.87	3.08	1.03
Graduates (N=8)	1.16	4	2.92	3.25	1.10
Cancelled (N=15)	1.12	4	3.00	3.66	1.17
Not cancelled (N=33)*	1.12	4	2.79	3.06	0.98

Source: DASL program data \* Not cancelled cases includes all graduations, completions, and active cases

Figure 11. Sentence length distribution, by case status, 2020–March 2022



Source: DASL program data \* Not cancelled cases includes all graduations, completions and active cases

These findings seem to suggest that, while men are overrepresented among DASL participants, men and women both graduate and have their cases cancelled at equivalent rates. Similarly, there does not seem to be a relationship between sentence length and cancellation. Cancelled cases have more people in the 20–29 age group compared to graduates. Finally, Indigenous participants are overrepresented in cancelled cases.

As is borne out in the above data, the DASL judge expressed a concern that both young people and Indigenous people are overrepresented in cancelled cases. In terms of age, the judge felt that, on average, the younger participants (e.g., those aged under 25) did not have the ‘emotional maturity’ to engage meaningfully with a DATO:

Yes, if you go back, the ones who have continued are much older. That on the whole, I mean, my recollection off the top of my head, and it is impressionistic, is that most of them are what I call in the rehabilitation ready stage. They get to 30 plus and think ‘this ain’t the life I want’, they’ve got kids that they want to relate to and so on.

Some further differences between those who succeed on the program and those who do not emerge from the interviews. As one TOT member put it, the ones who end up graduating are ‘more proactive. They know that they need to be persistent – to make a phone call, and then a follow-up phone call, if need be, to get the support they need. They are more likely to take the initiative’. Examples of this were apparent in the interviews with two graduates, who also reflected on their maturity and ‘readiness’ for DATO success:



I think I was always this person before this kind of stuff happened. But yes, basically it's just made me grow up and realise that life – there's more to life than drugs and all that sort of stuff.

Well, it worked because I wanted it to work. Last time [earlier attempts at rehabilitation], I don't know, I mustn't have been ready sort of thing, and that. Like, I didn't really care. But this time I took it seriously...Well, I'd wrecked my life. I had full custody of my daughter, I had everything I wanted, and I started using drugs again, doing crime, back to jail, lost everything. Everything. So it was time. I had to do it. Not just for me but for my daughter too. If I want her in my life, I have to give up the drugs and the crime really, I do.

Another stakeholder also pointed to a certain attitude and maturity among graduates:

And that's quite prevalent in the graduates that we have had. Not just what they've achieved over the course of the order, in terms of community and family inclusion and employment inclusion, but also their attitude and their mindset towards those aspects, as opposed to immediate gain and immediate gratification, which seem to be the main trait when participants first enter the scheme.

One stakeholder identified a kind of 'institutionalisation' in some participants that they need to overcome, in order to benefit from the program:

One of the key features that we find with participants, is that we find that they are on the tipping edge of not necessarily being institutionalised, but just very much system-identified and system-based, but it is a chance to break that mould, through the pro-social modelling, to deviate from that path back to a normal existence within the community.

In contrast with the graduates' initiative, the member of the TOT we spoke to had identified that those participants whose DATOs end up cancelled seem to take less initiative, while on their DATO and 'have an attitude where they see themselves as continually let down by the support services available, and that things are out of their control'.

This was supported by the two interviews conducted with former participants, whose DATOs had been cancelled. Although they took responsibility for their actions, including drug use during the program, they both said they had issues with other residents in their rehabilitation program and identified aspects of DASL as unfair. For example, one felt:

like I got set up to fail, because they tried to send me to a rehab in a state that I had warrants in...I think in a sense I was sort of set up to fail from the start. They put a bunch of conditions onto my order that they knew – well, I feel like they knew that I wouldn't be able to stick to.

He went on to state:

I felt like I should have been given another chance just because of the circumstances of everything. So, the charges that I got convicted of that ended up being the reason why the order got cancelled, because of the fresh charges, that happened when I took off from the hospital, because they tried to send me to a rehab in another state that I had warrants in. So, I feel like if they hadn't have tried to send me to that rehab, those other charges wouldn't have come about.

He also felt there had not been very clear communication with his family about what the order would entail, which placed strain on his relationships.

The other participant we interviewed after his DATO was cancelled also felt that he was not given enough of an opportunity to stay on the program. His DATO was cancelled, after he was charged with an offence, which was later found unproven. He asked the DASL lawyer if he could appeal against this decision, but was told this was not an option. He thought this was 'pretty unfair, pretty slack on the lawyer's part...She should at least let me go for the appeal, find out for myself, instead of just telling me it's not going to work.'

In both cases, there is a clear tendency to externalise responsibility; this is consistent with the criminological literature, in relation to the narratives of those who persist in, rather than desisting from, offending.<sup>115</sup> Both interviewees clearly struggled with the other people at their residential rehabilitation facilities. As one put it, 'it was a bit hard with everyone there from jail...if you see the wrong person. If they spread us out, through different rehabs, maybe it might have been better.' Again, this may reflect a lack of maturity and/or readiness to change. Both of these interviewees also indicated that they had developed less of a rapport with the judge and their Health and Corrections caseworkers. This may of course be a reflection of the fact that their orders were cancelled shortly after entering the program and they were in residential rehabilitation, so they did not attend court in person. They also appeared to struggle more with the demands of the program than some of the other participants.

Our interviews with the two participants whose orders were cancelled also revealed complex motivations and understandings of readiness. Both participants objected to being sent to residential rehabilitation and attributed their struggles on the program in part to this. One participant acknowledged that he probably had not been 'ready' for DASL:

No, I just, I guess I wasn't – I thought I was ready to do it, but wasn't. I reckon if I was ready to do it, it would be good. But I just *think* I'm ready, but I just used it to get out, I guess.

---

<sup>115</sup> See eg Maruna, S. (2001). *Making Good: How Ex-convicts Reform and Rebuild Their Lives*. American Psychological Association.

The other former participant thought that he was ready, but the design of the program prevented him from succeeding:

I was actually committed to trying to change things. I did want to change my ways and stop committing crime. And I don't feel like I needed a residential rehab to do that. It's more just willpower and staying away from the people that were bad influences or whatever.

This interviewee felt that he would have been successful on the program, if he had been allowed to do a day program instead, as he had issues being around other people. He wished that the TOT had listened to him more, when he raised these concerns.

Nonetheless, he was still willing to recommend DASL to others:

I feel like it was a better opportunity, and it should be given to more people. I feel like, if more people are given that opportunity, the chances of recidivism would go down a lot. If they're actually given the opportunity to try and change their ways, rather than just throwing them in jail and going, 'yes, you done this, suck shit, you're in a cell now'.

Interviewer: So would you recommend it to others?

Yes, one of my mates...I was telling him to talk to his lawyer about going for a drug court order, because it could have helped him out. I have told a few people that have come in, yes, you should try, go for drug court, it's good, you'll go to rehab, you won't be in here. As long as they're someone that's willing to actually try and stop doing what they're doing.

The insights from these two interviews are instructive, although interviews with a larger sample of those whose DATOs were cancelled are required to confirm these preliminary findings. We will also return to a discussion of emotional maturity in Chapter 9.

The evaluation team is particularly concerned about the fact that DASL does not appear to be working for Indigenous participants. Although there has now been one Indigenous graduate from the program, our findings generally accord with the submission of Tjillari Justice Aboriginal Corporation to the Inquiry into Community Corrections that '[n]o [DASL] clients we have spoken to have completed the program and remained drug and alcohol free'.<sup>116</sup> When Deborah Martin (previously Evans), the CEO of Tjillari, appeared before the Committee, a member put to her that DASL 'basically seem[s] to have totally failed [Indigenous

---

<sup>116</sup> Tjillari Aboriginal Justice Corporation n 48, 2.

participants], if no clients you have spoken to have completed them and remain drug free'.<sup>117</sup> When asked what was required for Indigenous clients, Martin called for:

the Bush Healing Farm to be a drug and alcohol centre, to be very honest. I see that as a big step forward for us. I think the problem is that the programs that are put in place are not delivered in a wraparound process. We have multiple agencies, and I think that has really impacted on the Drug and Alcohol Court. We have multiple agencies in the community and each one of them develops its own management plan. If you do not comply with each of those management plans, you could be considered to have breached a community-based order, so it becomes really overwhelming and difficult.

I worked in Queensland and moved down from Queensland to work here. We had multidisciplinary teams, and all those agencies would get together once a month and discuss the way forward. There was one plan. That, I think, is the big thing that is impacting on the Drug and Alcohol Court. It is for a year, but there is no intensive support in between, if that makes sense. There is some, I know, through the Drug and Alcohol Court, but once again we get back to that issue of: how culturally appropriate is it? Our people listen to our people. It is as simple as that. I would really like to see that Bush Healing Farm targeted as a [residential] drug and alcohol rehab centre.<sup>118</sup>

The lack of culturally appropriate AOD options was also raised in the submission to the Inquiry from Our Booris Our Way. Again, there was no explicit mention of DASL or DATOs, but the following comment was made:

We need a local drug and alcohol treatment centre that is designed and run by Aboriginal and Torres Strait Islander community-controlled organisations that understand the need for a culturally strong drug and alcohol program...

*In the absence of an ACT treatment option, we recommend that funding is allocated for people to attend private rehabilitation options. The costs of private rehabilitation are less than the cost of added jail time and out of home care costs. It also contributes to reducing recidivism.*<sup>119</sup>

A new Indigenous drug and alcohol rehabilitation centre is proposed for the ACT. One of the Committee members asked the Acting Director-General of Community Safety in JACS whether

---

<sup>117</sup> Braddock, A. (2022, February 17). Member, Legislative Assembly Committee on Justice and Community Safety, *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs13a.pdf> 125, paraphrasing Martin's submission.

<sup>118</sup> Martin, D. (2022, 17 February). CEO, Tjillari Justice Aboriginal Corporation, *Hansard*, *ibid*.

<sup>119</sup> Our Booris Our Way (2021). *Inquiry into Community Corrections*, Submission 11, 6.

this will be available for Aboriginal and Torres Strait Islander participants on DASL. In response, the JACS representative stated:

Yes. The new centre is being coordinated through the Health Directorate. It is a fairly early proposal. It is certainly focused on Aboriginal and Torres Strait Islander peoples and will have a model of care that covers drug and alcohol treatments, which will allow it to be available to be used for people who come through the drug and alcohol sentencing court process. At this stage the full model of care and eligibility criteria are not yet available.<sup>120</sup>

The implications of the lack of a dedicated residential AOD facility for Indigenous people was already foreshadowed as a likely issue for DASL before the program commenced, with Julie Tongs OAM, the Chief Executive Officer of Winnunga Nimmityjah Aboriginal Health and Community Services, 'express[ing] reservations about what the ACT's new Drug and Alcohol Court will mean for Aboriginal people in its initial stages, as the wait for a culturally appropriate residential rehabilitation facility in Canberra continues'.<sup>121</sup> In the same article, a spokesperson for the ACT Government indicated that DASL 'would be able to include, as part of treatment orders, participation in a culturally appropriate rehabilitation program' and that 'ACT Health was in discussions with Winnunga about a "comprehensive model of care" for a new facility'.<sup>122</sup>

Regrettably, the steps currently being taken to provide culturally appropriate programs do not appear to be effective and, as noted above, the proposed new centre is far from operational. The evaluation team strongly supports the establishment of this facility, including its co-design with the Indigenous community. However, there is an urgent need for more immediate steps to be taken to improve outcomes for Aboriginal and Torres Strait Islander DASL participants, pending its completion. We note in particular that s 12A(2)(a)(iii) of the Act requires the participant to 'live in the ACT for the term of the sentence except as directed by the court'. We are aware of a case, where a non-Indigenous participant was permitted to travel to a rehabilitation centre interstate. Pending the establishment of the proposed new facility in the ACT, we accordingly recommend that consideration be given, where appropriate, to prioritising the use of culturally appropriate facilities interstate, such as Oolong House<sup>123</sup> and The Glen.<sup>124</sup>

---

<sup>120</sup> Doran, K. (2022, 16 February). Acting Director-General, Community Safety, Justice and Community Safety Directorate, *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf> 4.

<sup>121</sup> Foden, B. (2019, October 13). 'Aboriginal community "can't afford" another long wait for residential drug rehabilitation'. *Canberra Times*. <https://www.canberratimes.com.au/story/6433687/aboriginal-community-cant-afford-another-long-wait-for-residential-drug-rehabilitation/>.

<sup>122</sup> Ibid.

<sup>123</sup> See Oolong House (nd). [https://www.oolonghouse.org.au/main\\_oolong.html](https://www.oolonghouse.org.au/main_oolong.html).

<sup>124</sup> See The Glen (nd). <https://www.theglencentre.org.au>.

There is some evidence of recent improvement in how DASL supports its Indigenous participants. In evidence before the Inquiry, the Acting Assistant Commissioner for Community Corrections and Release Planning stated:

One of the adjustments we have made recently is that we [Corrections] have increased our presence there. We also have recently moved. We have what is called a cultural engagement officer, which is effectively an Aboriginal liaison officer within community corrections. That person is now being placed in that space as well to ensure that we are across the cultural issues and our awareness and our responses, particularly for the Aboriginal and Torres Strait Islanders who might be subject to drug and alcohol treatment orders. This is a way of making sure that we are thorough and comprehensive in our assessments and our supervision that we provide.<sup>125</sup>

We commend this. We also recognise that the Court and especially the DASL judge are keen to improve outcomes for Indigenous participants; the judge is in regular discussion with the DASL ALO to develop better strategies for doing so. One idea that has been raised is to include elements of Indigenous sentencing circles, such as the incorporation of community Elders from the Galambany Circle Court, into the DASL process. As one Indigenous stakeholder pointed out:

I've seen the way that Galambany works, which is incredible and very different. It's more culturally focused, which I think is vital for the healing and rehabilitative journey for Aboriginal and Torres Strait Islander people that come to DASL or Galambany to be successful. This complete cultural focus is something DASL is lacking. We have Aboriginal Liaison Officers [ALOs], who are great, but I think there is uncertainty of how and where they fit within the DASL team and the only cultural support Aboriginal and Torres Strait Islander clients are getting is an occasional interaction with the ALO. The DASL list is too big to do in one day anymore, really. Eventually, it will have to be listed across a couple of days. Perhaps it could be that one day a Galambany/DASL hybrid court sits and, on the other day, a DASL for non-Indigenous participants?

This stakeholder also suggested making particular reference to cultural issues in the progression and graduation speeches for Indigenous participants.

A member of the evaluation team works closely with many members of the ACT Indigenous community. During recent informal conversations, the role of peer mentors was raised, including the opportunity to have other Indigenous people with lived experience of the justice system and addiction speak to DASL participants about their journey to health and sobriety. This would provide a powerful and culturally appropriate example of success and mentoring, for DASL participants to emulate.

---

<sup>125</sup>Aloisi, n 54, 3.

In order to ensure that the fullest range of approaches to better support DASL's Aboriginal and Torres Strait Islander participants is considered, we recommend that the Court consult with representatives from key Indigenous organisations, including Winnunga, Yeddung Mura, Tjillari, the Gulanga Program at ACTCOSS and Aboriginal Legal Services, as well as the Galambany Elders.

We also strongly support the recommendation recently made by the ACT Legislative Assembly Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 that the 'ACT Government should continue its commitment to establish and fund an Aboriginal Community Controlled residential rehabilitation facility and increase the number of First Nations alcohol and other drugs Peer Support Workers'.<sup>126</sup>

### 8.2 Survey of DASL Participants

In the first half of March 2022, the research team undertook a survey of the current cohort of DASL participants. We invited participants to fill in a brief survey about their experience when they came to court for urine testing or a check-in hearing. During this period, there were 30 participants under a DATO. Of these, seven were not attending court and could not be surveyed (three had warrants out, two were in the AMC on new charges, and one was in residential rehabilitation). Of the remaining 23 participants, 20 (87%) returned a survey to us.

Just over half of the survey respondents (55%; n=11) were in Phase 1 of the program at the time of the survey, five (25%) were in Phase 2, and four (20%) were in Phase 3. Most (70%; n=14) were under the age of 34 (three of these were aged 18–24) and 30% (n=6) were aged 35 and over. Nearly all (95%; n=19) were male and 70% identified as non-Indigenous (20% identified as Indigenous and 10% declined to answer this question). Just under half (45%) of respondents reported having no children, 20% had one or two children, 20% had three or four children, and 15% had five or more children.

Although we did not have any prior data on participants' number of children, the other demographic characteristics of the survey sample are broadly consistent with the DASL population as a whole. While this does not mean we can confirm that the results of this survey are generalisable to the entire DASL population, we can draw reasonable conclusions about the generalisability of these findings. However, these findings are likely to be indicative only of people who are currently participating in the program and we do not have such information for people whose orders have been cancelled, although we do have qualitative information from participants who have graduated from DASL, which is consistent with the results below.

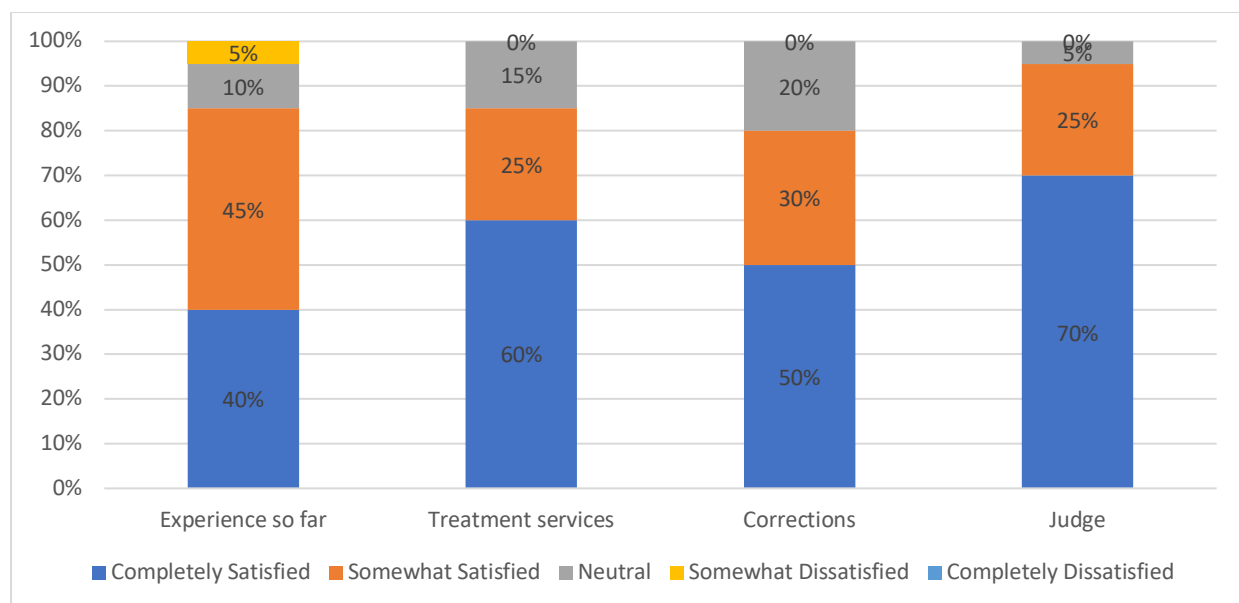
Overall, the survey respondents reported a high level of satisfaction with the program ([Figure 12](#)). The overwhelming majority of respondents (85%; n=17) reported being completely or somewhat satisfied with their experience of DASL so far. A further 10% (n=2) of respondents

---

<sup>126</sup> ACT Select Committee, n 10, Recommendation 8.

were neutral on this question and 5% (n=1) reported being somewhat dissatisfied. The same large proportion (85%; n=17) also reported being completely or somewhat satisfied with the treatment services available to DASL participants, while 80% of respondents were completely or somewhat satisfied with the service provided by Corrections. Finally, the DASL judge received an overwhelming endorsement, with 95% completely or somewhat satisfied with the judge and their role on the DASL program. No respondents reported negative feedback for these last three items. Taken together, these findings demonstrate strong participant support for the program, although it is again acknowledged that this is among participants currently attending court and may therefore not represent the views of those who are not as actively engaged.

Figure 12. DASL participant satisfaction, by program component, 2020–March 2022



Source: DASL survey

When asked to comment on how the program has affected them, the responses were overwhelmingly positive. Some comments include:

- *Great program to keep drug addicts in recovery. Without it, I would be in jail, without custody of my kids. I now live a great healthy life with my kids.*
- *It's kept me out of jail and stopped me from re-offending.*
- *It's given me a second chance and allowed me back into the community.*
- *[It has] helped me get my life back.*
- *I was looking at another long sentence for crimes related to my drug use and DASL gave me this opportunity to address the reason why I use and offend. I was given a safe place to work on my problems and good people to work with.*
- *The DASL program has helped me to stay clean and sober.*
- *It's changed my life, made my future bright.*
- *It has helped me to restart my life and get back on track.*



- *It has helped improve all aspects of my life.*
- *Has definitely been a positive impact on my life. I can see a bright future.*

Of note here are the positive future orientations that many participants expressed. Similar sentiments were expressed by some when asked how the program will affect them going forward:

- *Hopefully it will help me set up a good foundation.*
- *It has really helped me and continues to keep me in check.*
- *It will be good for me because it helped me reform.*
- *I think it will help prepare me for life.*

In terms of what specifically has been helpful for them on the program, participants identified different elements, reflecting a range of needs different participants may have. Participants pointed to the following elements of the program as most helpful: their stays in residential rehab, frequent urinalysis, counselling, positive relationships with their case managers from ACT Health, check-ins, SMART Recovery, and the general flexibility/adaptability of the program.

While some participants found the urine testing helpful, others reported the opposite. The most unhelpful aspects of the program or areas where participants suggested improvements include: the frequency of urinalysis, the requirements and obligations, the limited flexibility/availability of the urinalysis testing (one location and limited time-frame), residential rehabilitation, having to miss work because of DASL commitments, the lack of housing options, and the frequency of court. Specific comments regarding challenges or improvements included:

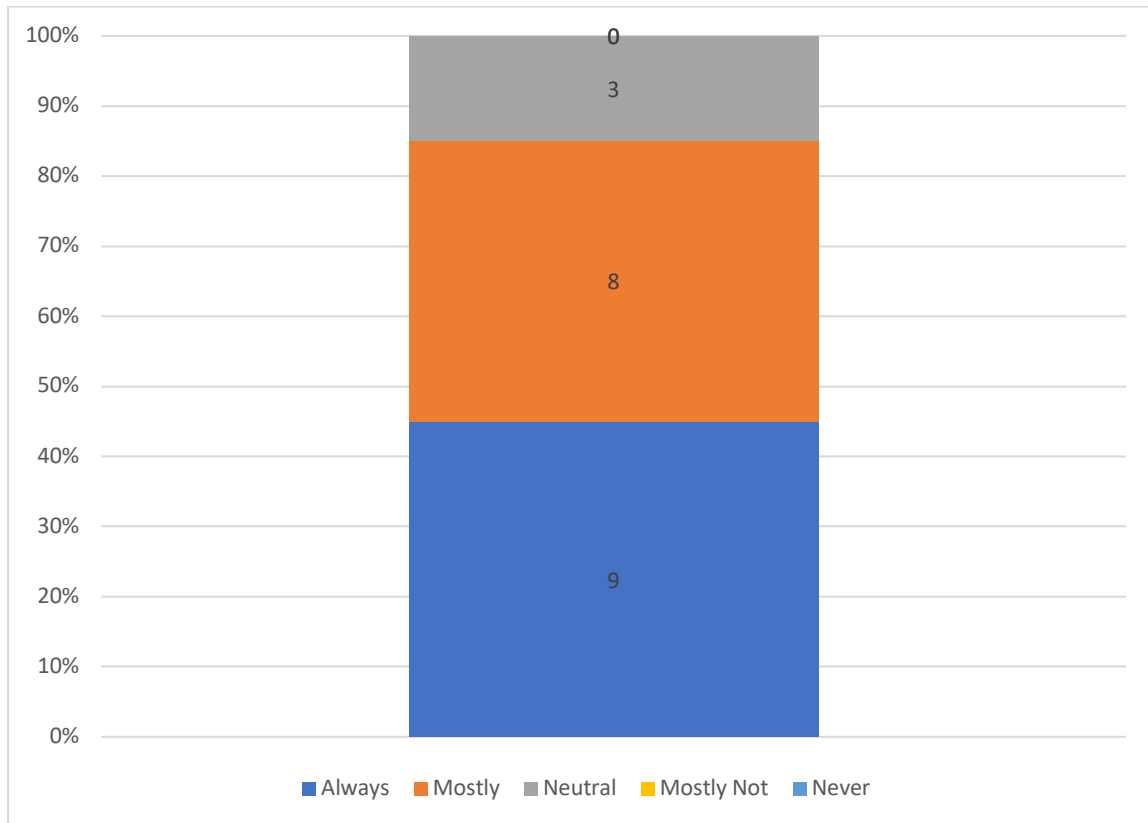
- *Corrections could be better organised.*
- *Housing.*
- *Make it easier for us to get work and keep the promise on housing.*
- *Lack of housing, having to tell my employer I am on DASL making it hard to find decent work to afford housing.*
- *Engaging with the counsellor, how Rehab was mandatory.*
- *Lacking income. Hard to get work around appointments.*
- *It's full hands on an[d] really hard to maintain...I can't control what my life will be like right now and [that's] holding me back.*

As already noted, the lack of adequate housing is an ongoing issue raised by multiple stakeholders and in relevant judgments (section 4.3 and 6.3, see also section 9.4).

In general, participants reported positive experiences, in terms of their treatment during DASL, with 17 (85%) reporting that they had always or mostly been treated fairly while on the

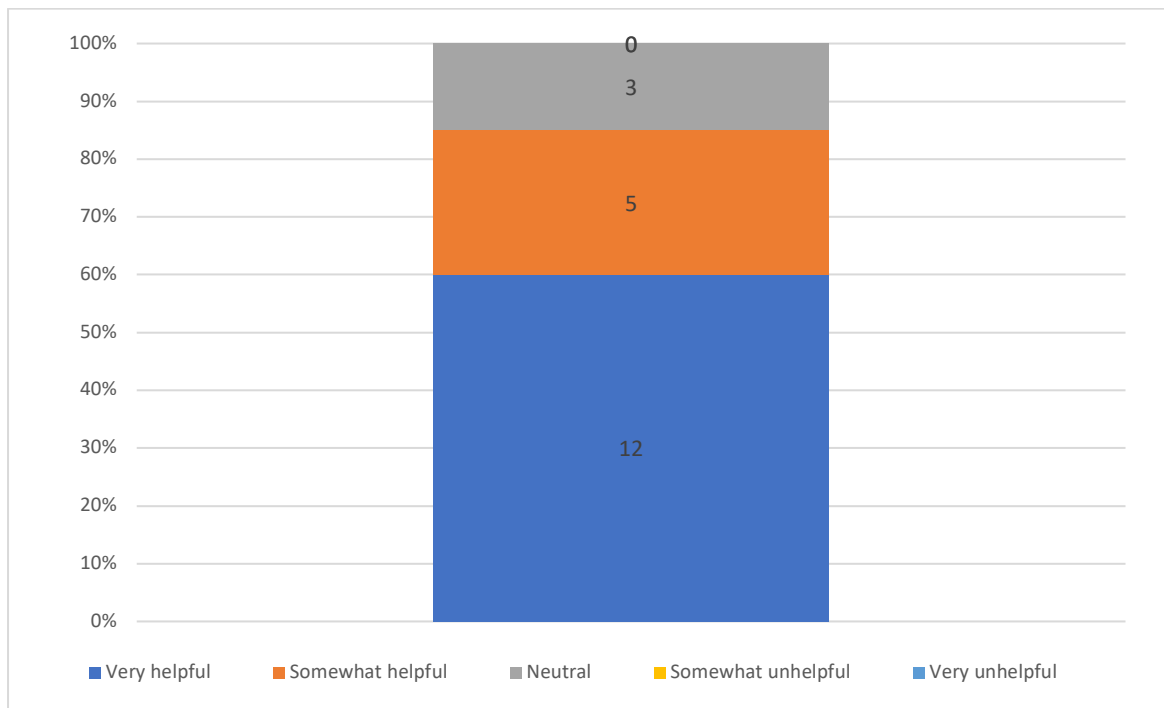
program (Figure 13). The same proportion (85%) also reported the urine testing to be very helpful or somewhat helpful (Figure 14).

Figure 13. DASL survey question: Have you been treated fairly while on the DASL program?



Source: DASL survey

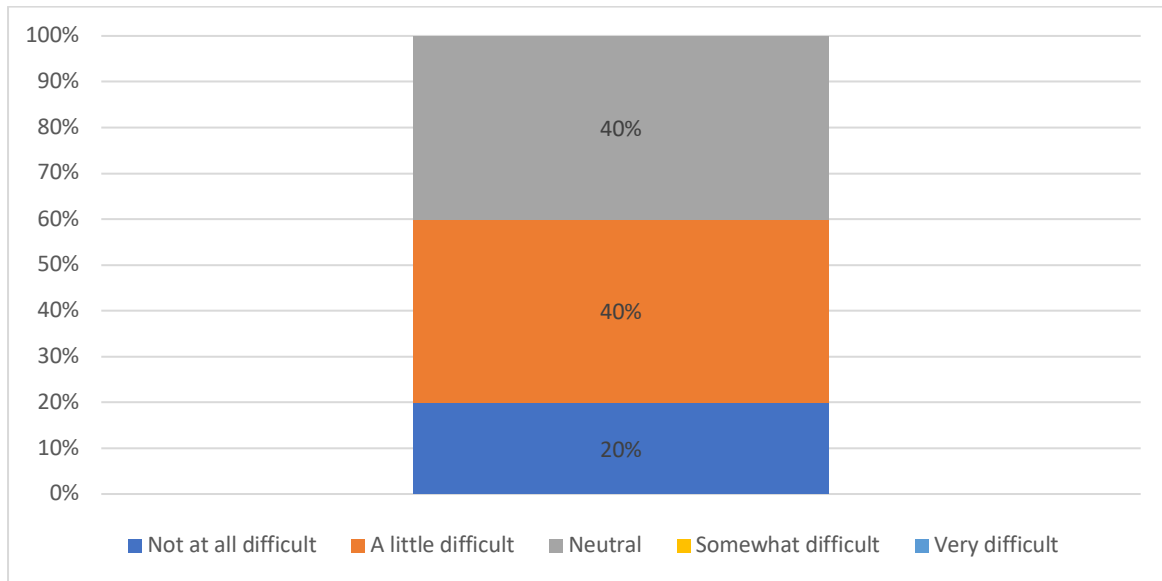
Figure 14. DASL survey question: How helpful or unhelpful has urinalysis been during DASL?



Source: DASL survey

As set out in Figure 15, 60% of participants thought it was not at all or only a little difficult to meet the DASL program requirements; 40% were neutral on this topic. This is surprising in light of the comments above and in light of the program's intensive requirements, especially given that most respondents were in Phase 1. This may suggest that respondents did not feel they could be overly critical of the program and/or that they felt adequately supported to comply with the program's requirements.

Figure 15. DASL survey question: How difficult has it been to meet the DASL program requirements?



Source: DASL survey

Our participant survey revealed an overwhelmingly positive assessment of the DASL judge. This was certainly confirmed in our interviews. The following is an indicative statement from one participant, when asked about what it is like to appear in court, as part of DASL:

Normally good. Unless you're in the wrong and then you kind of feel a bit nervous. But generally good, especially when you're doing good, you feel good. Normally, he's got a happy presence about him and you feel like he genuinely wants you to do good.

Similar statements were made by everyone we spoke to for this evaluation. This is true, even when participants 'stuff up' – test positive for drug use, miss appointments or commit some other infraction, as both these participants remarked:

Well, I knew I'd stuffed up, so I knew there was going to be some sort of consequence of that. I thought at first it was a little bit harsh, for sure. Because it was just one slip up. But I guess it was the right thing to do.

I do feel like what he did was probably for the best. Sometimes you might not agree with it, and then sometimes you're going to look back on it afterwards and think, 'yes, maybe it was'.

We recognise that the participants we interviewed had come or were coming to the end of their DATO and were therefore successfully able to comply with its requirements. Nevertheless, the fact that there was also such a positive assessment of the judge amongst the survey participants (most of whom were in Phase 1) reaffirms the clear commitment to TJ principles in evidence in the program.

### 8.3 ACT Health Data

#### 8.3.1 Drug dependency and use

In agreement with the evaluation team, ACT Health agreed to regularly and routinely administer drug dependence screening tools, for the duration of each person's DATO. For a variety of reasons, including resourcing, these tools were not consistently administered. However, where available, ACT Health has provided the following data, which allow for a preliminary assessment.

The TCU-5 drug screening tool is a widely-used instrument for identifying the severity of drug and alcohol use, with criteria drawn from the Diagnostic and Statistical Manual of Mental Disorders.<sup>127</sup> It includes questions about drug use, the social and health impacts of drug use, and attitudes to treatment. This tool produces a composite score, with scores of 2–3 (out of 10) indicating mild disorder, 4–5 moderate disorder, and a score of 6+ indicating severe disorder.

Table 10 shows that, under the TCU-5, the DASL participants showed a marked improvement in drug use scores, decreasing over time from an average of 9.7/10 at the beginning of their orders to 0.2/10 after 12 months (with the 15-month interval excluded, due to there being only one contributing score). In particular, we note that marked improvement did not take place until participants had been in the program for 9–12 months, confirming the need for an order of at least this duration, to bring about lasting change in drug use. However, a decreasing number of contributing scores at each time interval reduces the meaningfulness of the latter intervals' averages.

*Table 10. DASL participants' TCU-5 drug dependency scores, over time, 2020–March 2022*

TCU-5 drug dependency score	At screening (n=86)	Start of order (n=36)	3m (n=24)	6m (n=16)	9m (n=11)	12m (n=6)	15m (n=1)
Mean score	9.6	9.7	7.2	6.2	3.2	0.2	0
Median score	10	10	10	10	0	0	0
SD	1.65	1.68	4.82	5.41	5.06	0.41	-

Source: ACT Health

ACT Health also administers the ATOP to participants at regular intervals. This includes 22 items that measure self-reported substance use, psychological health, physical health and quality of life over the preceding four weeks (psychological health, physical health and quality

<sup>127</sup> Knight, D., Blue, T., Flynn, P. and Knight, K. (2018). The TCU Drug Screen 5: Identifying justice-involved individuals with substance use disorders. *Journal of Offender Rehabilitation*, 57: 525–537.

of life will be discussed in Chapter 7 on social integration outcomes).<sup>128</sup> The ATOP is widely used in the Australian AOD sector. As with the TCU-5 tool, there is a significant amount of missing data and attrition over time for ATOP scores among DASL participants. As such these data should be read as indicative, but not conclusive. Notwithstanding the data issues around low sample size and inconsistent data collection, the data reveal an overall decrease in the use of drugs and alcohol among DASL participants as they progress through the program (see Table 11). This is not surprising, given the high level of supervision participants are under. Particularly positive is the decrease in alcohol and tobacco use (down from 49% and 84% at the start to 25% and 38% respectively after 12 months). Although these are legal substances, reductions in their use will bring significant health benefits. The other notable improvements relate to the marked reduction in methamphetamine use (from 62% at the start of their order to 0% at 12 months) and the fact that participants also ceased using drugs intravenously.

*Table 11. DASL participants' ATOP self-reported drug use, over time, 2020–March 2022*

ATOP self-reported drug use	Start of order (n=37)*	3m (n=24)~	6m (n=17)	9m (n=14)	12m (n=8)
Alcohol	48.6%	25.0%	35.3%	21.4%	25.0%
Cannabis	32.4%	12.5%	11.8%	7.1%	0.0%
Methamphetamine	62.2%	20.8%	11.8%	21.4%	0.0%
Other amphetamine-type stimulants	13.5%	0.0%	0.0%	7.1%	0.0%
Prescribed sedatives	13.9%	8.3%	5.9%	7.1%	0.0%
Non-prescribed sedatives	5.4%	0.0%	0.0%	0.0%	0.0%
Prescribed opioids	16.2%	12.5%	17.6%	7.1%	12.5%
Non-prescribed opioids	29.7%	4.2%	5.9%	7.1%	0.0%
Cocaine	18.9%	0.0%	0.0%	7.1%	0.0%
Inhalants	0.0%	0.0%	0.0%	0.0%	0.0%
Hallucinogens	5.4%	0.0%	0.0%	7.1%	0.0%

<sup>128</sup> Lintzeris, N., Mammen, K., Holmes, J., Deacon, R., Mills, L., Black, E., Gardner, L. and Dunlop, A. (2020). *Australian Treatment Outcomes Profile (ATOP) Manual 1: Using the ATOP with Individual Clients*. [https://www.seslhd.health.nsw.gov.au/sites/default/files/groups/Drug\\_Alcohol/ATOP%20Manual%201\\_Using%20the%20ATOP%20with%20Individual%20clients\\_July%202020.docx.pdf](https://www.seslhd.health.nsw.gov.au/sites/default/files/groups/Drug_Alcohol/ATOP%20Manual%201_Using%20the%20ATOP%20with%20Individual%20clients_July%202020.docx.pdf).

<b>Tobacco</b>	83.8%	66.7%	64.7%	64.3%	37.5%
<b>GHB</b>	16.2%	0.0%	11.8%	0.0%	0.0%
<b>Other</b>	32.4%	29.2%	17.6%	14.3%	0.0%
<b>IV in last four weeks</b>	37.8%	17.4%	5.9%	7.1%	0.0%
<b>Shared equipment in last four weeks</b>	5.6%	0.0%	5.9%	0.0%	0.0%

Source: ACT Health

\* N=36 for prescribed sedatives and shared equipment      ~N=23 for shared equipment

### 8.3.2 Self-reported offending during the program

The ATOP records self-reported data on the previous four weeks (see [Table 12](#)). At the start of the order, one-third of participants reported that they had been arrested recently, compared with 0% from the six-month mark. This generally aligns with the recidivism data presented in Chapter 10, although the small number of respondents in the later time periods is acknowledged and of course those who are arrested, especially repeatedly, will be removed from the program and placed in custody. Nevertheless, this reveals a noteworthy improvement in self-reported engagement with the justice system. Participants also reported a marked reduction in their own use of violence (from 14% at the start of the program to 0% by six months), as well as reductions in transport in an ambulance or attendance at a hospital (from 14% at program commencement to 0% from nine months onwards). They were also less likely to be a victim of violence (decreasing from 8% to 0% by the six-month mark). All of these clearly bring reductions in health costs, as well as reduced trauma to both the participants and others and increased wellbeing.

Table 12. DASL participants' ATOP self-reported offending, over time, 2020–March 2022

<b>ATOP self-reported offending</b>	<b>Start of order (n=36)</b>	<b>3m (n=23)</b>	<b>6m (n=15)</b>	<b>9m (n=14)</b>	<b>12m (n=8)</b>
<b>Arrested</b>	33.3%	4.3%	0.0%	0.0%	0.0%
<b>Used violence</b>	13.9%	4.3%	0.0%	0.0%	0.0%
<b>Victim of violence</b>	8.3%	4.3%	0.0%	0.0%	0.0%
<b>Ambulance or hospital</b>	13.9%	8.7%	6.7%	0.0%	0.0%

Source: ACT Health

### 8.4 Understanding Participant Trajectories: Analysis of Status Reports

There were 911 completed status reports available for analysis, involving 56 DASL participants. The number of reports for individual participants depends on their time spent in DASL and length of follow-up, which vary across each intervention phase and their progress in each phase.

A status report covers a broad range of details, including participant's drug use, employment, attendance at services and appointments, volunteer work, training, sanctions and, where relevant, re-offending. In Phase 1, a participant attends court every week for a check-in with the judge and, as such, a status report is produced weekly. In Phase 2, reports are written every fortnight and monthly in Phase 3, depending on the participant's need and the availability of DASL staff.

Most status reports are written while participants are serving their DATO in the community, since most participants spend their DATO in the community. There were 243 status reports provided while participants were not in the community:

- 210 reports were provided while participants were in residential rehabilitation;
- 32 reports were written while participants were at the AMC; and
- one report was provided when a participant was in a mental health unit.

We also identified that up to 656 reports throughout the reference period were missing, with at least 170 of these likely due to the unavailability of participants in custody or rehabilitation or when participants were not scheduled to go to the court. In addition, it is possible that reports were also given verbally, or may take the form of comments from counsellors, which do not form part of the official status report document. Other missing reports could be attributed to poor record-keeping and other circumstances, including participants failing to turn up to appointments.

The following section provides a summary of the overall progress of participants throughout the program, with respect to their records of self-reported drug use, drug use detected in urinalysis, attendance at appointments, changes in sanction points and re-offending.

There were status reports for 56 people, comprised of:

- eight graduates;
- three completions;
- 14 cancellations;
- 27 ongoing participants; and
- four people, who did not end up joining the program.



The reason there is a discrepancy between the number of cancelled DATOs (n=15) and the number of cancellations with status reports (n=14) is because one participant did not have any status reports completed in his short time on the program. It is not entirely clear why people who did not commence a DATO had status reports. In addition, the fact that we were not provided with status reports for three other DASL participants (inferentially, three ongoing participants) reinforces the issues with data collection and the need to ensure that there is adequate resourcing to enable this.

In order to undertake the analysis presented here, research assistants spent, on average, an hour per DASL participant, to extract status report data, with an average number of 16 reports per participant (a minimum of 1 and a maximum of 48). The research team was then able to examine progress in participants' disengagement from drug use, count their missing appointments, the number of participants being incarcerated, the number of participants requiring mental health and/or residential rehabilitation and changes in sanction points and reported re-offending. To facilitate ongoing outcome evaluations and assess participants' progress during DASL, we recommend that the DASL coordinator or other staff member systematically fill in information, through the use of a standardised data file (e.g. an Excel spreadsheet), with each status report representing a unique entry in a row. Each report, as the smallest unit of analysis, will capture the most important information, including:

- drug use and types of drugs used;
- residential rehabilitation;
- the results of regular urinalysis;
- missed appointments;
- any re-offending and the types of crime/s committed;
- changes in sanction points; and
- incarceration at the AMC.

These data are easy to record (e.g. yes/no, types of crime or drug). Since such practice does not require any additional information, beyond what is already being reported in the status reports, it should not lead to major data entry burden for case managers. However, some additional resources may be required, to develop the database and undertake training in its use.

In order to improve the analysis of recidivism, some consistent and clear data on participants' time spent in custody and residential rehabilitation should also be captured, as part of the administrative data. This will allow evaluators to make refined estimates of individuals' 'free' days, during and post-DASL, taking into account their time in custody and different residential rehabilitation facilities. Currently, this is a difficult task, given the lack of systematic data collected on these issues.

In relation to participants with a finalised program outcome, participants with a cancellation spent substantially less time on the program, compared to completions and graduates. [Table 13](#) summarises the average time difference between the first and last status report for each group. Five (out of 14) participants had their DATO cancelled within seven days – that is, between their first and last reports. All cancellations occurred in Phase 1. Both completers and graduates had reports spanning over 12 months. This is not surprising, given the increasing length of DATOS reported in Chapter 4.

*Table 13. Length of time of status reporting, 2020–March 2022*

Program outcome	Average time between first and last report (days)	Standard deviation	Min	Max
Cancellation (n=14)	52.9	77.1	0	294
Completion (n=3)	371.7	20.0	352	392
Graduation (n=8)	393.8	67.6	329	525

*Source: DASL status reports*

#### 8.4.1 Offending during DATO

According to the available status reports, 11 participants were reported for having some form of criminal justice involvement during 13 unique status report entries, with the majority of them involving property crime (e.g. theft, burglary, and property damage) (see [Table 14](#)). Documentation in the status reports may not reflect an arrest or charge during this period, but it may mean that a participant has come to the attention of the police, though it may not have resulted in an arrest. While the status reports did not capture all official re-offending (as compared with the ACT Policing data discussed in Chapter 10), the general offending pattern is consistent with the recidivism data retrieved from the PROMIS database.

*Table 14. Self-reported offending during DATO, 2020–March 2022*

Type of offence	Number of offences
Theft	4
Burglary	3
Steal motor vehicle	1
Assault	1
Drug possession	2
Driving offences (if criminal only)	2
Property damage	2
Non-association order breach	1

Graffiti	1
Existing warrant	1
Violence	1
Drug dealing	1
<b>Total</b>	<b>20</b>

Source: DASL status reports

#### 8.4.2 Drug use during DATO

The program recognises the common setback of drug use along participants' journey and in fact nearly two-thirds of participants (64.2%) experienced at least once instance of drug use. The proportion of participants experiencing a lapse differs across the three phases, with Phase 1 being the most common phase when drug use occurs (59%; see [Table 15](#)). The drug use rate in both Phases 2 and 3 was less than 50%; it was higher in Phase 3 (46%) than Phase 2 (24%). This may suggest that some participants require additional supervision and monitoring to ensure they are able to sustain behaviour change, though the small number of participants who have progressed to Phase 3 means that caution should be taken in interpreting these results.

Table 15. Self-reported drug use during DATO, by program phase, 2020–March 2022

# of instances of drug use (self-report/positive urinalysis)	Phase 1 (n=53)	Phase 2 (n=21)	Phase 3 (n=13)	Total (n=53)
0	22 (42%)	16 (76%)	7 (54%)	19 (36%)
1	15 (28%)	2 (10%)	3 (23%)	16 (30%)
2	2 (4%)	2 (10%)	1 (8%)	2 (4%)
3	2 (4%)	0 (0%)	1 (8%)	2 (4%)
>3	12 (23%)	1 (5%)	1 (8%)	14 (26%)
# participants who experienced lapse	31 (59%)	5 (24%)	6 (46%)	34 (64%)
Min # of status reports with drug use per participant	1	1	1	1
Max # of status reports with drug use per participant	37	6	5	37

Source: DASL status reports

It is striking that over one-fifth of participants in Phase 1 (23%) experienced more than three instances of drug use. By contrast, of those who progressed to the later stages, this fell to between 5% and 8%. The maximum number of relapses was 37. In this particular case, the participant ceased using methamphetamines during DASL, but still regularly smoked cannabis. Nonetheless, this participant ultimately completed the program, demonstrating that the team's willingness to continue working with him was justified. A balance must of course be struck, however, between supporting those who are struggling and ensuring that the program is available for those who are most likely to benefit from it.

[Table 16](#) demonstrates that graduates were in fact the cohort *most* likely to lapse, at 75%, compared with 67% of completers. This again demonstrates the importance of having a nuanced understanding of addiction and detailed program data to elucidate patterns such as this in participants' progression. However, it is important to recognise that many of the Phase 1 status reports are for participants who are currently in the program and this may not be an accurate reflection of their entire Phase 1 trajectory. The finding that graduates commonly experience a lapse during their journey could even be discussed with participants, to encourage them to persevere in the face of challenges. Another interesting finding is that the number of instances of drug use for graduates was lower, with a maximum of nine, compared with 18 and 37 respectively for cancellations and completers.

*Table 16. Drug use during DATO, by program outcome, 2020–March 2022*

# drug use (self-report/positive urinalysis)	Cancellations (n=14)	Completions (n=3)	Graduates (n=8)	Total (n=25)
0	5 (35.7%)	1 (33%)	2 (25%)	8 (32%)
1	5 (35.7%)	0 (0%)	5 (63%)	10 (40%)
2	0 (0%)	0 (0%)	0 (0%)	0 (0%)
3	0 (0%)	0 (0%)	0 (0%)	0 (0%)
>3	4 (29%)	2 (67%)	1 (13%)	7 (28%)
# participants who experienced lapse	9 (64%)	2 (67%)	6 (75%)	17 (68%)
Min # of status reports reporting drug use per participant	1	13	1	1
Max # of status reports reporting drug use per participant	18	37	9	37

Source: DASL status reports

The most common types of drug use were cannabis, methamphetamine and amphetamine (see [Table 17](#)). While there were only two instances of cigarette smoking in these reports, this

is almost surely an undercount, and not something that would have appeared in urinalysis or been regularly self-reported by participants.

*Table 17. Drug type detected, 2020–March 2022*

Drug types	Count of reports
Methamphetamine	76
Cannabis	66
Amphetamine	52
Morphine	23
Benzodiazepines	15
Cocaine	14
Unknown	12
Alcohol*	11
Heroin	10
Opioids	9
Cigarettes	2
Steroids	0

Source: DASL status reports \* Some participants had a condition on their order not to drink alcohol

Our analysis identified a lack of concordance between self-reported drug use and the urinalysis reports (see Table 18). Specifically, data retrieved from the status reports reveal 40 episodes where a participant was found to be using drugs through the urinalysis, without a self-admission or report. There were also 20 episodes where a participant reported drug use, which was not confirmed by the urinalysis. It is possible that, while the drug had already dissipated from the person’s system, to the extent that it could no longer be detected by urinalysis, a desire to be honest meant that participants were nonetheless self-reporting their use.

*Table 18. Concordance between self-report drug use and urinalysis results, 2020–March 2022*

		Urinalysis	
		Positive	Negative/unknown
Self-reported drug use	Positive	122	20
	Negative/unknown	40	731

Source: DASL status reports

A stark difference with regard to the time between each report of drug use can be observed across the three phases (see Table 19). Specifically, the proportion of participants who reported using drugs again within seven days of their last report of use is substantially higher in Phase 1, compared to Phases 2 and 3. It is also obvious that the proportion of participants who reported re-engaging in drug use decreased as their time in Phase 1 increased. The time between occasions of drug use in Phase 2 also tended to skew towards a relatively shorter period, with up to 14 days covering almost 70% of repeat drug use.

*Table 19. Time difference between each recurrence of reported drug use and previous report of use, by program phase, 2020–March 2022*

Within...	Phase 1 (n=122)	Phase 2 (n=13)	Phase 3 (n=10)	Total (n=145)
7 days	70 (58%)	2 (15%)	3 (30%)	75 (52%)
8–14 days	28 (23%)	7 (54%)	1 (10%)	36 (25%)
15–60 days	16 (13%)	1 (8%)	3 (30%)	20 (14%)
61–90 days	4 (3.3%)	2 (15%)	1 (10%)	7 (5%)
> 91 days	4 (3.3%)	1 (8%)	2 (20%)	7 (5%)

Source: DASL status reports

A time gap of up to seven days appeared to be common for participants whose DATO was cancelled and those who completed their order, but did not graduate from the program, accounting for 62% and 60% respectively (see Table 20). By contrast, only 38% of graduates used drugs again in this period. This suggests that, for people who make it to Phase 3 and those who graduate, drug use is a more isolated incident. This is consistent with the recovery literature, which recognises that people in recovery can experience, and overcome, lapses. Our analysis of the graduation speeches (Chapter 6) points to this experience amongst the cohort of graduates.

*Table 20. Time difference between each recurrence of reported drug use and previous report of use, by program outcome, 2020–March 2022*

Within...	Graduated (n=8)	Completed (n=48)	Cancelled (n=34)	Total (n=90)
7 days	3 (38%)	29 (60%)	21 (62%)	53 (59%)
8–14 days	1 (13%)	12 (25%)	9 (27%)	22 (24%)
15–60 days	1 (13%)	6 (13%)	3 (9%)	10 (11%)

61–90 days	1 (13%)	0 (0%)	0 (0%)	1 (1%)
> 91 days	2 (25%)	1 (2%)	1 (2.9%)	4 (4%)

Source: DASL status reports

#### 8.4.3 Time in custody

We found that 18 (out of 56) or 32% of participants had spent time in custody during DASL, according to the status reports. Most of this occurred when participants were in Phase 1, with 15 participants being sent to custody during this period. Of the 18 participants who were incarcerated during their DATO, 53% served one period of custody and another 37% served two periods. One person (5%) served three periods in custody and one served five periods in custody. Time in custody became less common when participants entered Phases 2 and 3 of DASL (see Table 21).

Table 21. Time in custody, by program phase, 2020–March 2022

# of periods in custody	Phase 1 (n=15)	Phase 2 (n=2)	Phase 3 (n=2)	Total (n=19)
1	8 (53%)	2 (100%)	0 (0%)	10 (53%)
2	6 (40%)	0 (0%)	1 (50%)	7 (37%)
3	0 (0%)	0 (0%)	1 (50%)	1 (5%)
4	0 (0%)	0 (0%)	0 (0%)	0 (0%)
5	1 (6.7%)	0 (0%)	0 (0%)	1 (5%)

Source: DASL status reports

Table 22 Time in custody, by program outcome, 2020–March 2022

# of periods in custody	Graduated (n=2)	Completed (n=2)	Cancelled (n=7)	Ongoing (n=7)	Total (n=18)
1	1 (50%)	0 (0%)	3 (43%)	4 (57%)	8 (44%)
2	1 (50%)	1 (50%)	3 (43%)	3 (43%)	8 (44%)
3	0 (0%)	1 (50%)	0 (0%)	0 (0%)	1 (6%)
4	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
5	0 (0%)	0 (0%)	1 (14%)	0 (0%)	1 (6%)

Source: DASL status reports

Incarceration was more common among participants with a cancelled DASL (seven out of 15 participants; 47%), compared to graduates (25%, or 2 out of 8). Among the current (ongoing) participants (n=27), seven (26%) have served time in custody (see Table 22).

#### 8.4.4 Time in residential rehabilitation

A total of 210 reports indicated that 24 out of 56 participants (43%) required residential rehabilitation during the reference period. Table 23 shows that over 80% of these reports involved a participant in Phase 1. The number of participants in residential rehabilitation decreased substantially in Phase 2 and none of the participants in Phase 3 required any residential rehabilitation.

*Table 23. Time in residential rehabilitation , by program phase, 2020–March 2022*

# of reports in residential rehabilitation	Phase 1 (n=20)	Phase 2 (n=4)	Phase 3 (n=0)	Total (n=24)
1–2	1 (5%)	1 (25%)	0 (0%)	2 (8%)
3–5	5 (25%)	2 (50%)	0 (0%)	7 (29%)
6–9	5 (25%)	0 (0%)	0 (0%)	5 (21%)
> 9	9 (45%)	1 (25%)	0 (0%)	10 (42%)

*Source: DASL status reports*

Only one of the graduates (12%) required any residential rehabilitation, as shown in Table 24. Interestingly, however, this participant attended residential rehabilitation on more than nine occasions, although it is not entirely clear from the status reports whether this was nine separate periods or a lengthy period of rehabilitation, covering nine separate status reports. Generally, however, the fact that so few graduates undertook residential programs may suggest that the substance abuse issues in this cohort were less severe than other participants' and/or that they had better support systems in place. On the other hand, the interviews with two former DASL participants in the AMC revealed that they both had issues with the other participants in the residential rehabilitation facility they attended; one indicated that he felt he would have been successful on the program, if he had been permitted to do a day program, instead of a residential one. Residential rehabilitation was found to be more common among participants with a cancelled DASL (four out of 15; or 27%). This issue should be explored further to determine if there is scope to reduce cancellations, by supporting suitable participants to undertake day programs. The data below also indicate that an atypically high proportion of current participants had attended residential rehabilitation. This may not augur well for their prospects on the program, but should also be considered in light of the comments in other parts of this report about the way residential rehabilitation is at times used to address a lack of housing. There was also mention of one participant receiving service at a mental health unit in Phase 2.



Table 24. Time in residential rehabilitation , by program outcome, 2020–March 2022

# of reports in residential rehabilitation	Graduated (n=1)	Completed (n=2)	Cancelled (n=4)	Ongoing (n=13)	Total (n=20)
1–2	0 (0%)	0 (0%)	1 (25%)	0 (0%)	1 (5%)
3–5	0 (0%)	0 (0%)	2 (50%)	3 (23%)	5 (25%)
6–9	0 (0%)	1 (5%)	1 (25%)	3 (23%)	5 (25%)
> 9	1 (100%)	1 (50%)	0 (0%)	7 (54%)	9 (45%)

Source: DASL status reports

#### 8.4.5 Missed appointments

There were 37 out of 56 participants (66%) who missed at least one appointment, during their DATO. This could include a meeting with a case manager, a counsellor, a SMART recovery session or another scheduled appointment. Table 25 shows that missing appointments was more common in Phase 1 and declined significantly in later phases, from a total of 34 missed appointments across reports in Phase 1, to five in Phase 2 and two in Phase 3. For participants who missed an appointment, one-third of them tend not to miss another appointment. Where participants missed multiple appointments, it was unusual for them to miss more than nine appointments. Current and ongoing participants, when compared against the cohort of graduates, completed and cancelled participants, appear to have more instances of missed appointments (see Table 26).

Table 25. Missed appointments, by program phase, 2020–March 2022

# of reports indicating missed appointments	Phase 1 (n=34)	Phase 2 (n=5)	Phase 3 (n=2)	Total (n=41)
1	13 (38%)	2 (40%)	0 (0%)	15 (37%)
2–3	10 (29%)	1 (20%)	0 (0%)	11 (27%)
4–5	4 (12%)	0 (0%)	1 (50%)	5 (12%)
6–9	4 (12%)	1 (20%)	1 (50%)	6 (15%)
> 9	3 (9%)	1 (20%)	0 (0%)	4 (10%)

Source: DASL status reports

Table 26. Missed appointments, by program outcome, 2020–March 2022

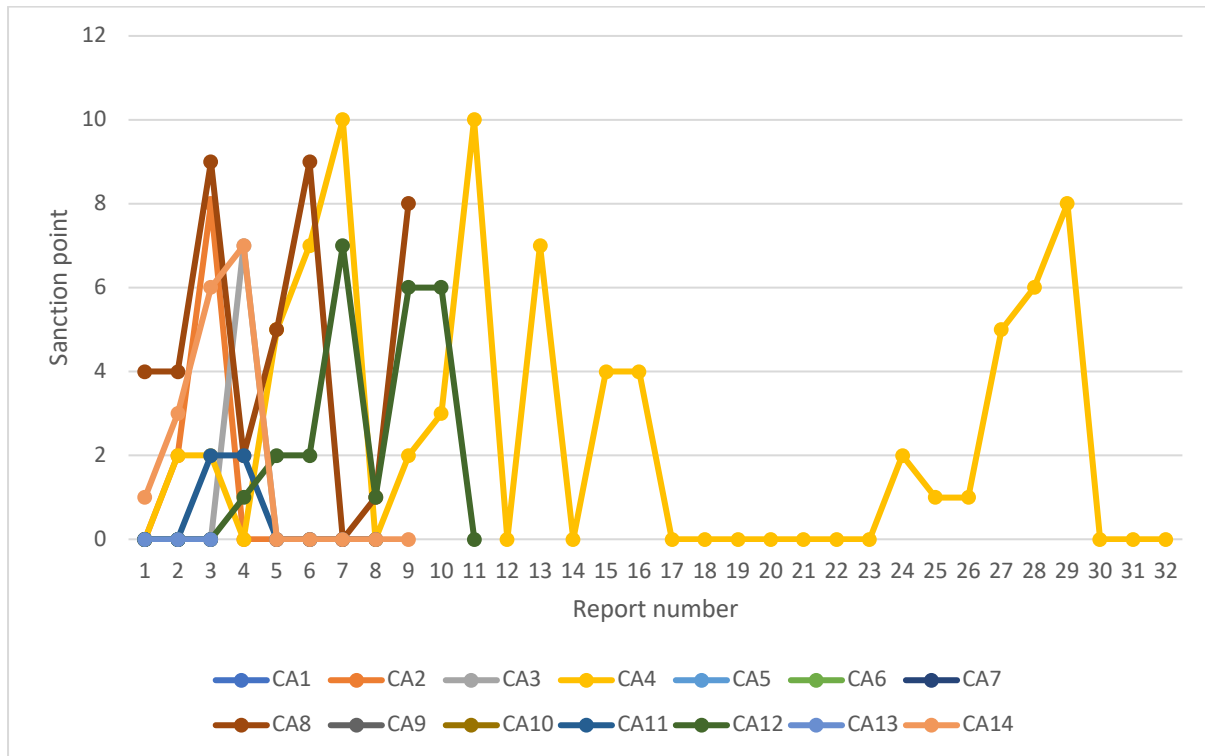
# of reports indicating missed appointments	Graduated (n=4)	Completed (n=2)	Cancelled (n=10)	Ongoing/unknown (n=21)	Total (n=37)
1	1 (25%)	1 (50%)	4 (40%)	7 (33%)	13 (35%)
2–3	1 (25%)	0 (0%)	3 (30%)	5 (24%)	9 (24%)
4–5	1 (25%)	0 (0%)	1 (10%)	3 (14%)	5 (14%)
6–9	1 (25%)	0 (0%)	1 (10%)	4 (19%)	6 (16%)
> 9	0 (0%)	1 (50%)	1 (10%)	2 (10%)	4 (11%)

Source: DASL status reports

#### 8.4.6 Changes in sanction points

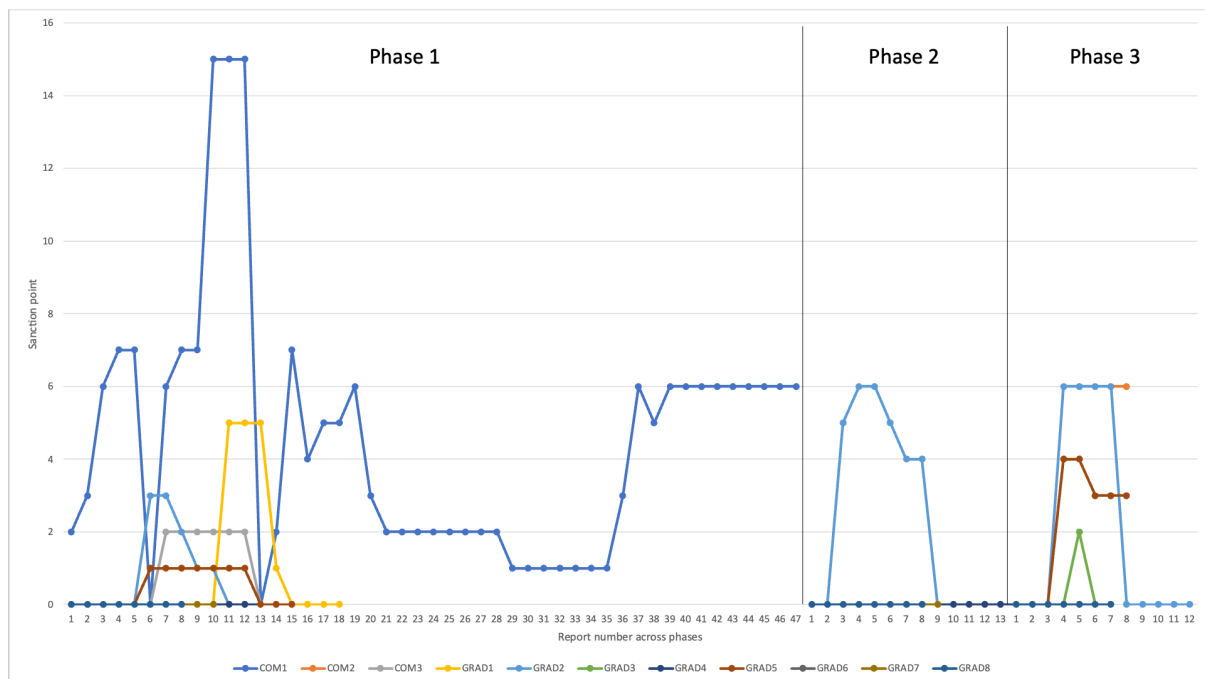
We also examined the addition and subtraction of sanction points during the course of a DATO. Specifically, we plotted the sanction points for participants whose cases were cancelled and for those who graduated and completed. It is perhaps not surprising to see the wide fluctuation of sanction points in Phase 1 among cases that resulted in a cancellation (Figure 16). As noted earlier in this report, all cancellations happened during Phase 1 of the program, though one participant did spend significant time in that phase before cancellation. Graduates and completers also experienced variation in the sanction points awarded and removed and most of this activity also occurred during Phase 1 of the program (Figure 17). Of note is that, of the 11 graduates/completions, many had very little or no sanction point activity.

Figure 16. Total sanction points of individual participants in each reporting period, cancelled cases, 2020–March 2022



Source: DASL status reports

Figure 17. Total sanction points of individual participants in each reporting period, graduates and completed cases, graduates and completed cases, 2020–March 2022



Source: DASL status reports

Reported drug involvement does not necessarily lead to an immediate change of sanction points. It was found that most participants (92.8%) did not receive a change in their sanction points in the reporting week (see Table 27). Also, when a change occurred to the overall sanction points, there could be different complex considerations relating to a participant's circumstances and the change of points might not always be an addition to the overall points (where more points are negative). In fact, only 3.4% of the 180 instances of admitted drug use resulted in an increase in the participant's sanction points that week. This could also be because a lag might occur for participants with a positive urinalysis result who do not admit drug use in a given period. This might result in the court ordering further tests, to confirm if drug use was present.

*Table 27. Change to sanction points, when DASL participants reported using drugs, 2020–March 2022*

Sanction point change	Count	%
Deduction of sanction point	7	3.9
No change	167	92.8
Addition of sanction point	6	3.4
<b>Total</b>	<b>180</b>	<b>100</b>

*Source: DASL status reports*

### 8.5 Estimate of Savings from Avoided Prison Time

We also sought to determine the cost of the prison time 'saved', by virtue of participants serving their DATO in the community, rather than in the AMC. We acknowledge that the calculations below are not a full cost estimate; future evaluations should take more variables into account, including fuller costings of DASL and more up-to-date prison cost estimates. A further complication is that a non-parole period is not set at the time a DATO is imposed, but is to be imposed at the time of cancellation for sentences of over one year (which, of course, all sentences in the program are), unless the judge considers this inappropriate.<sup>129</sup>

For the purposes of the calculation below, we used the Productivity Commission's estimate of the ACT's real net operating daily expenditure, per prisoner for 2020/21, at \$386.23. This is significantly less than the figure for 2019/20 (\$426.97), which was the relevant cost for the first six months of DASL's operation. Accordingly, it is likely to be an underestimate of prison costs for the early period of DASL's operation. On the other hand, we do not yet know the daily operating cost from July 2021 to April 2022, which may be higher or lower than the 2020/21 figure.

<sup>129</sup> See Crimes (Sentencing) Act 2005 (ACT) s 65(1).

As noted elsewhere in this report, there were 15 cancellations during the period under examination. Assuming each of these participants subsequently served their full sentence (which is unlikely, but is the same premise adopted for the participants below, in respect of the costs 'saved'), the nominal cost 'spent', as a result of their 16,426 prison days is \$6,344,213.98. This amount would likely have been spent anyway, in the absence of the DASL program. However, we recognise that additional costs were incurred, through these participants' involvement in the program, which we are currently unable to quantify. Subject to the significant caveats set out above, it appears that the remaining 41 participants may have 'saved' 42,189 prison days, at a nominal cost of nearly \$16.3 million (see Table 28).

It should be acknowledged that this estimate does not account for fixed and inflexible operating costs associated with the management of detainees. In practice, much of the cost would be redistributed to the remaining detainees. It is also important to disaggregate these figures further by program phase, as some of these costs have already been saved, whereas others remain somewhat speculative. The eight graduates and three who completed their DATOs, albeit without progressing through each of the phases, together avoided serving 10,776 prison days, at a nominal cost of \$4,162,014.48. To date, all program cancellations have occurred in Phase 1. This means it is highly likely that the four participants in Phase 3 will successfully complete their DATO. It is perhaps slightly less likely, but still highly probable, that they will in turn be joined by the six participants in Phase 2. Together, this would amount to a further \$3,929,117.79 in avoided prison costs, with the saved prison time of all participants who have progressed past Phase 1 adding up to \$8,091,132.27.

It is of course less certain that the 20 participants in Phase 1 will all complete their DATOs; in fact, it is to be expected that some proportion will not. To date, 27% of participants have had their order cancelled and, as discussed elsewhere, this has only occurred in Phase 1. Accordingly, it is not yet possible to determine how much of the largest proportion of the costs set out below (over \$8.2 million) will ultimately be 'saved' or spent. If, however, one were to assume that 27% of those in Phase 1 will have their order cancelled (and the remaining 73% complete theirs), this would suggest that approximately \$5,988,573.40 in prison costs would also be avoided for those in Phase 1 at the time we completed our data collection. Against this, we need to offset the time spent in custody for short periods, due to accumulated sanction points. There were 167 days served as sanctions, divided among 15 participants, on 23 separate occasions, costing just over \$64,500.

Notwithstanding the limitations set out above, these calculations provide some preliminary economic assessment of DASL, indicating that approximately \$14,015,205.26 is estimated to have been saved on prison costs. This does not, of course, provide any estimate of the cost savings associated with the benefits of taxes paid by participants engaged in employment (which most participants were by 12 months into the program) or attributable to children leaving the care and protection system, nor the benefits of improved family relationships more generally and the costs avoided from the prevention of new criminal offending. As set

out above, there are also likely to be significant cost savings, due to improved health outcomes. A full cost-benefit analysis should also consider a range of other factors.

Table 28. Cost of prison days, by program phase, 2020–March 2022

Cohort	Number of prison days not served	Cost (@\$386.23 p/d)
Graduated (n=8)	8526	\$3,292,996.98
Completed (n=3)	2250	\$869,017.50
Phase 3 (n=4)	3485	\$1,346,011.55
Phase 2 (n=6)	6688	\$2,583,106.24
Phase 1 (n=20)	21,240	\$8,203,525.20
<b>Total (n=41)</b>	<b>42,189</b>	<b>\$16,294,657.47</b>
Minus sanction points	167 days (served)	-\$64,500.41

Source: DASL program data and Productivity Commission (2022)

The data presented above cover the period from when the first participant entered the program on 15 January 2020, to 31 March 2022– that is, two years, two months and 16 days.

This of course needs to be offset against the costs of delivering the program and we recognise that DASL is resource-intensive. In November 2021, the Attorney-General provided a response to a question on notice from Elizabeth Kikkert, which stated, *inter alia*, that the Government would allocate \$13.251 million over two years to maintain the DAC (i.e., DASL) at current levels, for the following items:

- \$9.017 million to provide 28.4 full-time equivalent staff positions, to operate and support DASL – this covers operational and staffing expenses for the DASL judge (3 days per week), the judge’s associate and other courts administrative staff, prosecution and defence lawyers, and corrections and police support;
- \$3.809 million provided to ACT Health (including Canberra Health Services) to cover operational costs such as treatment and support services (including residential rehabilitation) and urinalysis drug testing costs;
- \$100,000 to ACT Corrective Services for operating costs including training and information session expenses; and

- \$325,000 to ACT Courts & Tribunal for program evaluation, training, family violence programs and transcription costs.<sup>130</sup>

On these figures, it appears that the cost of DASL has likely been more than offset, through the reduction in demand on the AMC alone.

### 8.6 Conclusion

This chapter has presented data from a range of sources, to evaluate DASL's short-term success, through in-program outcomes. Both younger and Indigenous participants were disproportionately represented in cancelled cases compared to graduations. In order to ensure that the fullest range of approaches to better support DASL's Aboriginal and Torres Strait Islander participants is considered, we recommend that the Court consult with representatives from key Indigenous organisations, including Winnunga, Yeddung Mura, Tjillari, the Gulanga Program at ACTCOSS and Aboriginal Legal Services, as well as the Galambany Elders.

Our survey with 20 current DASL participants demonstrated a high level of satisfaction with the program and, both in the survey and in qualitative interviews, the DASL judge received an overwhelming endorsement from participants. However, the lack of adequate housing is a systemic issue that was raised by several participants.

Data from ACT Health showed a marked improvement in DASL participants' drug use score, from an average of 9.7/10 at the beginning of their orders, to 3.2 after nine months and 0.2 after 12 months. The fact that it took some time for this improvement to occur confirms the need for a lengthy order, to bring about lasting change in drug use. It is important to note, however, that these data are incomplete and should be treated as preliminary and indicative. There were also notable reductions in participants' self-reported offending, victimisation and use of ambulance or hospital services.

Analysis of the status reports demonstrates the dynamic nature of participants' trajectories during DASL. Setbacks are common, including offending, drug use, missed appointments and periods spent in residential rehabilitation or custody. Of note is that even the cohort of graduates experiences such setbacks, though largely during Phase 1 of the program.

Finally, a preliminary economic assessment of DASL found that up to \$14 million is estimated to have been saved, due to avoided prison time. This is more than the \$13.3 million the Government recently allocated to continue to run DASL over two years. It therefore appears that the cost of DASL has likely been more than offset, through the reduction in demand on

---

<sup>130</sup> ACT Legislative Assembly (2021, November 21). Standing Committee on Justice and Community Safety, *Inquiry into ACT Budget 2021-22 – Question on Notice*, authorised by Shane Rattenbury MLA [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0005/1904774/JACS-QON-45-ACT-Budget-2021-22-Attorney-General-Drug-and-Alcohol-Court-more-support.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0005/1904774/JACS-QON-45-ACT-Budget-2021-22-Attorney-General-Drug-and-Alcohol-Court-more-support.pdf).

the AMC alone. However, a fuller cost-benefit evaluation is required, taking into account a broader range of variables. Out above, there are also likely to be significant cost savings, due to improved health outcomes. A full cost-benefit analysis should also consider a range of other factors. Any such evaluation should consider the difference in total operating expenditure of the AMC and how this is impacted by the DASL.



### Case Study 5

When Mr L entered DASL, he was in his late 40s, when he received a sentence of nearly four years for aggravated burglary and other offences. His DATO was set at two years. His criminal record, both in the ACT and interstate, dated back over 30 years and he had spent numerous periods in custody. He had previously breached community-based orders, including parole.

Mr L started began drinking at 14, using heroin at 16 and methamphetamine in his late 30s. Before entering custody on remand, he was using both heroin and methamphetamine every day. He said that associating with anti-social peers was a key factor in his drug use. He considered his physical and mental health to be good.

Mr L was still in contact with his parents, but had lost contact with his siblings. He had four children with his ex-partner and was no longer involved in their lives, but keen to re-connect with them and this was a significant factor in his desire to cease using drugs.

He had done some house maintenance work and said his previous employer would be willing to have him back, although this was not independently verified. He did not have any established housing in the community at the time of entering in the DASL program.

At the time we completed our data collection, Mr L was about to progress from Phase 2 to Phase 3.

## 9 Social Integration Outcomes

With ongoing drug and alcohol treatment, it is expected that a participant's social, emotional and physical health will improve. Indeed, drug and alcohol courts are often established with a comprehensive set of operational expectations, of which the objectives often include improvements in the general and mental health of participants. A strength of this evaluation is that it recognises the complex trajectories that participants experience, as they undertake a DATO. The program is designed to be holistic and, as such, outcome indicators also need to reflect that holistic approach. To that end, this evaluation reports on key social integration outcomes; this can include exploration of a person's integration within their social networks, employment, accommodation and physical and/or mental health. The prevalence and importance of social integration outcomes came through strongly in our interviews with DASL participants and stakeholders. As one team member put it:

If you look at all of those social markers, people's mental health, physical health, recovery from trauma, not offending, not using [drugs], having space to allow their brains and bodies to recover without using. All those things we're doing. We're ticking all the boxes for all those amazing things that we need to be doing.

Interviewer: And do you feel that's something that you regularly are seeing in people?

Absolutely, yes. Otherwise, I couldn't keep doing this. I can tell you, I would be long gone. Look, every little breakthrough that we have with someone feels like such a victory. We're working obviously with such complex people and, even at the very early stages, in Phase 1 – I didn't work yesterday and I had about 15 missed calls. Having these guys know that they can call me, and they need to call me when things aren't going right, or when something happens, just that reaching out is a huge skill.

This exchange illustrates the multiple facets of success in a drug court. A different stakeholder articulates a similar understanding of success, in relation to a recent DASL graduate:

[by the end of his DATO] he got a job, he was seeing his child more, he had pets, which was a huge thing, I thought that was amazing, that he had these pets now, that he wanted to take care of himself enough to take care of other things. He did volunteer work, he [had] increased his social networks. I just think that's all phenomenal stuff.

This approach is endorsed within the drug court literature. Indeed, research that has included these broader measures has shown that drug court participants reap psychosocial benefits in other areas of their lives, including significantly less family conflict. They are also more likely

to be enrolled in education and are less likely to need assistance with employment, education and financial issues.<sup>131</sup>

The collection of qualitative data as a part of this evaluation provides a unique opportunity to explore the facets of social integration in the Australian context. In this chapter, we report on the mental health and wellbeing of DASL participants, family and other relationships, employment, housing, emotional growth and maturity, and hope. To do so, we draw on data collected by ACT Health, as well as input from participant and stakeholder interviews.

At the outset of the program, the ANU evaluation team worked closely with both the Court and Health representatives, to identify strategies for documenting participant change, across a range of domains. In particular, a traffic light reporting system was developed, to assist the DASL team to monitor improvement, stability and deterioration in key life domains. These domains included:

- treatment compliance;
- accommodation;
- family and relationships;
- physical health, mental health;
- disability;
- peer associations;
- skills;
- education; and
- employment.

Key to the traffic light reporting system was a requirement that the DASL team regularly attend to questions of ‘progress’ and document even when the participant’s situation had remained unchanged. Too often in programs like drug and alcohol courts, practitioners have little time to attend to anything but the most pressing issues – usually fresh drug use or new criminal offending – and spend little, if any, time documenting stability or even improvement. The traffic light system was specifically designed to overcome this bias and ensure that positive outcomes were documented, even when there were less favourable issues to discuss.

A few months into the program, the traffic light system was abandoned by the TOT, which somewhat limits the capacity of this evaluation to report on health and general social outcomes. To be fair, all indications suggest that the traffic light system was not fit for purpose, especially during the complexities of the COVID-19 lockdown, the rapidly increasing participant population and the diminishing resources available to the DASL team. Small courts in small jurisdictions do not have the same luxuries as those in larger jurisdictions; there was

---

<sup>131</sup> See eg Rossman et al, n 108; Rossman and Zweig, n 108.

simply not enough time or capacity to properly implement the traffic light system, which would have weakened the value of the data in any case. While we recognise that the traffic light system as initially developed may have been cumbersome, we recommend that DASL reinstate collecting social integration data, across the course of a person's DATO, albeit in a form that is more convenient and accurately reflects the exigencies of the Court's workload.

Against this background, this chapter largely focuses on the positive social integration outcomes that were demonstrably experienced by the eight DASL graduates. However, it is important to note that such outcomes may also be experienced by participants who do not actually graduate from the program. In our process evaluation, we profiled a participant who completed the program, but did not graduate. This person successfully abstained from serious drug use, such as opioids and methamphetamine. This is the longest period in their adult life they have gone without using drugs or committing any offences. However, this participant continued to test positive for cannabis use, preventing their progression out of Phase 1. As we discussed in our progress report, interviews with members of the TOT revealed the tensions around recognising social integration while also using abstinence as a marker for 'success':

I've got a client...that's never been able to progress from Phase 1, but their progress is phenomenal to me...[Before DASL], they could never make a phone call, they could never meet a commitment. They lived on caffeine. They didn't know to drink water. They had no health knowledge whatsoever. They had no ability to navigate any emotional hurdles – to me, they've made so much progress.<sup>132</sup>

Another stakeholder expressed similar sentiments about this participant:

They've given up heroin, given up ice, doesn't re-offend, but they still smoke pot...And you know what – to me [that's] very successful. They have their own place. They communicate better now. A whole range of basic living skills, they're doing so much better now than they ever were. Huge difference in how they manage themselves, huge. But they will finish the DATO on Phase 1. But huge trauma history, so the expectations of someone like that, to expect that they're going to go from how they were to model citizen, high-functioning, is unrealistic. But from where they started to where they are now, huge difference.<sup>133</sup>

---

<sup>132</sup> Rossner et al, n 7, 53.

<sup>133</sup> Ibid.

It is worth noting here that research has shown that participation in drug courts is linked to lower re-offending and improved health outcomes, even if someone does not successfully complete the program.<sup>134</sup>

It is also important to note the reciprocal relationship between drug use and social integration. As people undertake drug treatment, it can commonly lead to reconnections, improved relationships and wellbeing. At the same time, wellbeing and improved quality of life can help a person in their recovery and desistance journeys. This is why working to improve social integration is such a valued component of the DASL program. As one member of the TOT explained:

I think that that's when people go downhill, when they're disconnected. People start to isolate, they're disconnected, they start using, their mental health is worse, all those things. So, when we have these conversations I always say 'how do we measure success?' It's these tiny little things that happen in people's lives. And trying to grow them, to set them up, so when they get to the end, they can do all of that on their own.

### 9.1 Psychological Health and Wellbeing

As a part of the evaluation, ACT Health initially agreed to regularly and routinely administer a series of health screening and assessment tools, the outcomes of which would then feed into ACT Health's regular participant report to the Court. Much like the traffic reporting system itself, resourcing became a barrier to the regular administration of these assessments. Where available, ACT Health has provided the data that were recorded throughout the evaluation period and the results provide for a preliminary assessment, although there were significant gaps in the data. We therefore make further comments below on the importance of ensuring all stakeholder organisations are adequately funded to collect data. Below, we report the results of items measuring psychological health, physical health, and quality of life over the preceding four weeks using the ATOP tool. Participants are asked to self-assess these different measures on a scale of 1 to 10.

On the data available, it appears there was a clear improvement over time across three domains: psychological health, physical health and quality of life (see Table 29). Psychological health shows the greatest increase, from a median of 5/10 at the start of the order to 9/10 at 12 months. Participants' self-perceived physical health and quality of life were initially slightly higher (with medians of 5.7 and 5 respectively) and these also improved, to 8 and 9 respectively. As in the TCU-5 drug dependency screening conducted by ACT Health, there is a risk of selection bias in the reported data, as well as a relatively low number of responses overall (only 63% of DASL participants appear to have completed the ATOP on intake) and high attrition rate (with only two participants providing data at the 15-month mark and no

---

<sup>134</sup> Gifford, E., Eldred, L., McCutchan, S. and Sloan, F. (2014). The effects of participation level on recidivism: a study of drug treatment courts using propensity score matching. *Substance Abuse Treatment, Prevention, and Policy*, 9: 1-8.

data at all for later months). Accordingly, we suggest that these data should be read as indicative and more consistent administration of this tool would provide more robust results.

*Table 29. Participants' ATOP scores for health and quality of life, over time, 2020–March 2022*

ATOP score for health and quality of life	Start of order (n=35)	3 months (n=24)	6 months (n=15)	9 months (n=14)	12 months (n=8)	15 months (n=2)
<b>Psychological health</b>						
Mean score	4.6	7.1	8.1	7.3	8.8	7.5
Median score	5	7.5	8	7.5	9	7.5
Standard deviation (SD)	2.37	2.06	1.33	1.64	1.28	3.54
<b>Physical health</b>						
Mean score	5.7	7.2	7.7	7.4	8.1	7
Median score	5	7	8	7.5	8	7
SD	2.62	1.9	1.59	1.87	0.99	4.24
<b>Quality of life</b>						
Mean score	5	7.2	8.3	7.4	8.8	8
Median score	5	7	8	7	9	8
SD	2.75	1.88	1.16	1.55	1.28	2.83

Source: ACT Health

These scores are generalised and rather abstract measures of psychological health, physical health, and mental health. It is important to note, however, that social integration outcomes are rarely exhibited in isolation. Rather, improvements in one area often go hand-in-hand with improvements in another. This can be seen in a comment from one of the stakeholders:

The ones who have graduated, I think they have [seen improvements in their lives]. And even some of the ones in Phase 3, they're now working, they've kind of got structure in their lives, they're not using, they haven't gotten any more fresh charges. They seem to have built up some supports in the community, outside their drug-using circle, which is tough, if that's your whole kind of cohort.

Even one of the former participants, whose DATO was cancelled, explained that when he was trying to get onto the program, ACT Health ‘helped me to sort out my mental health report for the court. And when things were getting a bit sketchy when I was in there, it was good to be able to talk to someone like that’.

### 9.2 Family and Relationships

In our process evaluation, we considered some initial social integration outcomes among the first group of graduates and completers. Multiple interviewees raised a particular example of a drug court participant whose children were returned from out-of-home care, as a result of the progress made during DASL. A DASL judge pointed to this, as a highlight of the program:

The absolutely most significant one...was [during] the beginning of the process, which I understand has now led to the return of children to a mother. If the program achieved nothing else, assuming that that’s sustainable, the cost saved by keeping her out of prison and those children out of care, and the trajectory that they might otherwise have experienced, both emotionally and socially, but financially, would pay for everything that’s happened so far.

Improved family relationships, including the return of children, continues to be a significant positive outcome for DASL participants. This came up repeatedly, in almost all of our interviews with participants and stakeholders. In at least one other case, children were returned to a parent, while they were undertaking a DATO. In many others, the improved relationship with children was less formalised, but no less impactful. As another stakeholder explained: ‘Many of them have not had connections with family, but during the course of the program, do reconnect and, in particular, kids are a big motivator’. For instance, one participant pointed to their recovery, as instrumental in helping them to be ‘a normal member of society’ and spoke about:

just enjoy[ing] the small things, like spending time with my kids, gaining back the respect from my family, rebuilding the connections. Having genuine friendships with people, instead of it being based around crime and drug use and sex and money. I know it’s a whole new lease on life for me. I honestly thought that that stuff was out of reach.

Another participant described losing custody of their child, due to their drug use. During their recovery, they successfully rebuilt their relationship with their child and reported to us that they currently have a much better relationship together, pointing to this as a significant personal achievement in their recovery journey.

Participants also reported both improved relationships with spouses and partners in some instances and a desire to distance themselves from partners who are still using drugs. For instance, when asked about how their successful navigation of a DATO impacted their

relationship with their partner, one participant explained:

she's really happy. Because she's seen me – like, she was there for when I went to jail, come out of jail, in the middle of my addiction and coming clean. She's always seen the good in me, even though I never saw the good in myself. And now that I can see the good in myself, she's happy that I found it. She's really supportive.

This participant told us at interview that once he graduated from DASL, he was planning on proposing to his partner. In his words, 'I want just support my family and some work, and see where we go. And as I've come out, I've felt...more love for my partner. Yes, it's just great'.

A member of the TOT had this to say about a different participant:

And now they actually have changed the outcomes and changed a long criminal history. That is really hard to do. Changed a long addiction history and a long criminal history, as well as other things. Poor relationships, broken-down relationships with family, they've actually started to rebuild, the family have started to trust again. And to buy back in, and risk getting hurt again, and possibly losing their love, they've actually invested in that again, and it's been a long road for them too.

In another case, a stakeholder recounted a conversation with a participant, who recognised the need to surround themselves with positive relationships, indicating that they had developed:

different sort of standards. Who they invite into their life, what situations they'd involve themselves in...So conversations like: 'my girlfriend, she uses, but I don't think I can do that, I don't think I can be around, I can't afford this, I think I need to do something different. Otherwise, I will jeopardise my recovery'. And it wasn't emotive, it was considered, and it was thought out there, and they were trying to align better with their goals and intentions, which was nice to see.

Another participant echoed a similar sentiment: 'I've been off drugs for a long time now. I just stay to myself now, so I don't hang with the wrong people sort of thing'.

Again, the fact that both participants and professional stakeholders pointed to the participant's desire to increase pro-social relationships and reduce anti-social relationships demonstrates that the impact of the program extends far beyond mere drug use and, especially for those with children, is likely to have significant beneficial intergenerational implications.

### 9.3 Employment

Many participants expressed a strong desire to work. Our survey with participants (section 8.2) showed that many felt some frustration at not being able to work during Phase 1 of the



program, due to the rigorous and intense schedule of appointments and court appearances. By Phase 3 of the program or after graduation, many participants see employment as a positive indicator of their progress. As one participant explained:

Now I can work every day. I couldn't work every day, because I still had to do urines on a Friday, I had court once a month. So, I'm sort of glad I've graduated, so now I can work every day.

Many stakeholders saw this embrace of employment as a positive outcome for many graduates. As one put it:

One of the really good things has been reintegration in family and employment. And most of the graduates are people who have got into employment. We've had quite a good burst recently, because an events management organisation has got about five or six of our participants, and they're quite keen.

ACT Health collects limited data about employment, as a part of the ATOP tool. Participants were asked about their employment status at 3-month intervals, across the program. However, there were only data for two participants at 15 months (not reported here, as the number is too small), and no data collected for participants at 18, 21, or 24 months. As with the psychological health and wellbeing questions above, the limited sample size and high attrition rate make it hard to have full confidence in these data. However, some trends are apparent.

As set out in Table 30, only 8% of the 36 participants who provided this information were employed at the start of their DATO, compared with 62.5% at the 12-month mark. Although the small number of participants who provided information at this point (n=8) is of course acknowledged, this is a remarkable change. There was an inverse reduction in the proportion of unemployed participants (down from 84% to 25%), while one of the eight described themselves as being in home duties and another as studying; these are both identities which may be more consistent with a non-offending identity and lifestyle.

*Table 30. Participants' ATOP employment status during DATO, over time, 2020–March 2022*

<b>Employment status</b>	<b>Start of order (n=36)</b>	<b>3m (n=24)</b>	<b>6m (n=14)</b>	<b>9m (n=14)</b>	<b>12m (n=8)</b>
<b>Employed</b>	8.1%	12.5%	21.4%	57%	62.5%
<b>Unemployed</b>	83.8%	62.5%	71.4%	35.7%	25.0%
<b>Home duties</b>	0.0%	0.0%	7.1%	7.1%	12.5%
<b>Studying</b>	2.7%	0.0%	0.0%	0.0%	12.5%
<b>Other</b>	2.7%	25.0%	0.0%	0.0%	0.0%

Source: ACT Health

### 9.4 Housing

Secure and safe accommodation is fundamental to wellbeing and quality of life. Unfortunately, this may be inaccessible for many people involved in the justice system.<sup>135</sup> As one team member explained:

Well, COVID has changed the shape of homelessness in the ACT....People are not moving. Rentals have skyrocketed in price, so people aren't moving into private rentals. There's just no properties. So, we sort of always say that, when I was doing case management, prior to coming into DASL, three-to-six months could get someone on the list and housed. On [the] priority [list] at the moment, now they're talking years. Years! And I've explored every single angle of this.

This is impacting DASL participants' ability for social integration and is a major challenge for the DASL team and DASL participants. The DASL judge described one such case:

And it is really sad to get to the stage, where someone has performed really well – I mean, I've got a classic one, which is [participant], who has performed really well. [Earlier in the program], he and I had a stand-up fight. I mean, we shouted at each other at one stage. Because I was sending him to AMC, because he had failed on something. He went through the 14 days [in the AMC], came back – he was in the community and we sent him into CRS, He did very well and then graduated [from CRS]. He wanted to go back with his family, but unfortunately his family were homeless and were living with some extended family. That's become very difficult and he's been looking for another residence, because he wants to stay with his family, understandably. He could go into [the] Justice Housing [Program], but only as a single man. His wife or partner could go into, say Toora,<sup>136</sup> but as a single woman or as a single mum. The three of them can't, at the moment, go anywhere. It's obviously stressing him out. I keep trying to encourage him, because he manages well, and he hasn't relapsed as a result. I mean, it's really amazing.

Many stakeholders indicated that they spend a significant amount of time in both case management and case conferences dealing with this issue, across multiple participants. As one explained:

I think in those greater discussions more recently, I've noticed that they're really associated with maybe more issues with the system itself, in terms of funding, and our

---

<sup>135</sup> See eg Doyle, C., Pfothenauer, D., Bartels, L. and Hopkins, A. (2020). *[T]hey Say "You're Going Home, You're Going Home" ... But I Don't Have a Home... I'm Getting Out, But I'm Not Going Home, There's No Home...': The Experiences of People Leaving Prison in the Australian Capital Territory*. University of NSW. See also Australian Institute of Health and Welfare (2019). *The Health of Australia's Prisoners, 2018*. To address this issue, the ACT Government has introduced the Justice Housing Program: see <https://justice.act.gov.au/justice-programs-and-initiatives-reducing-recidivism/building-communities-not-prisons/justice>.

<sup>136</sup> See Toora Women Inc (nd). <https://www.toora.org.au>.

interaction with Housing is a massive concern that's been raised in the conference increasingly and continually, recently, because we've actually just had a participant who's become homeless, with his family and his three kids. So that's obviously on everyone's mind.

There is a real concern that, in cases like this, all of the positive benefits of a successful DATO, including abstinence, social integration and lack of re-offending, will be undermined by the lack of adequate housing. One participant vented their frustration with us:

Because I've – got no house, I live with my parents in the lounge room. So, it's messed up. And I thought housing was going to be a lot easier to get, but no, housing is near-impossible...So, I've virtually got no chance.

In our process evaluation, this issue was flagged as a potential problem and stakeholders suggested that ACT Housing could be more involved in helping to secure safe accommodation. Since then, the issue has become a central problem facing the program and the ACT community more broadly.<sup>137</sup> Representatives from ACT Housing did begin to attend some case conference meetings, but were not able to offer any tangible support to participants. For instance, one participant told us her case manager had put her in touch with:

the Housing person for DATO, but then she's pretty much told me all I can do is keep ringing up and becoming a nuisance, to the point where they just want to get me a house, so that they can stop me from ringing.

Needless to say, multiple calls did not result in an improvement in this participant's housing situation.

The team has tried to support people in relation to this issue, where possible. The most consistent strategy is placing people in residential rehabilitation, for a portion of their DATO. As one stakeholder explained:

So everywhere is full, all the hostels are full, temporary accommodation is full, there's no options whatsoever. CRS, thankfully, has developed a transitional accommodation program and the guys who do rehab can go into that accommodation...But I mean we've got a guy who's been in CRS for 12 months, he's got nowhere to go, he's got no capacity to move on. Ordinarily, also, you'd put someone on a DATO who's homeless, then they have to go to rehab. So, there was this pattern of referring people directly to rehab, then when we needed rehab for people, there's no spaces. But we've got these guys who are homeless in there.

---

<sup>137</sup> See eg Neale, H. (2022, February 21). Affordable housing continues to be a challenge for Canberra's homeless. *Canberra Times*. <https://www.canberratimes.com.au/story/7520211/impact-of-lockdown-continues-for-canberras-homeless/>.

However, it was acknowledged that this is not a permanent solution and is also not a possibility for a significant proportion of participants, who are assessed as not needing residential rehabilitation. It also poses a risk, because, 'if they stuff up, they can't go into the community, they've got nowhere to go, so their DATO would get cancelled'. Our findings about the participants who attended residential rehabilitation having a higher rate of DATO cancellation (see Chapter 8.4.4) should also be noted, although we cannot conclude that there is a causal connection between these two events.

For those who are in residential rehabilitation, some facilities have taken the very positive step of developing transitional housing for people, as they exit rehabilitation. But this, too, may create more problems later on. This is elaborated by a DASL stakeholder:

...I think at the moment there's definitely not enough resources, because our beds – like DASL-appropriate beds at Karralika and Arcadia have been cut off, effectively. So, the only place we can send people is CRS. But all of the DASL spots at CRS are currently filled, but by people who are in transition housing, because there's just no housing for them once they finish the CRS program, so they're not even doing the program anymore, they've finished it, but there's just nowhere else for them to go. And as a result, that cuts off our ability to send more people to CRS. So, I think it's just a bit of a circular problem at the moment, with this lack of housing that we have.

In its submission to the Inquiry into Community Corrections, ATODA referred to 'anecdotal concerns that referrals for mandated residential rehabilitation may be occurring as a result of limited accommodation options, rather than because there is a genuine need for residential care over other types of rehabilitation'.<sup>138</sup> Accordingly, it was suggested that JACS, Health and the Community Services Directorate:

should work together to investigate this concern as a priority and consider whether other accommodation alternatives should be made available to individuals in Community Corrections. Community Corrections should conduct a housing assessment as part of the follow-up on individuals existing treatment under the DASL.<sup>139</sup>

In his evidence before the Committee, ATODA's CEO expanded on this issue, as follows:

In someone's treatment journey, they pretty much need to have a house or an apartment or something. Early on, especially in the court, the evidence seemed to be that a whole lot of the treatment options that were being taken by the court were basically residential rehab. Residential rehab is absolutely great for people who need it. But it is expensive and there are a lot of other treatment options that can be more

---

<sup>138</sup> ATODA, n 18, 4.

<sup>139</sup> Ibid.

cost effective if someone is housed. Our impression has been that some people have been diverted to residential rehab, partly because they have a drug issue – fair enough – but there would be a range of options available to them, including counselling or day programs, and they were being put in residential rehab simply because there was no other house.

So, we think teaming up with Housing ACT to make sure that people are housed, maybe separate from their drug treatment, if that is required, might be more cost effective and might also expand the range of treatment options available to people because in some cases people can find the transition from residential rehab back to ordinary life a bit abrupt. The capacity for the drug court to offer stepped care, to say, ‘All right; first we are going to have you in something really intensive and then we are going to step it down,’ seems not to be being used and we could, I think, be more effective with the taxpayer dollar that way.

MR BRADDOCK: What is the scale of the problem, do you know? Are we talking tens of years or –

Dr Bowles: It is early days and a lot of our information is anecdotal. At its peak, if memory serves, there can only be 30 clients at a time. So you combine that with COVID and the total number of people who have gone through is not huge. I do not have specific figures and I would be hesitant to rely too heavily on that. To be fair, our impression is that that pattern is starting to change but that there is still an emphasis on day programs and not other stepped-down models of care. But the housing issue continues to seem to be a big issue for us.<sup>140</sup>

Nonetheless, the ATOP data collected by ACT Health do point to some improvements in participants’ housing situation during DASL. Participants were asked at three-month intervals about their housing status, whether they were homeless, and if they felt they were at risk of eviction. As in the data reported above, these data must be treated with caution, due to possible selection bias, small sample size, and attrition.

These data (see Table 31) indicate that no participants were in crisis or short-term housing at the 12-month mark, nor did any consider themselves at risk of eviction (compared with 14% at the start of the program and 9%–20% at other stages of their DATOs). They were also less likely to be homeless (12.5%, compared with 22% at the start of the program). At nine and 12 months, around one-third of participants were living with friends or family, without paying rent, which may be evidence of re-established trust and improved relationships. They were also more likely to be in the private rental market (15% and 17% respectively, compared with 8% at the start of the program). Conversely, they were less reliant on public housing (15% and

---

<sup>140</sup> Bowles, n 43, 25.

17% at nine and 12 months, compared with 24% at the start), thereby easing demand on this limited resource.

*Table 31. Participants' ATOP record of accommodation during DATO, over time, 2020–March 2022*

Accommodation type	Start of order (n=25)	3m (n=21)	6m (n=10)	9m (n=13)	12m (n=6)
Crisis/short-term	4%	0.0%	0.0%	0.0%	0.0%
Couch surfing/homeless	0.0%	0.0%	10.0%	15.4%	0.0%
Family/friends (no rent)	24%	9.5%	10.0%	30.8%	33.3%
Private rental	8%	14.3%	10.0%	15.4%	16.7%
Privately owned	4%	0.0%	0.0%	0.0%	0.0%
Public housing	24%	19.0%	10.0%	15.4%	16.7%
Residential rehab	36%	52.4%	40.0%	15.4%	16.7%
Supported accommodation	0%	4.8%	20.0%	7.7%	16.7%
% homeless	21.6%	4.3%	20.0%	14.3%	12.5%
% eviction risk	13.9%	8.7%	20.0%	21.4%	0%

Source: ACT Health

As discussed in Chapter 4.3 the lack of suitable housing also impacts potential DASL participants, as the Court is reluctant to give a DATO to a person experiencing homelessness, due to the challenges this presents to effective recovery and social integration. This means that there are participants who might fit the criteria for a DATO, but are prevented from participating, because of the lack of suitable housing options.

More broadly, we note that the lack of housing has been the source of significant comment recently. For example, the Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 recommended that the 'ACT Government should invest in housing options for people who use alcohol and other drugs and are at-risk or experiencing homelessness'.<sup>141</sup> We echo this recommendation.

<sup>141</sup> ACT Select Committee, n 10, Recommendation 9.

### 9.5 Emotional Growth and Maturity

Many of the participants and stakeholders described transformative experiences that took place during a DATO. Language around emotional growth and maturity were common. For instance, one participant told us:

I never used to believe counselling helped, until I've actually started counselling, and that was because I had to do it because of this order. And now I've started it, I probably won't ever stop it...I used to just bottle everything up and then feel sorry for myself and just be stupid. But I've learned a lot of tactics, too. And anyone that knew me from before jail, even from just getting out of jail, they'd say I've grown so much. And I can see that myself, because I know where I was before.

Professional stakeholders gave a number of examples of such growth. For instance, one AOD stakeholder remarked that, in their experience, 'quite a few do...take up the ongoing option [to see a counsellor]. And that shows, in my view, a degree of maturity'. Another participant reported: 'I'm just a lot smarter than what I was'.

Many of the stakeholders described a growing emotional maturity they saw in participants over the course of the program. This was demonstrated through their capacities for conflict resolution and self-reflection. For instance, one participant:

has good conflict resolution skills now with his partner. Not just that, he's learned how to self-reflect every Friday. And misses it when he can't do it. And how do you go from— you're a man in a cell at AMC [to] regretting your actions and feeling 'I don't know what the future holds'? That's great growth.

Another stakeholder recalled a participant who had recently graduated. During the program:

I knew something was up that day [a few months prior] and I said 'what's going on?' He said, 'listen, something's not right'. And he said: 'I used marijuana. I don't know why I did it'. And he was so reflective about it. And he could really step out and see the great things about being sober. And what is...not as exciting – but the mundane and the consistent care that, in the end, they'll give to themselves is going to hold them for the long term.

It emerges from these comments from both the participants and professionals who work with them that they foresee a future beyond the life of the program, with changes that are far-reaching in scope and encapsulate issues around their broader identity and emotional development.

## 9.6 Hope and Optimism

Finally, our interviews revealed a general positive and forward-looking attitude among the graduates. This is also apparent in some of the comments given as a part of the survey to DASL participants (see Chapter 8.2). One participant told us that their experience in DASL has 'given me hope for the future'. A stakeholder further explored some of the facets of what this means:

There have been some strong reputational changes for the people, where they were carrying themselves differently...[and] asking for different things out of life as well. I think some people, they are developing better routines in their own life. There were some proud moments in there as well and they were able to see the role of goal-setting as well and to be able to – you know, when someone moves to the next stage there, it is a proud moment for them. And start to believe in themselves. That's the best. Start to back themselves, that they can do this.

This came out in our interviews, in the way participants spoke about the fullness in their lives:

the DASL stuff, yes, and all the other stuff I do is, like, I work once a week. And all the other stuff I do is, like, attend NA and AA meetings. And besides that I just do my own hobbies, like gym and building cars and riding motorbikes and stuff like that...I see my kids every Sunday as well. I do a weekly planner every Sunday night for the next week, and it's a pretty jam-packed life sometimes.

Another graduate described:

Pretty much just got rid of all my old friends, old contacts, started back at the gym, that's largely what helped me at the start, but that was what I really enjoyed before. And then started getting involved in that every day again, started looking at my health, and just started, I don't know, just doing things I wouldn't normally do. I just didn't want to be the same as I used to be.

Such a positive outlook is fundamental to wellbeing and also a protective factor against future offending.<sup>142</sup> Many of the stakeholders also report profound satisfaction in their work when they can see this change occur in people. For instance:

It's a joy when someone says 'first time I've been sober since I was 16'. Or first time, [like] my client said the other day, 'I've been in and out of prison for my kids' birthdays, and I can be not just present, but sober'. Isn't that a win? The delight on his face. Really solid, 'I'm my own man, I'm moving forward to who I want to be'. It can be a really

---

<sup>142</sup> See eg Martin, K. and Stermac, L. (2010). Measuring hope: Is hope related to criminal behaviour in offenders? *International Journal of Offender Therapy and Comparative Criminology*, 54: 693-705.



rewarding program, like that.

Finally, this outcome, like the other social integration outcomes, creates feedback loops across all areas of psychological health and quality of life. For instance, one participant observed:

the best thing is that connection to self is powerful. And then to take that self into their family space. Or into an employment. This client's been able to say 'no' to certain offers of methamphetamine, has developed ways to say that.

### 9.7 Conclusion

There is evidence that participation in DASL has led to positive outcomes across various domains of social integration: psychological and physical health, quality of life, relationships, employment, emotional maturity, and hope and optimism about the future. For example, participants' ratings of their psychological health increased, from a median of 5/10 at the start of the order, to 9/10 at 12 months. In addition, the proportion of participants who were in employment increased from 8% to 63%. Many participants also experienced improved relationships with their loved ones, especially their children. The positive outcomes achieved are a testament the work of the TOT and other stakeholders, as well as the participants' commitment to their recovery.

Although there were some improvements in participants' housing situation during DASL, the issues around the lack of housing in the ACT are impacting DASL participants' ability for social integration and present a major challenge for both participants and the DASL team.

In addition, inconsistent data collection limited the ability of the evaluation team to draw strong conclusions from this information. We therefore recommend that the DASL team collects ongoing data about social integration during DASL and be appropriately resourced to do so. Finally, social integration data could also be collected in the form of exit interviews with participants when they graduate or finish their DATO. The collection of such data would be an important element to support ongoing monitoring and evaluation.

## Case Study 6

Mr S was convicted of robbery and a motor vehicle offence and received a sentence of nearly four years, coupled with a two-year DATO. He has a significant criminal record, both in the ACT and interstate.

Mr S was in his late 30s at the time of sentencing. He had experienced a somewhat difficult childhood, including abuse from his father, who had a drinking problem, but his father quit drinking when Mr S was in his teens and the family has been close since then. He was living with his parents and enjoyed going to the gym with his brother-in-law. After Mr S left school in Year 10, he worked for about a decade in the construction industry, until his substance use issues prevented further employment. He was keen to re-enter the workforce, but knew he would have to prioritise his DATO commitments first.

He began drinking and using heroin in his teen years. He used heroin daily for many years, but by the time he entered DASL, said he was no longer using it. He continued to drink to excess, especially on the weekend. He used to use amphetamines, marijuana, and cocaine, but said he was no longer using these substances and recently stopped smoking cigarettes. He has attended residential rehabilitation programs on four occasions, but has tended to relapse. He was discharged from the most recent attempt, due to multiple breaches.

Mr S experiences depression and anxiety, but is in good physical health. He has previously had a gambling issue, although he has now paid his debts.

When we completed our data collection, Mr S had recently progressed from Phase 1 to Phase 2.

## 10 Recidivism

This chapter presents the criminal offending outcomes of the participants of the DASL program, since its commencement. In view of the small sample size and difficulties in obtaining a matched comparison group, these descriptive findings on participants' re-offending should be interpreted with caution. Further observations and analyses of recidivism across treatment and comparison groups will be required for more rigorous evaluation.

### 10.1 ACT Policing Data

#### 10.1.1 Methods

In order to evaluate the impact of DASL on criminal offending outcomes, participants' frequency of offending during DASL and after the program has been captured, from data held in the ACT Policing PROMIS database. Here, we use fresh charges as our measure of re-offending. We acknowledge that this is likely to be an overestimate of recidivism, as not all of these will necessarily result in a conviction.<sup>143</sup> In fact, one of the former DASL participants we interviewed in the AMC had his DATO cancelled in part because he had been charged with a further offence, of which he was later acquitted. Despite this, for the purposes of our analysis, charges recorded by the police will be taken as evidence of 'offending'.

Counts of re-offending are calculated for participants in the period during and after their DATO. These counts are then compared with the number of offences recorded within the 12 months prior to the participants' admission into DASL. Since the amount of time a participant spends on DASL varies, according to individual progress, the frequency of offending after admission (i.e. 'during DASL' and 'post-DASL' periods) is standardised as an estimate per 365 free days (non-custodial) in the community. Specifically, the total number of offences during the reference period is divided by the total number of participants' 'free days' in the community and multiplied to represent a rate per 365 days. Standardisation is necessary, in order to make comparisons between individuals and in different time periods, but it is important to note that it masks the wide variety of 'free days' that DASL participants actually experience.

With the assistance of ACT Policing, the data for 46 DASL participants were extracted from the PROMIS database. There were 10 missing cases, as these participants appear not to have been apprehended by ACT Policing, within the 12 months prior to, during or after DASL. It is possible that this is because the offending that brought them to the DASL occurred before this 12-month period. It is also possible that the missing data are due to inconsistencies with the PROMIS system. The police data available to evaluate recidivism includes participants

---

<sup>143</sup> For discussion of the different means of assessing recidivism, see eg Payne, J. (2007). *Recidivism in Australia: Findings and Future Research*. Australian Institute of Criminology.

who, by 28 April 2022, had successfully graduated from the program (n=6),<sup>144</sup> completed the program (n=3), had their DATO cancelled (n=15) and were ongoing participants of DASL (n=22). It will be noted that these numbers do not align with the in-program data analysed elsewhere in this report, due to the missing data. Comparisons of participants' re-offending were also made by age and gender. Unfortunately, a comparison of offending based on participant's Indigenous status is not possible, as data on Indigenous status are not consistently captured in the database.

The research team had access to individual participants' names and case files. However, the restrictions imposed by the ANU ethics process meant that we were only able to access aggregate data from the police. Accordingly, we are unable to determine accurately which participants re-offended or how often they re-offended, although some of this information can be determined from the case law.

The DASL program has also been tracking the progress of graduates and completed cases, with regular monitoring, to determine if they have made further appearances at court. We report on these data as well, which provides a useful means of triangulating the police data.

#### 10.1.2 Recidivism during and after DASL

##### *Recidivism by demographics*

Analysis of re-offending over the evaluation period shows that 50% of DASL participants (n=23) did not re-offend during their DATO, while the other half of the participants were apprehended at least once while participating in DASL (see Table 32). There was a higher proportion of female participants who were apprehended during DASL (four out of six participants; 67%), compared with male participants (19 out of 40; 48%). The female cohort was, on average, also apprehended for more offences (4.9) than their male counterparts (3.4). Re-offending across different age groups varied within the range of 0–100%, with those aged 40–44 recording the highest proportion of participants re-offending during DASL. Participants within this group also committed the highest average number of charges (7.6), compared with averages of between 0 and 6.6 for the other age groups.

---

<sup>144</sup> It is unfortunately unclear whether the other two graduates did not have any charges in the 12 months before their DATO or were unable to be located in the PROMIS system, due to missing data.

Table 32. Number of participants receiving new charges during DASL, by gender and age groups, 2020–March 2022

Participant group	N	Charged during DASL	%	Average N of charges (for free days) per 365 days
<i>Gender</i>				
Male	40	19	48	3.4
Female	6	4	67	4.9
<i>Age</i>				
15–19	1	0	0	0.0
20–24	9	6	67	6.6
25–29	15	8	53	3.0
30–34	5	1	20	6.4
35–39	10	5	50	1.6
40–44	2	2	100	7.6
45–49	4	1	25	2.4
<b>Total</b>	<b>46</b>	<b>23</b>	<b>50</b>	<b>3.6</b>

Source: ACT Policing

As the number of graduates is small, and the follow-up time post-program is shorter for the graduates, compared to the other groups with different program outcomes, the number of offences before and after entry into DASL is smaller for the completed and graduated participants. Table 33 shows the mean number of offences charged per ‘free’ day (i.e., day in the community) for the pre-DASL period, as well as during and after DASL.

Overall, the data reveal that, on average, *all* participants had much lower rates of offending in the post-DASL follow-up periods, compared to their pre-program offending. Specifically, across the whole cohort, there was a 61% reduction in the number of offences, over a 12-month period, compared with the comparable pre-DASL period. When only those who are no longer on the program are considered (n=24), the reduction in offending was 41% when they were in the program and 81% after the program. The cancelled participants had the highest average number of offences both before and during DASL (11 and 18.4 respectively), while completers and graduates revealed a comparable rate of re-offending before DASL (6.3 and

6.7 respectively). This indicates that participants whose orders were cancelled were offending, on average, nearly twice as frequently in the period immediately before entering the program.

*Table 33. Mean number of charges (for free days), per 365 days, before, during and after DASL, 2020–March 2022*

Participant type	N	Pre-DASL	During DASL	Change, vs pre-DASL	Post-DASL	Change, vs pre-DASL
<b>All participants</b>	46	9.3	3.6	-61%	N/A	N/A
<b>Ongoing</b>	22	9.3	1.2	-87%	N/A	N/A
<b>Graduates</b>	6	6.7	0.4	-93%	0	-100%
<b>Completions</b>	3	6.3	1.6	-75%	2.3	-64%
<b>Cancelled</b>	15	11	18.4	67%	2.1	-81%
<b>Graduates, completions and cancelled</b>	24	9.3	5.5	-41%	1.74	-81%

Source: ACT Policing

The graduates demonstrated a consistent and substantial reduction of offending during and after the program (by 93% and 100% respectively). These data therefore demonstrate that, for those who are able to complete their DATO successfully, there is a complete cessation in offending, at least over the short follow-up period covered by our report. As noted above, those who ended up with their DATO cancelled had a higher number of offences at the outset. They not only continued offending during their order, but this actually increased during their DATO (by 67%), in spite of the support offered and high degree of accountability imposed. This may suggest the need to better identify who is likely to be able to comply with the order and/or ensure that high-risk participants are given additional support, to help them successfully complete their order. For this cohort, their average number of charges reduced substantially in the post-DASL period, down 81%, compared with pre-DASL, although this must be interpreted with caution, given that they were in custody during this period. The three participants who completed their order showed a drop in the average number of charges during (by 75%) and after (by 64%) DASL, compared with before commencing on the program. It is of course too early to tell how many of the 22 ongoing participants will graduate and how many will be cancelled. Based on the previous participants' experiences, however, the number of pre-DASL offences appears to be about halfway between these cohorts, while the offending during DASL is much lower than for the cancelled cohort. The reduction, relative

to the pre-DASL average, is also close to the graduates (87%), suggesting that many of these participants are likely to continue to perform well on the program.

*Amount of offending, before, during and after DASL*

Table 34 sets out the types of offences committed by all DASL participants (n=46) in the 12 months before and during DASL (standardised, by 12 months). We acknowledge that, but for DASL, all participants would have been in custody during the relevant period and therefore any crimes committed during their time on the program and after it are theoretically an increase on what would have been possible, if they had been detained in the AMC. Nevertheless, these data demonstrate that, in the pre-DASL period, there was a total of 428 offences, compared with 165 during DASL, after standardisation of participants' free time, representing a reduction of 61%.

*Table 34. Change in number of offences, by crime type, before and during DASL, 2020–March 2022*

Crime type	12 months prior to DASL	During DASL (standardised)	Change, vs pre-DASL
Assault	27	22	-19%
Other offences against the person	6	5	-9%
Robbery	11	12	12%
Burglary	48	10	-80%
Fraud	25	10	-62%
Stolen motor vehicle	29	11	-62%
Theft (excl motor vehicle)	39	16	-58%
Property damage	19	7	-64%
Justice procedures	88	40	-55%
Firearms and weapons	22	3	-88%
Other offences against good order	21	1	-93%
Drug offences	13	4	-68%
Traffic offences	75	23	-69%
Other	5	1	-73%
<b>Total</b>	<b>428</b>	<b>165</b>	<b>-61%</b>

Source: ACT Policing

Table 34 also demonstrates that every single category of offence, except robbery, fell between the pre-DASL and during-DASL period; conversely, robbery increased by 12%. The

smallest decrease was in relation to other offences against the person, which only fell by 9%, while 'other offences against good order' fell by 93%. Justice procedure offences were the most frequent form of offences before DASL and fell by 55%, followed by traffic offences, which fell by 69%.

Table 35 disaggregates the data further, for participants no longer on the program (n=24), by graduates, completions and cancellations. This shows that graduates and participants with a completion and cancellation of DASL seem to display different offending patterns, prior to their admission to DASL. Specifically, graduates and completers did not have any assaults in the 12 months prior to commencing on the program, unlike the cancellation cohort. Furthermore, most offending, including assaults, drug offences and other crimes, increased for the cancellation cohort during DASL. This cohort also committed 20 robberies during DASL, compared with zero robberies in the pre-DASL period. Together, this suggests that DASL participants who commit violent offences are less likely to complete the program. Despite these increases in offending, however, even the cancellation cohort saw sizeable reductions in some types of offending during and (unsurprisingly) after DASL, when they were in custody. The most common type of offence, traffic offences, fell by 31% while on DASL, as well as moderate decreases in possession of firearms and weapons (59%) and burglary (18%). There were no 'other offences against good order' recorded against this cohort during or after DASL. Overall, there were 67% more offences during DASL than in the 12 months beforehand and 81% fewer offences in the post-DASL period. As noted above, however, the fact that cancelled cases were incarcerated during this time should be taken into account in interpreting these findings.

The cohort that completed DASL without graduating was small (n=3) and saw a 93% reduction in the number of offences committed during DASL and a 90% reduction thereafter. The most notable change was the cessation of the most common offence before DASL, justice procedure offences (down from 10 in the 12 months before DASL, to one during DASL and none thereafter). This cohort also desisted from burglary (down from three before DASL, to one during and none thereafter). On the other hand, there was an increase in the number of traffic offences, from zero before and during DASL, to three thereafter.

As noted above, the graduates' pre-program offending was different from those whose orders were cancelled, as they did not have any assaults. They also had relatively fewer justice procedure offences than the other cohorts (with a pre-DASL average of 0.8, compared with 1.7 for the cancellation cohort and 3.3 for the completers). Prior to DASL, their most common offence was theft (excluding a motor vehicle). Like most offence types, this ceased during and after DASL. The only exception was that this cohort committed four traffic offences during the program, with no offending post-DASL.



Table 35. Change in number of offences for past participants, by program completion and crime type, before, during and after DASL, 2020–March 2022

Participant group	Offence type	12 months prior to DASL	During DASL (standardised)	Change, vs pre-DASL	Post DASL (standardised)	Change, vs pre-DASL
<b>Cancelled (n=15)</b>	Assault	9	39	337%	0	-100%
	Other offences against the person	0	10	N/A	0	N/A
	Robbery	0	20	N/A	0	N/A
	Burglary	16	13	-18%	1	-94%
	Fraud	13	13	1%	4	-73%
	Stolen motor vehicle	22	23	4%	2	-92%
	Theft (excl motor vehicle)	15	29	97%	4	-76%
	Property damage	9	13	46%	2	-80%
	Justice procedures	26	75	190%	9	-66%
	Firearms and weapons	8	3	-59%	0	-100%
	Other offences against good order	5	0	-100%	0	-100%
	Drug offences	3	7	118%	1	-70%
	Traffic offences	38	26	-31%	10	-74%
	Other	1	3	228%	0	-100%
	<b>Total</b>	<b>165</b>	<b>275</b>	<b>67%</b>	<b>31</b>	<b>-81%</b>
<b>Completed (n=3)</b>	Burglary	3	1	-68%	0	-100%
	Fraud	1	0	-100%	1	-15%
	Theft (excl motor vehicle)	1	1	-43%	0	-100%
	Justice procedures	10	1	-95%	0	-100%
	Firearms and weapons	2	0	-100%	1	-76%
	Other offences against good order	2	1	-82%	1	-79%
	Drug offences	0	1	N/A	0	N/A
	Traffic offences	0	0	N/A	3	N/A
	<b>Total</b>	<b>11</b>	<b>5</b>	<b>-93%</b>	<b>7</b>	<b>-90%</b>
<b>Graduated (n=6)</b>	Robbery	3	0	-100%	0	-100%
	Burglary	8	0	-100%	0	-100%

## 10. Recidivism

	Stolen motor vehicle	2	0	-100%	0	-100%
	Theft (excl motor vehicle theft)	10	0	-100%	0	-100%
	Property damage	1	0	-100%	0	-100%
	Justice procedures	5	0	-100%	0	-100%
	Firearms and weapons	2	0	-100%	0	-100%
	Drug offences	1	0	-100%	0	-100%
	Traffic offences	8	3	-67%	0	-100%
	<b>Total</b>	<b>40</b>	<b>3</b>	<b>-93%</b>	<b>0</b>	<b>-100%</b>
<b>Total (n=24)</b>	Assault	9	17	90%	0	-100%
	Other offences against the person	0	4	N/A	0	N/A
	Robbery	3	9	185%	0	-100%
	Burglary	27	7	-74%	1	-96%
	Fraud	14	6	-59%	5	-64%
	Stolen motor vehicle	24	10	-58%	2	-92%
	Theft (excl motor vehicle theft)	26	14	-45%	4	-84%
	Property damage	10	6	-43%	2	-80%
	Justice procedures	41	34	-17%	10	-75%
	Firearms and weapons	12	1	-88%	1	-92%
	Other offences against good order	7	1	-80%	1	-85%
	Drug offences	4	4	7%	1	-75%
	Traffic offences	46	17	-63%	14	-69%
	Other	1	1	42%	0	-100%
	<b>Total</b>	<b>224</b>	<b>132</b>	<b>-41%</b>	<b>42</b>	<b>-81%</b>

Source: ACT Policing

Table 35 also presents the pooled data for these 24 participants, revealing reductions for most offence types during DASL (except drug offences, assault, robbery and other offences, which increased) and after DASL. Between the pre- and post-DASL period, the reductions in offending ranged from 64% (for fraud) to 100% (for assault, robbery and other offences). Overall, there was a 41% reduction in the number of offences committed during DASL and an 81% reduction in the post-DASL period. As discussed above, however, there were quite distinct patterns across the three cohorts. Further analysis is required with larger sample sizes, to confirm these preliminary observations.

For completeness, Table 36 sets out the number and types of offences committed by the 22 participants still on the program, at the time of our research. This demonstrates an 87% reduction in the number of offences, with all crime types falling. In particular, drug offences, other offences and other offences against good order fell by 100%, while the most common offence types, justice and traffic, fell by 90% and 84% respectively. The smallest decrease was for robbery (64%).

*Table 36. Change in number of offences for current DASL participants, by crime type, before and during DASL, 2020–March 2022*

Crime type	12 months prior to DASL	During DASL (standardised)	Change, vs pre-DASL
Assault	18	4	-79%
Other offences against the person	6	1	-84%
Robbery	8	3	-64%
Burglary	21	2	-91%
Fraud	11	3	-74%
Stolen motor vehicle	5	1	-81%
Theft (excl motor vehicle theft)	13	2	-85%
Property damage	9	1	-89%
Justice procedures	47	5	-90%
Firearms and weapons	10	1	-90%
Other offences against good order	14	0	-100%
Drug offences	9	0	-100%
Traffic offences	29	5	-84%
Other	4	0	-100%
<b>Total</b>	<b>204</b>	<b>27</b>	<b>-87%</b>

*Source: ACT Policing*

It is of course too early to tell what proportions of this cohort will end up graduating, completing or having their order cancelled. There are members of this group who look like the cancellation cohort, with assaults in their pre-DASL profile. On the other hand, the reduction in offending to date (87%) appears to be much more like the graduate cohort (93%) than the cancellation cohort (with an increase, rather than decrease, of 67% during DASL) or even the completers (75%). It would be naïve to assume that all of these 22 current participants will graduate from DASL, but the findings to date on those who do graduate indicate that the impressive reductions in offending, especially for serious offences, are likely to be sustained or even improved. Further analysis is of course required to confirm this.

*Time to first offence during and after DASL*

Table 37 shows the average time to first offence (free days) during DASL (i.e. post-entry into the program) and post-DASL, as recorded by ACT Policing. According to the participant's final program outcome, the average number of days from program entry to first offence is 49 days for graduates, 219 days for completed participants, and 44 days for cancelled participants. None of the graduates has re-offended with any offence. The average number of days post-program is 336 days for completed participants, and 252 days for cancelled participants. While the average free days of female participants during DASL (32 days) is shorter than male participants (86 days), the average free days of females after DASL (423 days) is longer than their male counterpart (167 days). It should be noted that, due to the small sample size and the presence of participants with substantial differences in their free time in the community, these statistics should be interpreted with caution.

*Table 37. Number of free days before first offence, by DASL case status and demographic, 2020–March 2022*

Participant group	Average N free days, from admission to first offence	Lower bound	Upper bound	Average N free days from post- DASL to first offence	Lower bound	Upper bound
Graduated	49	49	49	0	0	0
Completed	219	79	359	336	336	336
Cancelled	44	4	161	252	3	490
<b>Total</b>	<b>65</b>	<b>4</b>	<b>359</b>	<b>263</b>	<b>3</b>	<b>490</b>
<b>Gender</b>						
Male	86	4	359	167	3	345
Female	32	19	49	423	317	490
<b>Total</b>	<b>77*</b>	<b>4</b>	<b>359</b>	<b>263</b>	<b>3</b>	<b>490</b>

Source: ACT Policing

\* includes ongoing participants

## 10.2 Court Appearances

The DASL program has undertaken its own monitoring of graduates and completed cases, regularly checking to see whether there have been any reappearances before court. Since graduation (n=8), the only court mentions are two graduates appearing on the fail to vote list. Both of these matters were dismissed, because the matter had been resolved by the Australian Electoral Commission.

Of the three completions, one has fresh charges before the court and a second has had fresh charges and is currently being assessed for suitability for a new DATO.

It is of course important to note that many of the DASL graduates have had rather few 'free' days since graduation (the most recent graduation was in March 2022). The small sample, the lack of a comparison group and short follow-up time mean that these findings need to be read conservatively. Nonetheless, combined with the police data, there is preliminary evidence to suggest that graduates of the program are desisting from offending.

### 10.3 Conclusion

The DASL program is still in its early stages, with a relatively small number of graduates, completions, cancellations and ongoing cases. There are also a number of caveats around how the recidivism data in this chapter are recorded and reported. However, the data from ACT Policing allow for some preliminary indications of re-offending. The notable findings include that:

- participants whose orders were cancelled were offending, on average, nearly twice as frequently in the 12-month period immediately before entering the program;
- participants who had committed violent offences in the 12 months before joining the program were less likely to complete the program successfully;
- for those who are able to complete their DATO successfully, there is a complete cessation in offending post-DASL, at least over the short follow-up period covered by our report;
- in the post-DASL period, graduates, those who completed their DATOs and those who had their orders cancelled reduced their offending, against the number of pre-DASL offences, by 100%, 90% and 81% respectively, with an overall reduction of 81%. It is acknowledged however, that most of this reduction for the cancellation cohort would have been when they were in custody;
- even where participants who were no longer on their orders continued to offend, this was generally less serious offending than prior to their entry on the program, with robbery and assault reducing by 100%;
- for the 22 people still on the program at the time of data collection, there had been an 87% reduction in the number of charges between the periods before and during DASL; and
- no DASL graduates have returned to court since graduation.

These data are preliminary and need to be treated with caution. Nevertheless, they provide initial evidence that the DASL is an effective program to reduce re-offending.

In relation to the finding that participants with violent offending records were less likely to successfully complete their DATO successfully, it is worth noting that, in many other Australian jurisdictions, early drug court programs were established with eligibility criteria that specifically excluded offenders with a history of violence. The rationale most often articulated was a concern for the safety of treatment staff, court staff and the community more generally. Most evaluations and program reviews, however, have recommended lifting that restriction, in part, because international evidence suggests that the aforementioned

concerns about risk are not supported by evidence. There is also strong evidence that the implications of excluding offenders with a history of violence are disproportionately felt in minority and marginalised populations, including Aboriginal and Torres Strait Islander populations. These preliminary data should not be used as a foundation for limiting DASL to non-violent offenders, as it is too soon to make that judgement and the negative implications of doing so likely outweigh the benefits.

## Case Study 7

Ms D was in her 30s and pleaded guilty to several property and driving offences. She received a sentence of nearly four years, with a 15-month DATO.

Ms D was using drugs at the time of some of her offences and said this was why she committed the offences. She started using drugs as a young teenager. Like many, she began with cannabis, before progressing to methamphetamine use in her twenties. By the time of her arrest, she was using this daily. She sometimes also used heroin and methadone. She smoked cigarettes at the time of entering DASL, but did not drink alcohol. She had previously undergone some drug rehabilitation, including several months in a residential rehabilitation facility, and showed insight into her addiction at the time of entering DASL. She was open about her past drug use.

Shortly before Ms D started using drugs, her brother died, and this impacted her significantly. She left school in Year 7, has not had any education since then, and has also had limited work experience. She came into contact with anti-social peers when she left school and no longer has contact with her family of origin.

She has a young son and a good relationship with her former partner. Her son has previously lived with her full-time and she wants to gain shared custody. She lives in public housing and wants to move to live near her ex and son. She receives unemployment benefits, but would like to find work in gardening, because she has done a bit of work in this previously and likes being outside. Ms D has been diagnosed with depression, but this is being managed by her doctor. She also has a physical injury, which requires surgery.

Ms D's criminal record is significant and her past compliance with court orders has been mixed, but she now seems committed to her recovery.

After some missteps, Ms D completed her DATO and graduated from DASL.

## 11 Principles of Therapeutic Jurisprudence

A key element of success in a drug court is for all members of the program to be committed to TJ principles.<sup>145</sup> This includes having an understanding of drug addiction, rehabilitation and relapse; and the role of the program in assisting participants to complete their orders successfully, especially the vital role of the judicial officer. Members of the treatment team also need to be able to hold participants to account for their behaviour. An important component of this is the cultivation of positive relationships between the team members, other relevant stakeholders and participants.<sup>146</sup> Other elements may include structure and accountability, court capacity, and rewards and sanctions.<sup>147</sup>

In our literature review, which informed the ongoing evolution of DASL, we considered the 10 key components to a successful drug court and 10 best practice standards described in the international literature.<sup>148</sup> In our process evaluation, we concluded that DASL had created a robust and respectful working culture, and participants experienced their relationships with members of the TOT as respectful and supportive. We also determined that the program adheres to a predictable model of rewards and sanctions, and assessed DASL's fidelity to the 10 key components and best practice standards. Here, we revisit our 2021 assessment, to provide an updated analysis of DASL's fidelity to the key components and best practice principles. Fidelity to these components and principles reflects a commitment to the principles of TJ.

### 11.1 Components of a Successful Drug Court and Best Practice Principles

In our 2019 literature review, we identified 10 key components of a successful drug court and 10 best practice principles for drug courts. In our 2021 process evaluation we assessed DASL's fidelity to these components and principles.

In what follows, we reassess DASL, based on further evidence gathered as a part of the outcome evaluation (see Tables 38 and 39).

---

<sup>145</sup> See generally Wexler and Winick, n 19. See also Australasian Institute of Judicial Administration (nd). Drug Courts <https://aija.org.au/research/resources/drug-courts/>; The Concept of Therapeutic Jurisprudence <https://aija.org.au/research/resources/the-concept-of-therapeutic-jurisprudence/>.

<sup>146</sup> Kuehn and Ridener, n 112. See also Shaffer, n 112.

<sup>147</sup> See Clarke, n 13.

<sup>148</sup> See Gelb, n 1.



Table 38. Evaluation of DASL against key components of a successful drug court

Key component	DASL's performance
<p>1. Drug courts integrate AOD treatment services with justice system case processing.</p>	<p><u>Achieved</u>. It is clear the DASL has successfully integrated AOD services from ACT Health and community-based treatment providers, as part of the program.</p> <p><b>2022 update:</b> According to our research, this continues to operate well.</p>
<p>2. Using a non-adversarial approach, prosecution and defence counsel promote public safety, while protecting participants' due process rights.</p>	<p><u>Mostly achieved</u>. The prosecution and defence counsel work effectively as part of the DASL team, although we recommend additional time for Legal Aid to consult with their clients between the case conference and check-in hearings. Adequate resourcing will be required to ensure both prosecution and defence are able to maintain appropriate standards as the program's caseload grows.</p> <p><b>2022 update:</b> As we had anticipated, there have been resourcing issues, as the program has reached capacity. Nevertheless, both prosecution and defence counsel have continued to demonstrate their commitment to a non-adversarial approach.</p>
<p>3. Eligible participants are identified early and promptly placed in the drug court program.</p>	<p><u>Mostly achieved</u>. All relevant practitioners need to be made aware of and understand the program, so they can identify potential participants and make appropriate referrals. Eligibility and suitability assessments are working well, though feedback suggests that this works best when cases are referred early to the DASL judge, who then orders the suitability assessment.</p> <p><b>2022 update:</b> There now appears to be wider awareness of the program across the ACT community, although there have been some concerns about the extent to which the otherwise eligible participants with mental health and/or intellectual disability issues are able to be placed in the program.</p>
<p>4. Drug courts provide access to a continuum of alcohol, drug and other related treatment and rehabilitation services.</p>	<p><u>Mostly achieved</u>. There is evidence of a lack of suitable treatment services in the community, which will likely become more of an issue as the program's caseload grows. The program needs continued resourcing, in order to provide effective treatment.</p> <p><b>2022 update:</b> This continues to raise some issues, with particular concerns expressed by a number of stakeholders about the extent to which services meet the needs of Aboriginal and Torres Strait Islander participants.</p>

Key component	DASL's performance
5. Abstinence is monitored by frequent AOD testing.	<p><u>Achieved</u>. This part of the program appears to be operating effectively. The evaluation team received positive feedback from participants about the urinalysis testing team.</p> <p><b>2022 update:</b> This aspect continues to operate effectively.</p>
6. A coordinated strategy governs drug court responses to participants' compliance.	<p><u>Achieved</u>. Appropriate policies are in place to govern responses to participants and the Treatment Order Team works effectively to respond to issues as they arise.</p> <p><b>2022 update:</b> We received some feedback that, although policies are in place to respond to participants' compliance, there is uneven implementation of these policies. We recognise the challenges of balancing individualised justice with consistency, but some participants and professional stakeholders have expressed concern about inconsistent responses to compliance (or lack thereof). We would therefore now assess this component as <u>partly achieved</u> and recommend that further steps be taken to ensure the Court adopts a coordinated response to participants' compliance.</p>
7. Ongoing judicial interaction with each drug court participant is essential.	<p><u>Achieved</u>. The DASL judge engages regularly and respectfully with all participants.</p> <p><b>2022 update:</b> The DASL judge's positive engagement with participants has been confirmed, through observation and the overwhelmingly positive survey responses received from 20 participants.</p>
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.	<p><u>In progress</u>. The evaluation team is monitoring and evaluating the program, with measures of effectiveness to be determined in the final report, due in April 2022.</p> <p><b>2022 update:</b> The present report provides a number of measures of the program's effectiveness, enabling us to now assess this component as <u>mostly achieved</u>. A longer monitoring period is required to determine some effectiveness outcomes, such as longer-term recidivism. We note that a statutory review is required to be undertaken after the legislation has been in effect for three years, i.e., from December 2022 (see <i>Crimes (Sentencing) Act 2005 (ACT) s 80ZQ(1)(a)</i>).</p>
9. Continuing interdisciplinary education promotes effective drug court planning,	<p><u>Mostly achieved</u>. There appears to be good understanding of the interdisciplinary approach by the Treatment Order Team. This understanding could be broadened across the court system and other relevant practitioners through continuing education.</p>

Key component	DASL's performance
implementation, and operations.	<b>2022 update:</b> Although there is recognition of the need for continuing education programs, their delivery appears to have been somewhat hampered by COVID.
10. Forging partnerships among drug courts, public agencies, and community-based organisations generates local support and enhances drug court program effectiveness.	<p><u>Partly achieved.</u> There is some public awareness of the program through media reports and the inaugural DASL judge engaged with a range of community-based organisations and other drug courts in Australia in the early phases of the program. There is scope to extend these partnerships, including with other drug courts across Australia, although the resource implications of this are acknowledged.</p> <p><b>2022 update:</b> The number of submissions to the Legislative Assembly Inquiry on Community Corrections that discussed the program demonstrate a high level of local support. We therefore now assess this as <u>achieved</u>.</p>

As can be seen above, in 2021, we assessed four items as 'achieved', four as 'mostly achieved', one as 'partly achieved' and one as 'in progress'. We now consider that three items have been 'achieved', six have been 'mostly achieved' and one has been 'partly achieved'. The one item that has been downgraded from 'achieved' to 'mostly achieved' is '6. A coordinated strategy governs drug court responses to participants' compliance', which is relatively simple for the TOT to reinstate.

In order to attempt to quantify DASL's performance, we allocated a nominal score for each component, from zero (not progressed), which was not used at all, to four (achieved). On this basis, DASL could receive up to 40 points, if it had fully achieved all of the components. Accordingly, we determined that, in 2021, DASL achieved a score of 31/40 (77.5%) and, in 2022, 33/40 (82.5%). This indicates that DASL is clearly mostly achieving the key components of a successful drug court and has improved slightly over the last year, but there is still some scope for improvement.

Adopting the same model as above, we see that the 2021 assessment was that five principles had been achieved, four partly achieved and one was in progress. In 2022, we consider that four have been achieved, three have been mostly achieved and three have been partly achieved.

Table 39. Evaluation of DASL against best practice standards

Best practice standard	DASL's performance
<p><i>1. Target Population.</i> Eligibility criteria for participation in the drug court are based on empirical evidence about the types of offenders for whom a drug court is likely to be effective. Potential participants are assessed for admission using evidence-based assessment tools and procedures.</p>	<p><u>Partly achieved.</u> The program participants have complex needs and significant histories of drug use and offending, which is consistent with the evidence on likely effectiveness. This evaluation cannot comment on the clinical appropriateness of the suitability assessment tool, but some stakeholders identified the need for a more robust assessment of 'readiness for change'.</p> <p><b>2022 update:</b> We have made a number of observations about participants' readiness for change and the competing challenges of only accepting participants who are truly ready for change, as opposed to facilitating treatment for those who may not yet be at this stage, but who may benefit from the program, once they commence on it. We consider that the program has <u>mostly achieved</u> this standard.</p>
<p><i>2. Historically Disadvantaged Groups.</i> The drug court ensures that it offers the same opportunities to participate to people who have historically experienced sustained discrimination, because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion or socio-economic status. The drug court offers appropriately responsive programming to these groups.</p>	<p><u>Partly achieved.</u> Analysis of the 17 participants for whom judgments are publicly available indicates higher participation by Indigenous and female defendants than might have been anticipated. The ALO supports the needs of Indigenous participants, while Toora Women Inc is available to support the needs of female participants. Many of the DASL participants have physical and/or mental disabilities and the evaluation team have observed efforts by the Treatment Order Team to support participants' needs in this regard. It is beyond the scope of the present data to determine the extent to which other historically disadvantaged groups are represented in the DASL program.</p> <p><b>2022 update:</b> Although there was initially a disproportionately high number of female participants, including the first two graduates, there have since been very few women in the program. Some stakeholders suggested that expanding the program to shorter sentences (of less than one year) would enable more women to be eligible to participate. In addition, several stakeholders suggested, and the cancellation data confirm, that the program is currently not serving Indigenous participants well. In addition, as noted above, there have been concerns about the extent to which the program is available to participants with serious mental health and/or intellectual disability issues. Evidence</p>

Best practice standard	DASL's performance
	<p>before the Legislative Assembly inquiry on community corrections also suggested that the program may not be considered suitable for transgender and gender diverse people. Accordingly, we recommend appropriate resourcing and community liaison, to ensure responsive programming for historically disadvantaged cohorts, including, but not limited to, women, Indigenous people, those with mental health and intellectual disability issues, and transgender and gender diverse people.</p>
<p><i>3. Roles and Responsibilities of the Judge.</i> The drug court judge is knowledgeable about current law and research on best practices in drug courts. The judge participates regularly in team meetings, interacts frequently and respectfully with participants and gives due consideration to the input and advice of other team members.</p>	<p><u>Achieved.</u> The DASL judge is highly knowledgeable about relevant issues and engages in all team meetings constructively and respectfully. The judge actively seeks input from TOT members and this shapes his approach and decisions. The judge also demonstrates principles of therapeutic jurisprudence in engaging with participants.</p> <p><b>2022 update:</b> We were pleased to see the judge implement suggestions from our 2021 report.</p>
<p><i>4. Incentives, Sanctions and Therapeutic Adjustments.</i> Consequences for participants' behaviour – both positive and negative – are predictable, fair, consistent and administered in accordance with evidence-based principles of effective behaviour modification.</p>	<p><u>Achieved.</u> The incentives and consequences are administered in accordance with the behavioural contract protocol, which was developed on the basis of the literature and is available on the Court's website, thereby making it predictable, consistent and fair for participants. Incentives and consequences appear to be administered as intended.</p> <p><b>2022 update:</b> Participants and stakeholders identified inconsistent adherence to the behavioural contract protocol. We therefore now assess this as <u>partly achieved</u> and recommend that the Court clearly communicates that the protocol is used as a tool to guide decision-making. We also recommend that the TOT discusses revision to the protocol, if appropriate.</p>
<p><i>5. Substance Abuse Treatment.</i> Drug court participants receive tailored substance abuse treatment, based on their assessed treatment needs. Treatment</p>	<p><u>Achieved.</u> Although the evaluation team does not have clinical expertise, our observations and interviews suggest that participants' treatment is tailored to their needs and appropriately administered. It is not used as a reward or punishment.</p>

Best practice standard	DASL's performance
<p>is not used as a reward or punishment. It is delivered by appropriately trained and supervised practitioners, who employ a continuum of evidence-based interventions that are documented in treatment manuals.</p>	<p><b>2022 update:</b> This aspect continues to operate effectively, despite the challenges posed by COVID.</p>
<p><i>6. Complementary Treatment and Social Services.</i> Drug court participants also receive complementary treatment and social services for conditions that are likely to interfere with their drug court compliance, increase the risk of recidivism or diminish treatment gains.</p>	<p><u>Partly achieved.</u> Participants receive a significant amount of support from Health and other AOD services. It was noted that further mental health support could be provided (including for trauma). It was also suggested that ACT Housing could be more involved in helping to secure safe accommodation.</p> <p><b>2022 update:</b> Housing issues continue to pose a significant challenge for participants and operate to prevent some otherwise eligible members of the ACT community from participating in the program. We therefore suggest that this issue be addressed as a matter of urgency. Beyond this, program participants continue to receive complementary treatment and social services and we recommend that adequate resources be allocated for this to continue.</p>
<p><i>7. Drug and Alcohol Testing.</i> Drug and alcohol testing is used regularly throughout people's participation in the drug court.</p>	<p><u>Achieved.</u> Participants attend regular urine testing throughout their engagement in the DASL program. This testing regime is appropriately stepped according to the participant's phase in the program. The professional and supportive relationship between participants and the urinalysis nurses has been an unanticipated positive outcome of this requirement.</p> <p><b>2022 update:</b> This continues to operate effectively.</p>
<p><i>8. Multidisciplinary Team.</i> A dedicated, multi-disciplinary team of drug court professionals manages the operation of the drug court.</p>	<p><u>Achieved.</u> The Treatment Order Team is a multi-disciplinary team of dedicated and enthusiastic professionals. We have identified scope for some additional professionals to contribute to the team, where appropriate.</p> <p><b>2022 update:</b> This continues to operate effectively.</p>
<p><i>9. Census and Caseloads.</i> The drug court serves as many eligible people as possible, while maintaining</p>	<p><u>Partly achieved.</u> The program has not yet reached its intended capacity. We have identified some issues which may pose concerns, as the program grows in size.</p>

Best practice standard	DASL's performance
<p>program fidelity to best practice standards.</p>	<p><b>2022 update:</b> We now consider this to be <u>mostly achieved</u>. The program is no longer taking new referrals and is considered to have reached capacity, at 30 participants, although it was initially expected to serve 35 participants. It is clear that there is demand for more places in the program, as well as support for expanding the program to the Magistrates Court and/or shorter sentences. Accordingly, appropriate resources should be allocated, to ensure that the program can serve as many eligible and suitable people as possible. Our evaluation has demonstrated that the program has generally maintained fidelity to best practice standards, while expanding its caseload, and we are confident that, if appropriately resourced, it could continue to do so, while expanding further.</p>
<p><i>10. Monitoring and Evaluation.</i> The drug court routinely monitors its adherence to best practice standards and employs scientifically valid and reliable procedures to evaluate its effectiveness.</p>	<p><u>In progress.</u> The evaluation team is monitoring and evaluating the program on behalf of the ACT Supreme Court, including its adherence to best practice principles. The evaluation team is adopting a mixed-methods qualitative and quantitative research design to evaluate the program's effectiveness.</p> <p><b>2022 update:</b> The present report forms part of the monitoring of the program and, as noted above, a further review is scheduled to commence in December 2022. We therefore consider that this standard has now been <u>mostly achieved</u>.</p>

On the same scoring system, DASL's 2021 score was 29/40 (72.5%), while the 2022 score was 31/40 (77.5%). This indicates that DASL is generally consistent with the internationally recognised best practice principles and improved slightly over the last year. The scope for improvement relates to:

- ensuring the program reaches historically disadvantaged groups;
- the use of the behavioural contract protocol and ensuring consequences are predictable, fair and consistent;
- addressing systemic issues in relation to housing; and
- continuing to monitor and evaluate the program.

Again, the item that has been downgraded from achieved to partly achieved relates to implementation of the behavioural contract (*4. Incentives, Sanctions and Therapeutic Adjustments*) and is therefore relatively straightforward to get back on track. On the other

hand, we recognise that some of the identified issues are complex and beyond the scope of this program and relate to broader issues in the ACT. We therefore urge a whole-of-government approach to addressing these critical issues, which have far-reaching implications for the ACT community generally.

## 11.2 Conclusion

This chapter examined the extent to which DASL is complying with TJ principles. Our process evaluation reveals ongoing evidence of the judge's and treatment team's therapeutic relationship with participants. Here, we revisited the 10 components of a successful drug court and 10 best practice standards from our literature review and process evaluation. We found that DASL continues to perform well against most of these measures. When we quantified this, we found that DASL had increased slightly, from 31 to 32 out of 40 points for the 10 components of a successful drug court, and from 29 to 31 for the 10 best practice standards. We identified some areas for future improvement and will return to these issues in our recommendations.



## Part III: Legal Analysis

## 12 Legal Analysis

The following discussion draws on the evaluation team’s analysis of the 27 judgments, undertaken for the process evaluation report completed in April 2021, the 37 relevant cases delivered between April 2021 and April 2022 and 46 uncorrected transcripts that were yet to be finalised as judgments, which were analysed in the outcome evaluation completed in May 2022, and relevant sections of the Act.

### 12.1 General Observations about the Legislation

A number of points can be distilled from our analysis of the legislation and case law. First, it is clear that the legislation is complex and urgently needs to be amended in several respects. The issues emerged early in the legislation’s operation – less than month after the first DATOs were imposed, Walker AJ, as her Honour then was, had identified ‘a matter [that] should be considered by the legislature’ (*BR* at [33]), while the Chief Justice had had cause to discuss an ‘unfortunate anomaly in the legislation’ (*JP* at [82]). These issues had not been addressed by the time of our outcome evaluation report. In fact, in *R v Sheather* [2021] ACTSC 290, which was handed down after our first report, the former Chief Justice once again referred at [65] to ‘the statutory difficulties associated with the drug and alcohol sentencing regime’, in respect of taking pre-sentence custody into account. This specific issue is discussed further below.

As a result of the issues we noted in our process evaluation report, we found in our outcome evaluation that the DASL judge, associate, and DPP were spending significant time preparing sentences, other judgments, and submissions. As one stakeholder explained:

The big broad issue of how the legislation is structured is still a problem. Judge has very smartly and cleverly in his own judge way found a way to navigate that, and as somewhat of a powerhouse, he’s laid the authorities for the future for the DASL, if we don’t get significant legislative change in that, even though the judge has to sit on the list for any reason there is a precedent for how certain situations are managed...If you look at DASL sentence judgments, compared to sentence judgments as a whole, there’s a lot more tackling of legislative issues in relation to the sentence, which aren’t necessarily required in a standard sentence judgment, as most of the authorities needed already exist. We don’t have the authorities yet for the DASL, so judge very much is making those authorities to be relied on.

When we spoke to the judge, during the preparation of our outcome evaluation report, he indicated that he was still spending significant time writing judgments, in order to address these complexities and inconsistencies in the legislation. According to another stakeholder, this is needed to support the progress of future DASL cases:

It will make life easier in the future. We’re tackling the big problems now, we’re getting the answers to the big problems. It’s not easy, in terms of sentencing practice for the current environment, but we’re already seeing it, in some of the more recent

sentences, a lot of the earlier DASL judgments are already being relied on by parties in their submissions, and by judge in his reasoning for with you he's choosing to do certain things in a certain way...In the DASL, it's proven very important, given the legislative limitations.

Our analysis across both reports highlights the complexity and excessive length of the legislation underpinning DASL. To provide but one example, Division 5.4A.7 deals with breaches of a DATO. This includes the following provisions:

- s 80ZB – Breach of treatment order – other than commission of offence
- s 80ZC – Provisional breach of treatment order – offender in custody
- s 80D – Breach of treatment order – commission of offence
- s 80ZE – Cancellation of treatment order – unsatisfactory circumstances

Collectively, the content of these provisions exceeds 2000 words. By way of comparison, s 10 of the *Drug Court Act 1998* (NSW) deals with 'Proceedings for non-compliance with program' and runs to 182 words respectively. It reads as follows:

(1) If it is satisfied, on the balance of probabilities, that a drug offender has failed to comply with his or her program, the Drug Court:

(a) may, in accordance with the program, impose any one or more of the sanctions specified in the program as sanctions that the Court may impose on the drug offender, or

(b) if it is also satisfied, on the balance of probabilities, that the offender is unlikely to make any further progress in the program or that the offender's further participation in the program poses an unacceptable risk to the community that the person may re-offend--may decide to terminate the program.

(2) Without affecting the other circumstances in which a drug offender is taken to have failed to comply with his or her program, a drug offender is taken to have failed to comply with the program if the drug offender is charged before a court with an offence referred to in section 5(2).

(3) No appeal lies in relation to any action taken or decision made by the Drug Court under this section.<sup>149</sup>

This provision was last amended in 2002, suggesting that the NSW Drug Court has found it a workable provision for nearly two decades, in a program involving over 300 participants a year.<sup>150</sup> In reviewing the specifics of the DATO legislation, it would therefore be timely to take steps to simplify the DATO legislation more generally, to ensure a more workable legislative framework.

<sup>149</sup> In the ACT legislation, the lack of appeal rights in respect of a breach determination is in fact covered in s 80ZN, i.e. Div 5.4A.9, not the division on breaches.

<sup>150</sup> NSW Drug Court (2020). *Annual Report 2018-19*.

In the following section, we highlight specific issues in need of reform, as revealed by the case law to date.

## 12.2 Specific Issues Requiring Reform

### 12.2.1 Should a DATO be available for total sentences of 1–4 years, where no individual sentence meets this threshold?

Section 12A(1)(b) provides that s 12A applies where ‘the Supreme Court convicts the offender of the offence and imposes a sentence of imprisonment of at least 1 year but not more than 4 years’. This wording gave rise to the ‘curious position’ in *NN*, ‘where the Crown is urging a more lenient sentence than the prisoner is urging, and the prisoner urges a more severe sentence’ (at [23]). At [32], his Honour posed the question: ‘Does the statute refer to the sentence for one offence, or for all offences?’ His Honour considered s 145(b) of the *Legislation Act 2001* (ACT), the Explanatory Statement to the Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Bill 2019 (ACT) (at [33]), the High Court’s decisions in *IW v The City of Perth* (1997) 191 CLR 1 (at [34]-[36]), *Victims Compensation Fund Corporation v Brown* 77 ALJR 1797 (at [38]), *International Litigation Partners Pty Ltd v Chameleon Mining NL (Receivers and Managers Appointed)* 246 CLR 455 (at [39]) and *Beckwith v R* (1976) 135 CLR 569 (at [40]). His Honour then turned to the specific wording of s 12A (see [42]-[45]), before concluding at [46] that ‘[t]he natural interpretation is that there is one primary offence that must attract a sentence of between one and four years’. His Honour considered this interpretation to be reinforced by the wording of the Supplementary Explanatory Statement to the Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Bill 2019 (ACT). It follows from this decision that it is not possible to impose a DATO on an offender who has committed multiple offences that collectively add up to a prison sentence of between one and four years’ duration, but where none of the individual sentences meet this threshold. Whether this was in fact the original intention of the legislature, it may be worth reconsidering whether it is consistent with the objectives of the DATO legislation (see s 800) to preclude the imposition of a DATO in such circumstances.

### 12.2.2 Referring matters to the Magistrates Court

In *R v Kelly* [2021] ACTSC 143, an issue arose around whether the Magistrates Court can refer a matter to DASL. There was initially confusion over whether the offence committed by Mr Kelly was required to be prosecuted summarily, as the prosecution submitted (see [15]), or was in fact indictable. Refshauge AJ determined at [16] that the relevant offence was in fact indictable. His Honour then observed that the Supreme Court generally only has jurisdiction to hear prosecutions on indictment, subject to the statutory exceptions under sections 90A (committal of charges) and 90B (transfer of charges) of the *Magistrates Court Act 1930* (ACT) and Pt 8 of the *Supreme Court Act 1933* (ACT), which deals with back-up and related offences. In the present case, all the other offences committed by the defendant were summary offences. Accordingly, in the absence of any statutory provision, the Supreme Court had no jurisdiction to hear and determine such charges. However, under s 375 of the *Crimes Act 1900* (ACT), a defendant may consent to have certain indictable offences disposed of

summarily, while a prosecutor may elect to have certain offences, including those punishable by imprisonment for longer than two years but not longer than five years, dealt with summarily, under s 374 of that Act. In the present case, this meant that Mr Kelly's offence could be the subject of a prosecution election. Under s 374(6) of that Act, if the prosecution makes such an election, then 'the court must hear and determine the charge summarily'. In this case, the prosecutor had made such an election in the Magistrates Court. There was then discussion as to whether Refshauge AJ even had jurisdiction to deal with the matter, which his Honour determined that he obtained under s 108 of the *Crimes (Sentence Administration) Act 2005* (ACT). This gave His Honour the power to relist the matter in the Magistrates Court. His Honour then considered the prosecution's power, under s 180 of the *Legislation Act 2001* (ACT), to withdraw its election to dispose of the matter summarily, stating at [21]-[22]:

I am not satisfied that, in a case where an election has been made and the proceedings have not concluded, it does not apply, notwithstanding that there is no express power in the *Crimes Act* for the prosecution to withdraw the election, and notwithstanding that s 375A of the *Crimes Act* gives an express power to a defendant to apply to the court for leave to withdraw his or her consent for summary disposal of a case, which is a necessary provision because that section provides for a specific condition to the defendant's exercise of the withdrawal of consent.

In any event, the prosecution intended, it appears, that such an election in this case be a matter of policy and would therefore not be withdrawn. It is at least disappointing to me that the application of a policy, the rationale for which and its application in this particular case has been entirely unexplained before me, will prevent a man with a severe drug dependency, especially an Indigenous man in the current circumstances, from accessing the benefits that participation in the relatively recent sentencing alternative of a Treatment Order would provide and which, as with similar programs elsewhere, has been able to assist many people in Australia to rehabilitate. There may have been perfectly proper reasons for this approach, but they have not been shared with the Court.

His Honour clearly found this to be an unsatisfactory situation. It has also been the subject of discussion within the ACT legal community more generally. Mr Kelly's lawyer suggested that this issue could be rectified, by establishing an exception to summary disposal, in circumstances where the defendant consents to the matter(s) being dealt with in DASL. In order to ensure fairness to such defendants, if their matter were not to proceed in DASL – for example, if they were found unsuitable – the matter should be dealt with summarily.

A similar issue arose in another case which is yet to be published. Mr E also had backup summary charges for a failure to appear on bail. When imposing a DATO for the substantive charges, Refshauge AJ observed at page 9 of the transcript that:

As explained in *R v Loulanting*, a breach of bail constituted by a failure to appear in a court in accordance with the bail undertaking is not a backup offence or a related

offence, see also *R v McMahon (No 2)*. The plea for legislative reform there made has, it appears, fallen on deaf ears. Thus the two offences cannot be dealt with in this court.

That does not mean that they cannot simply be dealt with later after I have completed sentencing Mr [E]. The problem is that if, as requested, I were to make a treatment order and later Mr [E] was to be sentenced to a term of imprisonment, which is certainly likely given the view of the courts taken of such offences, *Ursino v Read*, then any such imprisonment would require the court to cancel the treatment order, section 80ZD(3) of the *Sentencing Act*. It is possible that that section only applies to offences committed after the treatment order has been made but that is, by no means, clear and the policy justification for either position is finely balanced.

...A person subject to a treatment order sentenced to imprisonment would have been ineligible to have such an order made, section 12A(1)(c) of the *Sentencing Act*. Further, treatment orders could not be suspended for the period of the sentence. Compare that with section 80ZD of the *Sentencing Act*. It can only be suspended for a period on remand. Thus it was considered appropriate to request that the parties have the matters dealt with in the Magistrates Court before Mr [E] was sentenced.

Despite what was said in *R v Loulanting* and *R v McMahon (No 2)*, I consider that as there was no power in the Magistrates Court to transfer the matters to this court, the transfer was a nullity and there was nothing for me to remit. If the court had such a power, as there is no power in section 90B such as set out in section 90A(9) of the *Magistrates Court Act*, though were the offences in respect of which committal made transferred under the later section, there may be, in those particular circumstances, an implied power to transfer back to the Magistrates Court any transferred charges.

Legislative reform to clarify and/or rectify this issue would appear to be desirable. Specifically, it would appear to be desirable for the Supreme Court to be able to remit relevant matters from DASL to the Magistrates Court, in appropriate circumstances.

### 12.2.3 Definition of a ‘sentencing order’

A further issue arose in *R v Kelly* [2021] ACTSC 143 (discussed above), namely, the definition of ‘sentencing order’. Following the discussion above, Refshauge AJ proceeded to consider whether a so-called ‘Griffiths remand’<sup>151</sup> is a sentencing order under, s 12A(9) of the Act. His Honour determined at [38] that a Griffiths remand is not a sentencing order, under this definition, but *is* a sentencing order, for the purpose of s 12A(1)(c) of that Act, pursuant to the definition under (f) of the definition, ‘an order under a law in force in Australia that corresponds to an order mentioned in paragraphs (a) to (e)’. As a result, if such an order were made, it would mean that Mr Kelly was ineligible for a DATO (see [42]). His Honour also noted at [43]-[44] that:

---

<sup>151</sup> As Refshauge AJ observed, a Griffiths remand ‘is effectively an adjournment of the sentencing proceedings to permit the offender to take relevant steps to address his or her offending, usually by drug rehabilitation’: *R v Kelly* [2021] ACTSC 143 [33].

a sentencing order [at s 12A(9) of the Act] is not defined to include a Good Behaviour Order...

Given the intention of the ineligibility provisions in s 12A(1)(c) of the *Sentencing Act*, it is perhaps odd that a Good Behaviour Order is not included in the definition of a 'sentencing order'. Nevertheless, that is the position....

In the context of broader reform of the DATO legislative framework, the Government may therefore wish to consider whether to include (a) a Griffiths remand and (b) a good behaviour order under the definition of 'sentencing order' in s 12A(9) of the Act.

#### 12.2.4 Calculating pre-sentence custody when imposing a DATO

In *BR*, Walker AJ discussed the issue 'of how time served on remand in custody is to be reflected, if at all, when a [DATO] is imposed' (at [25]). Her Honour noted at [26] the 'potential unfairness which flows if time in pre-sentence custody is not taken into account for a person sentenced to a [DATO]'. This includes denying them the benefit of any time already served in custody (see [26]) and, if they do not breach their DATO and are then required to be subject to a good behaviour order at the end of the treatment and supervision part of their order, 'they do not get the benefit of time served even when they have performed impeccably on the treatment and supervision part of the order' (at [28]). Her Honour considered the case law in relation to a similar provision in respect of intensive correction orders (see *R v Slifkas* [2019] ACTSC 40; cf *R v Ingram* [2016] ACTSC 199; *R v Ngerengere (No 3)* [2016] ACTSC 299). At [31], her Honour considered 'other inequities that may flow from a literal application of s 63', including that a person whose sentence exceeds four years, rendering them ineligible for a DATO, may become eligible as a result of their pre-sentence custody, while a co-offending who had not spent as long on remand would be excluded. Conversely, someone whose sentence exceeded the lower threshold of one year's imprisonment would be excluded if their pre-sentence custody were taken into account, while another person on bail would not be so excluded. Furthermore, informally recognising time served 'by simply applying a lower actual sentence...risk[s]...skewing sentence practice, noting that on the criminal record, only the actual sentence imposed is recorded not the factors which sit behind it' (at [32]). Taking all of this into account, her Honour adopted 'a purposive approach which best reflects fair sentencing practice', by interpreting s 63(3)(c) as meaning 'fully suspended from the date of imposition of the sentence' [at 33]. However, as noted above, her Honour suggested that this matter be considered by the legislature.

The 'legislative anomaly' described above 'precludes the backdating of any sentence so as to recognise prison time served prior to the imposition of the sentence [and] requires that a sentence that is the subject of a drug and alcohol treatment order be fully suspended' (*IP* at [81]). Murrell CJ observed that this 'may give the impression that the Court is imposing sentences that are significantly more lenient than is the case, practically speaking' (at [82]). In *FE*, the Chief Justice again noted that '[t]here are difficulties with the drafting of the *Sentencing Act* in relation to [DATOs]' (at [72]). Furthermore, in *CU*, her Honour described

the legislation (in respect of the prohibition on imposing partly suspended sentences) as ‘unsatisfactory’ (at [95]).

In *OE*, Refshauge AJ considered the positions taken by Murrell CJ and Walker AJ respectively in *IE* (which his Honour considered at [105] to be ‘consistent with the common law’) and *BR* (see [106]-[107]). Refshauge AJ initially indicated that he ‘was concerned’ about Walker AJ’s interpretation, ‘because it seemed to fly in the face of a clear legislative provision where there was perhaps unfairness, but no absurdity, to the level required for such an apparent rewriting of the legislation’ (at [108]). On further review of s 63(3)(c), however, his Honour noted, at [109]-[111] in *OE*:

It is difficult to see how a sentence, which is backdated to take account of the time that has already been spent in custody, can be fully backdated. Even the function of backdating cannot convert a time in custody to a suspended period which would be served entirely in the community instead.

Thus, there would be an absurdity, unless the paragraph meant such a sentence be ‘fully suspended’ from not the backdated date, but from the date of imposition. I am far from certain that this completely resolves all the difficulties in the meaning of s 63(3)(c), and I add s 63(3)(d), which is, in my view, far from clear, but at least gives some meaning to it in cases such as this. The Explanatory Statement for the Crimes (Sentencing) Bill 2005 (ACT) provides no clarity.

In that event, it seems to me that the same meaning should be given to ‘fully suspends a sentence of imprisonment’ in ss 12A(2) and 80W(1) of the *Sentencing Act*, which is relevantly in the same terms. Accordingly, I will construe the terms in the same way as in *[BR]*, though not without some considerable hesitation. I urge the Legislature to address this issue and make appropriate amendments to obtain some clarity on this issue and hope that, enjoined by Walker AJ, it will achieve some amendment. It may also be helpful if the Legislature addressed the same issue in the slightly different context of intensive corrections orders.

It flows from the foregoing that the provisions in relation to how pre-sentence custody is to be taken into account urgently require review. This also provides a suitable opportunity to review the analogous provisions for intensive correction orders.

#### 12.2.5 Dealing with breaches

By the time of our outcome evaluation, there had been 15 DATOs cancelled, giving rise to a body of jurisprudence on how to deal with breaches of DATOs.<sup>152</sup> An issue in relation to the powers on breach arose in a recent case, where Refshauge AJ observed at [9]:

---

<sup>152</sup> The case law in relation to cancelling a DATO and resentencing a defendant in such circumstances was discussed in the process evaluation. For more recent cases, *R v Dowling (No 3)* [2021] ACTSC 210; *R v KL (No 4)* [2021] ACTSC 211. This is also examined in two cases that are yet to be published.



The constraints in s 80ZB(1)(e) of the *Sentencing Act* did not permit the Court to detain Mr Pelecky in custody pending the availability of another placement at a residential drug rehabilitation facility: see *R v Tonna (No 2)* at [67]-[68]. Thus, the cancellation of the Treatment Order may not have been required if there had been another suitable placement available or Mr Pelecky could have been detained in custody pending such availability.<sup>153</sup>

This suggests that there may be need for a more flexible range of powers for the Court, when considering whether to cancel a DATO. This issue of course needs to be considered in conjunction with the broader issue of the availability of rehabilitation options, including interstate.

#### 12.2.6 Reviewing a DATO, prior to cancellation

Refshauge AJ's comments in *QV (No 2)* should also be noted, in relation to the power to review a DATO prior to cancellation. Specifically, his Honour stated at [36]:

it would be unfair and a waste of time were the Court, in considering an application to cancel a Treatment Order, to consider that amendment would be feasible and meet the unwillingness or unlikelihood of the participant complying with the conditions, that were the subject of that unwillingness or unlikelihood, but where there were satisfactory rehabilitative options that could be made conditions of the Treatment Order which would remove the unsatisfactory circumstances.

His Honour went on to state, at [39]:

If I am not construing the legislation strictly as it is drafted when I do so as I have above, then I consider that reason and common sense would require urgent amendment to ensure that it meets a sensible approach of the kind that I have described so that the object of the legislation and of a Treatment Order set out in s 80O of the *Sentencing Act* can be met.

His Honour further observed, at [69], that he 'cannot simply remand him further until a placement becomes available at a New South Wales residential drug rehabilitation facility' and '[t]his may be a weakness in the legislation which requires attention, or it may be a matter of policy that the Legislature has implemented'. If it is the former, this should also be rectified by legislative amendment.

#### 12.2.7 Calculating pre-sentence custody for offences committed during DATO

In *BN (No 2)*, Refshauge AJ described s 80ZC(3), which provides that time served by an offender on remand for offences with which the offender has been charged during the currency of a DATO 'counts toward the sentence imposed under the custodial part of the treatment order' as 'an odd provision' (at [35]). His Honour found that the Explanatory Statement 'gives no explanation of it, nor points to the relevant policy that might explain it'.

---

<sup>153</sup> *R v Pelecky (No 4)* [2021] ACTSC 343.

Further simplification of this ‘odd provision’ or explication of the rationale underpinning may be of assistance.

### 12.3 Comments on judicial practice

The jurisprudence to date highlights both positive aspects of the Court’s operation and scope for improvement. For example, perhaps as a result of the complex framing of the legislation, it was not always clear precisely how long the sentence or treatment and supervision component of the sentence was. For example, in *JN*, Murrell CJ stated at [44] that ‘the offender is sentenced for the offence of aggravated robbery to imprisonment from [X date] to [Y date]’, but the precise length of the DATO was not stated clearly in the judgment. In *IO*, Refshauge AJ stated that the total sentence was 22 months and then stated, at [90]: ‘For the treatment and supervision part of the [DATO], [IO] be required to comply with the core conditions set out in s 80Y...for the term of the Order’. His Honour used similar language in *BN* and *QD*. Although his Honour went on to communicate the ‘legalese’ (*IO* at [87]) in more accessible terms, there was no apparent explanation that the treatment and supervision part of the sentence would run for two years (in fact, the reference in that case to the Canberra Recovery Service (CRS) program being nine months long may have led to an erroneous inference about a shorter treatment part). The evaluation team was kindly provided with a copy of the type of document provided to DASL participants when sentenced to a DATO. We were advised that this document was derived from an actual order handed down and was representative of the structure of document provided to the participant in that case. The document we received was explicit in stating both the length of the sentence and the treatment and supervision component of the order. However, the language used in the document was quite complex and it is prudent to remember that many people appearing in court have low of levels literacy. It would therefore be of assistance for the written statement about the order to be presented in more accessible terminology.

It is also worth noting that, in *JN*, Murrell CJ set the treatment and supervision part for ‘a period of at least 12 months from today, or such further period as the supervising judges or judge directs’ (at [48]). Section 80X(2)(b) provides that the treatment and supervision part of a DATO is in force for the period that ends ‘on a day stated by the court; or if the order is earlier cancelled by the court under this part – on the day the court cancels the order’. In order to comply with this provision and again ensure clarity in the length of the treatment and supervision component of the DATO, it may be preferable to state an end date.<sup>154</sup>

In *CU*, Murrell CJ set the length of the DATO, but left the period of supervision at large, ordering that that the offender ‘complete a treatment program as set by the judge presiding over the [DASL]’ (at [105]). Unfortunately, adopting this approach means that offenders will have their sentencing decisions split across multiple courts and may therefore be confused about the length of the orders with which they are to comply. In order to promote

---

<sup>154</sup> In that case, this could not have exceeded 13 months and 12 days, as s 80X(3) provides that the treatment and supervision part of the order ‘must not end later than the day the custodial part of the order ends’.

consistency, and in line with the comments of a number of stakeholders interviewed by the evaluation team, it may be preferable for all judicial officers to refer matters they consider appropriate for a DATO to the DASL judge for sentencing (and have the length of the treatment and supervision part of the order set at the same time as the DATO itself). Adopting this approach will also ensure that the DASL judge has an opportunity, at the time of making the order, to carefully explain its implications to the participant.

The evaluation team has observed that Refshauge AJ goes to significant effort to explain the DATO and DASL program to participants. This is also clear from the judgments, as the following quotes illustrate:

- ‘We will support you, the Court will support you if you are committed’: *OE* at [128].
- ‘We will get well acquainted over the next 12 months or so. I hope all positively. But if you fall short then there will be occasions where you might have to go back into jail’: *CR* at [72].
- ‘We cannot help you unless you do that. If things are going wrong, come and talk to us’: *QV* at [100].
- ‘[W]e will have a good chat and I will congratulate you’: *IO* at [97].
- ‘I have given you a chance which a lot of people would not have given you. You make use of it and do what you can. Do not be overconfident. Put your heart and soul in it and you will get through it’: *BN* at [92].

This is consistent with the TJ principles, which underpin courts of this nature and is an example of how the DASL is operating effectively. This is also borne out by the stakeholder and participant interviews (as discussed in Chapter 6), which are testament to Refshauge AJ’s warm and effective judicial style.

## 13 Recommendations

In our process evaluation, we found a general commitment to best practice and the principles of TJ. Our outcome evaluation revealed largely positive findings in relation to in-program outcomes, social integration, recidivism, and compliance with TJ principles. However, across both evaluations the data indicate some room for improvement. In what follows we offer recommendations that can help increase fidelity to best practice and improve outcomes.

### 13.1 Process Evaluation

In the 2021 process evaluation, we made 24 recommendations, structured around the pathways into DASL, the collaboration and cooperation between stakeholders, DASL in practice, preliminary outcomes, and analysis of case law and legislation. In May 2022, after we had submitted our outcome evaluation, we received a document from the Court, outlining the joint position of the Court and other relevant stakeholders on each recommendation, together with comments and an indication of which agencies were responsible for implementing the recommendation. Overall, this indicated that eight recommendations were agreed to, 15 were agreed to in principle and one was not agreed to. The following sets out each recommendation, together with the response and, where relevant, a summary of comments provided. The evaluation team thanks the Court and other stakeholders for their active engagement with these recommendations and the steps that have already been taken to implement many of our suggestions.

#### 13.1.1 Pathways into DASL

- 1. To increase opportunities for program participation, the Court should undertake activities to increase awareness of the DASL program, particularly among legal practitioners.**

*Agreed in principle.* It was noted that this may become important if the program cap is increased, but awareness appears to be sufficient for the current limited number of participants. In light of the developments since we completed our process evaluation, we concur with this assessment.

- 2. Eligibility criteria should be revisited to ensure that the program is enrolling the appropriate target cohort.**

*Agreed in principle.* It was suggested that any specific concerns or problems identified would be considered for inclusion in future legislative amendments, subject to stakeholder consultation. We returned to this issue in our outcome evaluation (see also Process Evaluation (PE) Recommendation 22 and Outcome Evaluation (OE) Recommendations 5 and 6).

- 3. Referral pathways into DASL should be reviewed, to ensure that they are as efficient as possible, including having the DASL judge makes the order for suitability assessments and sentencing people into the program, and improving communication between DASL and the rest of the Court.**

*Agreed*, noting that steps were being undertaken to streamline referrals into DASL list, court procedures were being reviewed and a practice direction drafted. We commented on these issues in our outcome evaluation and consider that the proposed practice direction will be helpful in increasing DASL's efficiency.

- 4. Referrals to the DASL judge should be made as early as possible.**

*Agreed*, although it was noted that any early referral needs to be accompanied by background information to enable the Court to progress it. The Court had encountered difficulties where referrals have been made with little or no information being provided about the prospective participant/offence committed/background etc. The evaluation team recognises the challenges that this poses for all stakeholders, as well as (prospective) participants. This reinforces the need for adequate resources, to ensure DASL's effective administration and operation.

- 5. In recognition of the complexity of the sentencing process – and the time required to apply therapeutic elements – more resources should be allocated to the program.**

*Agreed in principle*, noting that more funding is required to increase the resources allocated to the program. Our more recent research not only confirms this, but suggests that the cost of DASL has likely been more than offset, through the reduction in demand on the Alexander Maconochie Centre.

#### 13.1.2 Collaboration and cooperation between stakeholders

- 6. Consistent co-location of ACTCS and Health should be arranged to provide further opportunities for collaborative work.**

*Agreed*. It was noted that this is now occurring and we welcome this development.

- 7. Collaborative problem-solving during case conferences could be enhanced by providing a more intimate layout in case conferences, with the judge and associate seated with the rest of the team.**

*Agreed*, noting that the conferences have been moved into a hearing/meeting room. This was described as 'proving positive'. We recommend ongoing discussion and review by the DASL team.

- 8. Consideration should be given to widening the circle of stakeholders participating in the case conferences, such as Housing, Forensic Mental Health and other mental health professionals, nurses, trauma treatment clinicians and CYPS, as appropriate.**

*Agreed in principle*, although it was also noted that careful consideration is required for the circumstances of each matter and it would not be productive use of time/resources to have stakeholders present unnecessarily. We recognise this and respect the exercise of the treatment team's judgement of when this will be appropriate.

- 9. The ALO should be directly consulted for every Aboriginal and/or Torres Strait Islander participant.**

*Agreed in principle*, if the ALO wants this to occur and it is appropriate. It was also suggested that the participant's input would be required and opportunities should be considered for dedicated ACTCS ALO to be more involved in the process. In light of the significant concerns identified in our outcome evaluation report about the extent to which DASL is meeting the needs of Aboriginal and/or Torres Strait Islander participants, we suggest that this recommendation be considered further in the context of OE Recommendation 1 from our outcome evaluation below.

- 10. As the DASL caseload grows, care needs to be taken to continue to allow sufficient time for in-depth discussions of each participant.**

*Agreed in principle*, noting that any expansion is subject to additional funding being provided. A query was also raised as to what is classed as 'sufficient time', as discussions cannot be open-ended. The evaluation team recognises this and suggests this is something that could be explored as part of the proposed strategic days recommended in our outcome evaluation (see OE Recommendation 8 below).

#### 13.1.3 DASL in practice

- 11. Consideration should be given to providing more guidance and structure to ACT Health staff, in terms of expectations for their meetings with participants in each phase of the program.**

*Agreed in principle.*

- 12. There is a clear need for more treatment beds, including specialised options for Aboriginal and/or Torres Strait Islander participants. This need will become more urgent as the number of DASL participants increases.**

- 13. Other resources should also be expanded as the DASL list grows, including more sitting days and more time at court for the DASL coordinator.**

*Agreed in principle*, noting that this is subject to the availability of additional resources/funding, with full-time funding required for full time staff. We concur and refer to

our subsequent recommendations (see OE Recommendations 1, 2, 5, 6 and 7), as well as our endorsement of the recommendations made by the ACT Legislative Assembly Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021.

**14. There is a need for more time between the case conference and check-in hearing for the judge to prepare and for Legal Aid to consult with clients.**

*Agreed in principle*, It was acknowledged that there may not be enough time between when reports are received and participants are conferenced for legal representatives to obtain instructions. Timings have been adjusted, but this is of course subject to other court commitments.

**15. Check-in hearings should use open-ended questions, to allow participants to articulate their experiences in their own words and to build a stronger rapport between participants and the DASL judge.**

*Agreed in principle*, as this had already been addressed, with the DASL judge having taken our feedback on board, to ensure more open-ended questions are in place. We have observed this and welcome it. In our outcome evaluation, we made some further minor suggestions on how to enhance the program's therapeutic jurisprudence dimensions, especially in the context of graduation ceremonies (see OE Recommendation 11 below).

**16. Consideration should be given to ways to improve the rituals surrounding progression hearings and graduations and recognise the progress made by participants whose order has ended before they have completed the program.**

*Agreed in principle*. It was suggested that post-graduation outcomes should also be examined, 'with participants possibly re-engaging with the DASL as a positive mentor to other participants'. We strongly support this suggestion, as there is a growing body of research on the benefits of involving peer mentors in the justice context.<sup>155</sup> As noted above, we make a further recommendation in relation to graduations in OE Recommendation 11 below.

#### 13.1.4 Preliminary outcomes

**17. Monitoring and evaluation of the effectiveness of DASL should incorporate a full range of indicators of success, considering both in-program and post-program outcomes.**

*Agreed*, although it was noted that the cohort may not yet be large enough to generate the required data. The outcome evaluation provided a range of indicators of success, adopting the framework outlined in our process evaluation.

---

<sup>155</sup> See eg Seppings, C. (2015). *To Study the Rehabilitative Role of Ex-prisoners/Offenders as Peer Mentors in Reintegration Models*. Winston Churchill Trust; Nixon, S. (2020). "'Giving back and getting on with my life': Peer mentoring, desistance and recovery of ex-offenders', *Probation Journal*, 67: 47-64; Buck, G. (2021). *Mentoring and Peer Mentoring*. Her Majesty's Inspectorate of Probation.

**18. ‘Success’ should not be contingent on successful completion of all three phases of the program.**

*Agreed*, noting that ‘success needs to be informed by an evidence-based approach to addiction, mental health and domestic and family violence tailored for the individual’, using clearly defined measures for success. We provided significant detail on this in our outcome evaluation; although many of our data sources suggested that there may have been reduced family violence (eg, participants spoke about improved family relationships and the policing data showed a reduction in assaults), we did not report specific information on this. We see the benefit in future evaluations seeking to capture data on this, given the established link between family violence and substance use.<sup>156</sup>

**19. Data collection and monitoring processes should be well-resourced and systematic, including regular review to ensure that all appropriate data are being collected.**

*Agreed in principle*, subject to resources/funding. We returned to this issue in our outcome evaluation (see OE Recommendation 13 in relation to data collection).

**20. Monitoring should be undertaken with reference to the key components of successful drug courts and best practice principles identified in the drug court literature.**

*Agreed*. In our outcome evaluation, we allocated a score (between a nominal 0 for ‘not achieved’ and 4 for ‘achieved’) for how DASL was performing on each item in the *10 key components of a successful drug court* and the *10 best practice standards*. This enabled us to quantify its performance and demonstrated a small improvement between 2021 and 2022. We suggest that this model be used as framework for ongoing monitoring.

**21. Exit interviews with participants should be developed, to measure participants’ experiences of the DASL program.**

*Agreed*, noting that ‘this is already happening’. (see also OE Recommendation 14 below). Consultation with the DASL team suggests that the exit interviews with participants were conducted by ANU evaluation team as a part of the current research but have not been undertaken since data collection for the evaluation ended in March 2022. We recommend that interviews should continue with DASL participants as they exit the program.

It was also noted that the opportunity to find out what happens after participants leave DASL should not be missed and that this could perhaps be facilitated through Health and/or AOD services. The evaluation team supports such long-term qualitative follow-up.

---

<sup>156</sup> See eg Coomber K. et al (2021). ‘The role of illicit drug use in family and domestic violence in Australia’, *Journal of Interpersonal Violence*, 36(15-16): NP8247-NP8267.



13.1.5 Analysis of case law and legislation

**22. The DATO legislative framework requires review and simplification, with specific attention to the issues identified above, especially in relation to the issue of taking pre-sentence custody into account.**

*Agreed in principle.* As with PE Recommendation 2, it was suggested that any specific concerns or problems identified would be considered for inclusion in future legislative amendments, subject to stakeholder consultation (see also OE Recommendation 12).

**23. To ensure consistency and that all relevant issues are considered by the DASL team, all DASL sentences should be delivered by the DASL judge(s).**

*Not agreed,* as this is a matter for the Head of Jurisdiction to determine and is also subject to resources and funding issues. We recognise the need for flexibility in the Court's administration and that the proposed practice direction will assist in promoting consistency.

**24. To ensure clarity in relation to and promote compliance with the Court's orders, the length of the DATO and treatment and supervision component of the order should be clearly stated, in terms that participants are likely to be able to understand.**

*Agreed in principle.* It was noted that some legal terminology needs to be used, to ensure the orders are compliant with the legislation. Furthermore, Legal Aid lawyers always explain to their client what the order involves and there is significant after-court support available to participants, to explain the requirements of orders, including by the DASL team. The surveys and interviews with DASL participants in our outcome evaluation suggest that they are able to understand the requirements of the order.

13.2 Outcome Evaluation

Our 2022 outcome evaluation returned to some of themes that underpin the process evaluation. In particular, we make 15 further recommendations around supporting participants with additional needs, program fidelity and quality, and ongoing monitoring and evaluation.

13.2.1 Supporting participants with additional needs

We recommend that:

1. The Court consult with representatives from key Indigenous organisations, to ensure that the fullest range of approaches to better support DASL's Aboriginal and Torres Strait Islander participants is considered, and all suitable suggestions adopted (see also PE Recommendations 9 and 12).
2. Where appropriate, the use of culturally appropriate facilities interstate be prioritised for Indigenous participants (see also PE Recommendations 9 and 12).

3. The DASL team liaise with A Gender Agenda, to determine what steps can be taken to support any prospective or current transgender, gender-diverse and intersex participants.
4. Any misunderstandings about DASL's availability and suitability for people with mental illness and/or disability issues be addressed.
5. Consideration be given to expanding DASL's ability to support participants with significant mental illness and/or disability issues.
6. Consideration be given to expanding the range of court-based treatment options for people who are not serving sentences of between one and four years, which would be of particular benefit to women, who typically serve shorter sentences (see also PE Recommendation 2).
7. Additional resources be allocated, to ensure DASL can continue to meet participants' complex needs (see also PE Recommendations 5, 12 and 13).

### 13.2.2 Ensuring program fidelity and quality

We recommend that:

8. The DASL team regularly hold strategic planning days, to discuss the program's progress and address ongoing issues around management, data collection, adherence to the behavioural contract and other strategic goals (see also PE Recommendation 11).
9. There be better integration between DASL and the AOD sector, including specialised training and participation in strategic planning days.
10. Steps be taken to ensure the Court adopts a coordinated response to participants' compliance, including revision of and adherence to the behavioural contract protocol and the implementation of consequences that are predictable, fair and consistent;
11. A more strengths- and trauma-based approach be taken in relation to graduation ceremonies (see also PE Recommendation 16).
12. The legislation be simplified and the issues identified by the evaluation team addressed (see also PE Recommendation 22).

### 13.2.3 Monitoring and evaluation

We recommend that:

13. The DASL team collect ongoing data about social integration during a participant's DATO and be appropriately resourced to do so. In particular, we suggest that staff systematically record relevant information, through the use of a standardised data file (see also PE Recommendations 17 and 19).

14. Consideration be given to undertaking exit interviews with participants when they graduate or finish their DATO, as an important element to support ongoing monitoring and evaluation (see also PE Recommendation 21).

15. A full cost-benefit evaluation of DASL be undertaken.

### 13.3 Broader social issues impacting on DASL

Our findings demonstrate that many aspects of DASL's operation are adversely impacted by issues beyond its control, especially in relation to the resourcing issues in the AOD and housing sectors. We also acknowledge broader issues in relation to the over-representation of Aboriginal and Torres Strait Islander people in the justice system. We note that the ACT Government is yet to respond to the report of the ACT Legislative Assembly Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021. Our findings therefore underpin our strong support for the recommendations in that report that the ACT Government should:

- significantly increase its investment in alcohol and other drug services;
- continue its commitment to establish and fund an Aboriginal Community Controlled residential rehabilitation facility and increase the number of First Nations alcohol and other drugs Peer Support Workers; and
- invest in housing options for people who use alcohol and other drugs and are at-risk of or experiencing homelessness.<sup>157</sup>

Implementing these recommendations will not only enable DASL to increase its effectiveness, but will have far-reaching benefits for the ACT community as a whole.

---

<sup>157</sup> ACT Select Committee, n 10, Recommendations 7–9.

## References

- A Gender Agenda (2021). *AGA submission to the Inquiry into Community Corrections 2021*, Submission 20.
- ACT Council on Social Services (2021). *Inquiry into Community Corrections*, Submission 26.
- ACT Government (2019). *Disability Justice Strategy 2019–2029: A Strategy to Address Unequal Access to Justice in the ACT*.
- ACT Government (2020). *RR25by25: Reducing Recidivism in the ACT by 25% by 2025 – 2020 to 2023*.
- ACT Government (nd). Justice Housing Program <https://justice.act.gov.au/justice-programs-and-initiatives-reducing-recidivism/building-communities-not-prisons/justice>.
- ACT Law Society (2021). *Inquiry into Community Corrections*, Submission 24.
- ACT Legislative Assembly (2021, November 21). Standing Committee on Justice and Community Safety, *Inquiry into ACT Budget 2021-22 – Question on Notice*, authorised by Shane Rattenbury MLA  
[https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0005/1904774/JACS-QON-45-ACT-Budget-2021-22-Attorney-General-Drug-and-Alcohol-Court-more-support.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0005/1904774/JACS-QON-45-ACT-Budget-2021-22-Attorney-General-Drug-and-Alcohol-Court-more-support.pdf).
- ACT Select Committee (2021). *Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021*. Legislative Assembly for the Australian Capital Territory.  
[https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0006/1908789/Report-Inquiry-into-the-Drugs-of-Dependence-Personal-Use-Amendment-Bill-2021-with-dissenting-report.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0006/1908789/Report-Inquiry-into-the-Drugs-of-Dependence-Personal-Use-Amendment-Bill-2021-with-dissenting-report.pdf).
- ACT Sentence Administration Board (2021). *Inquiry into Community Corrections*, Submission 23.
- ACT Supreme Court (nd). *Behavioural Contract Protocol*.  
<https://www.courts.act.gov.au/supreme/law-and-practice/criminal/drug-and-alcohol-sentencing-list>.
- ADACAS (2021). *Response to the ACT Legislative Assembly Inquiry into Community Corrections*, Submission 27.
- Advocacy for Inclusion (2021). *Inquiry into Community Corrections Submission*, Submission 19, 17.

- Alcohol Tobacco and Other Drug Association ACT (2021). *Inquiry into Community Corrections*, Submission 15.
- Aloisi, B. (2022, February 16). Acting Assistant Commissioner, Community Corrections and Release Planning, ACT Corrective Services, Justice and Community Safety Directorate, *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf>.
- Australasian Institute of Judicial Administration (nd-a). *Drug Courts*. <https://aija.org.au/research/resources/drug-courts/>.
- Australasian Institute of Judicial Administration (nd-b). *The Concept of Therapeutic Jurisprudence*. <https://aija.org.au/research/resources/the-concept-of-therapeutic-jurisprudence/>.
- Australian Bureau of Statistics (ABS) (2020). *Prisoners in Australia, 2020*.
- Australian Bureau of Statistics (ABS) (2021). *Prisoners in Australia, 2021*.
- Australian Bureau of Statistics (ABS) (2022a). *Corrective Services, Australia – December 2021*.
- Australian Bureau of Statistics (ABS) (2022b). *Criminal Courts Australia, 2020–21*.
- Australian Institute of Health and Welfare (2019). *The Health of Australia's Prisoners, 2018*. AIHW Cat. no. PHE 246.
- Bartels, L. (2017). *Swift, Certain and Fair: Does Project HOPE Provide Therapeutic Paradigm for Managing Offenders?* Palgrave.
- Beacroft, L. (2022, February 17). Chair, ACT Sentence Administration Board. *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs13a.pdf>.
- Bowles, D. (2022, February 16 February). Chief Executive Officer (CEO), Alcohol Tobacco and Other Drug Association ACT (ATODA). ACT Legislative Assembly, *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf>.
- Braddock, A. (2022, February 17). Member, Legislative Assembly Committee on Justice and Community Safety, *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs13a.pdf>.
- Buck, G. (2021). *Mentoring and Peer Mentoring*. Her Majesty's Inspectorate of Probation.
- Canberra Mental Health Forum (2021). *Review of Community Corrections*, Submission 4.

- Clarke, A. (2020). The rehabilitative ideal and the realism of drug court success. *Journal of Judicial Administration*, 30: 19-36.
- Coomber K., Mayshak, R. and Litnaitkzy, P. (2021). The role of illicit drug use in family and domestic violence in Australia. *Journal of Interpersonal Violence*, 36(15-16): NP8247-NP8267.
- Dean, L. (2022, February 16). ACT Regional Manager, Ted Noffs Foundation. *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf>.
- Doran, K. (2022, 16 February). Acting Director-General, Community Safety, Justice and Community Safety Directorate, *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf>.
- Doyle, C., Pfothenauer, D., Bartels, L. and Hopkins, A. (2020). '[T]hey Say "You're Going Home, You're Going Home" ... But I Don't Have a Home... I'm Getting Out, But I'm Not Going Home, There's No Home...': The Experiences of People Leaving Prison in the Australian Capital Territory – Final Research Report. University of NSW.
- Drumgold, S. (2022, February 23). Legislative Assembly for the ACT, *Inquiry into Annual and Financial Reports, 2020–21*. *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs16a.pdf>.
- Foundation for Alcohol Research & Education (FARE) (2021). *ACT Inquiry into Community Corrections*, Submission 18.
- Foden, B. (2019, October 13). Aboriginal community 'can't afford' another long wait for residential drug rehabilitation. *Canberra Times*. <https://www.canberratimes.com.au/story/6433687/aboriginal-community-cant-afford-another-long-wait-for-residential-drug-rehabilitation/>.
- Freeman, K. (2002). *New South Wales Drug Court Evaluation: Health, Well-Being and Participant Satisfaction*. NSW Bureau of Crime Statistics and Research.
- Gelb, K. (2019). *Monitoring and Evaluation of Drug Courts: A Review of Best Practice*, prepared for the ACT Courts.
- Gifford, E., Eldred, L., McCutchan, S. and Sloan, F. (2014). The effects of participation level on recidivism: a study of drug treatment courts using propensity score matching. *Substance Abuse Treatment, Prevention, and Policy*, 9: 1-8.
- Hill, M. and Moore, L. (2018). *Reflections From the 'Double Figures' Milestone: A Decade of Therapeutic Jurisprudence in Tasmania*. Tasmanian Institute of Law Enforcement Studies, University of Tasmania.

- Hora, P. (2020). The trauma-informed courtroom. *Judicial Officers Bulletin*, 32(2): 11-13.
- Hughes, C., Shanahan, M., Sotade, O. and Ritter, A. (2017). *Towards a New ACT Drug and Alcohol Court: A Program and Systems Perspective*. Drug Policy Modelling Program, University of NSW.
- Justice Reform Initiative (2021). *Inquiry into Community Corrections*, Submission 5.
- King, M. (2006). Therapeutic jurisprudence in Australia: New directions in courts, legal practice, research and legal education. *Journal of Judicial Administration*, 15: 129-141.
- King, M. (2009). *Solution-Focused Judging Bench Book*. Australasian Institute of Judicial Administration.
- Knight, D., Blue, T., Flynn, P. and Knight, K. (2018). The TCU Drug Screen 5: Identifying justice-involved individuals with substance use disorders. *Journal of Offender Rehabilitation*, 57: 525-537.
- Kornhauser, R. (2018). The effectiveness of Australia's drug courts. *Australian and New Zealand Journal of Criminology*, 51: 76-98.
- KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Magistrates' Court of Victoria.
- Kuehn, S. and Ridener, R. (2016). Inside the black box: A qualitative evaluation of participants' experiences of a drug treatment court. *The Qualitative Report*, 21: 2246-2267.
- Kukulies-Smith, M. (2022, February 16). Chair, Criminal Law Committee, ACT Law Society. *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf>.
- Legislative Assembly for the ACT (2022). *Inquiry into Community Corrections – Submissions* <https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/jcs/inquiry-into-community-corrections#tab1780034-3id>.
- Legislative Assembly for the ACT (2021). *Inquiry into Community Corrections – Terms of Reference* [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0007/1780387/ToR-JCS-Community-Corrections.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/1780387/ToR-JCS-Community-Corrections.pdf).
- Legislative Assembly for the ACT, Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 (2021). *Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021*. [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0006/1908789/Report-Inquiry-into-the-Drugs-of-Dependence-Personal-Use-Amendment-Bill-2021-with-dissenting-report.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0006/1908789/Report-Inquiry-into-the-Drugs-of-Dependence-Personal-Use-Amendment-Bill-2021-with-dissenting-report.pdf).

Lintzeris, N., Mammen, K., Holmes, J., Deacon, R., Mills, L., Black, E., Gardner, L. and Dunlop, A. (2020). *Australian Treatment Outcomes Profile (ATOP) Manual 1: Using the ATOP with Individual Clients*.

[https://www.seslhd.health.nsw.gov.au/sites/default/files/groups/Drug\\_Alcohol/ATOP%20Manual%201\\_Using%20the%20ATOP%20with%20Individual%20clients\\_July%202020.docx.pdf](https://www.seslhd.health.nsw.gov.au/sites/default/files/groups/Drug_Alcohol/ATOP%20Manual%201_Using%20the%20ATOP%20with%20Individual%20clients_July%202020.docx.pdf).

Local Court NSW (nd). *Magistrates Early Referral into Treatment (MERIT) Program*. <https://localcourt.nsw.gov.au/local-court/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html>.

Lulham, R. (2009). *The Magistrates Early Referral Into Treatment Program: Impact of Program Participation on Re-offending by Defendants with a Drug Use Problem*. NSW Bureau of Crime Statistics and Research.

Magistrates' Court of Victoria (nd). *Bail support (CISP)*. <https://www.mcv.vic.gov.au/find-support/bail-support-cisp>

Martin, D. (2022, 17 February). CEO, Tjillari Justice Aboriginal Corporation, *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs13a.pdf>

Martin, K. and Stermac, L. (2010). Measuring hope: Is hope related to criminal behaviour in offenders? *International Journal of Offender Therapy and Comparative Criminology*, 54: 693-705.

Maruna, S. (2001). *Making Good: How Ex-convicts Reform and Rebuild Their Lives*. American Psychological Association.

McNeill, F., Farrall, S., Lightowler, C. and Maruna, S. (2012). *How and Why People Stop Offending: Discovering Desistance*. Institute for Research and Innovation in Social Services.

Meridian (2021). *Submission to the Inquiry into Community Corrections*, Submission 2.

Nagin, D. (2013). Deterrence in the twenty-first century: A review of the evidence. *Crime and Justice*. 42: 199-263, 204.

National Association of Drug Court Professionals (2018). *Adult Drug Courts: Best Practice Standards – Vol. II*. <https://www.nadcp.org/wp-content/uploads/2018/12/Adult-Drug-Court-Best-Practice-Standards-Volume-2-Text-Revision-December-2018.pdf>.

National Institute of Justice (2021). *Overview of Drug Courts*. <http://www.nij.gov/topics/courts/drug-courts/pages/welcome.aspx>.



Neale, H. (2022, February 21). Affordable housing continues to be a challenge for Canberra's homeless. *Canberra Times*. <https://www.canberratimes.com.au/story/7520211/impact-of-lockdown-continues-for-canberras-homeless/>.

Nixon, S. (2020). 'Giving back and getting on with my life': Peer mentoring, desistance and recovery of ex-offenders. *Probation Journal*, 67: 47-64.

NSW Department of Health (2007). *The Magistrates Early Referral Into Treatment (MERIT) Program: Health Outcomes*.

NSW Drug Court (2020). *Annual Report 2018–19*.

Oolong House (nd). [https://www.oolonghouse.org.au/main\\_oolong.html](https://www.oolonghouse.org.au/main_oolong.html).

Our Booris Our Way (2021). *Parliamentary Inquiry into Community Corrections*, Submission 11.

Payne, J. (2007). *Recidivism in Australia: Findings and Future Research*. Australian Institute of Criminology.

Payne J., and Morgan A. (2016) *Appendix E: Building effective interventions for drug users in the criminal justice system: A review of best practice*. Drug and Specialist Courts Review. Queensland Courts.

Prisoners Aid ACT (2021). *Submission to the Standing Committee on Justice and Community Safety ACT Legislative Assembly Inquiry into Community Corrections*, Submission 3.

Productivity Commission (2022). *Report on Government Services*. <https://www.pc.gov.au/ongoing/report-on-government-services>.

Rattenbury, S. (2022, February 17). Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction. *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs13a.pdf>.

Rossman, S. and Zweig, J. (2012). *The Multisite Adult Drug Court Evaluation*. National Association of Drug Court Professionals.

Rossman, S., Roman, J., Zweig, J., Rempel, M. and Lindquist, C. (2011). *The Multisite Adult Drug Court Evaluation: Executive Summary*. Urban Institute.

Rossner, M., Bartels, L., Gelb, K. and Payne, J. (2021). *ACT Drug and Alcohol Sentencing List: Process evaluation*. Australian National University.

- Saum, C. and Hiller, M. (2008). Should violent offenders be excluded from drug court participation? An examination of the recidivism of violent and nonviolent drug court participants. *Criminal Justice Review*, 33: 291-307.
- Seppings, C. (2015). *To Study the Rehabilitative Role of Ex-prisoners/Offenders as Peer Mentors in Reintegration Models*. Winston Churchill Trust.
- Shaffer, D. (2011). Looking inside the black box of drug courts: A meta-analytic review. *Justice Quarterly*, 28: 493-521.
- Shapland, J., Bottoms, A., Farrall, S., McNeill, F., Priede, C. and Robinson, G. (2012). *The Quality of Probation Supervision – A Lit Review*. University of Sheffield Centre for Criminological Research.
- Shoring, J. (2022, February 16). Acting Executive Director of A Gender Agenda. *Hansard*. <https://www.hansard.act.gov.au/hansard/2021/comms/jacs12a.pdf>.
- SMART Recovery (nd). <https://smartrecoveryaustralia.com.au>.
- Supreme Court of the ACT (2022, February 22). *Notice to Practitioners: Drug and Alcohol, Sentencing List – Pause on New Referrals*. [https://www.courts.act.gov.au/\\_data/assets/pdf\\_file/0003/1954740/Notice-to-Practitioners-Drug-and-Alcohol-Sentencing-List-Pause-on-new-referrals.pdf](https://www.courts.act.gov.au/_data/assets/pdf_file/0003/1954740/Notice-to-Practitioners-Drug-and-Alcohol-Sentencing-List-Pause-on-new-referrals.pdf).
- The Farm in Galong (2021). *Inquiry into Community Corrections*, Submission 10.
- The Glen (nd). <https://www.theglencentre.org.au>.
- Tjillari Aboriginal Justice Corporation (2021). *The Inquiry into Community Corrections Submission*, Submission 25.
- Toora Women Inc (nd). <https://www.toora.org.au>.
- Victorian Department of Justice (2010). *Court Integrated Services Program: Tackling the Causes of Crime – Executive Summary Evaluation Report*.
- Weatherburn, D., Jones, C., Snowball, L and Hua, J. (2008). *The NSW Drug Court: A Re-evaluation of its Effectiveness*. NSW Bureau of Crime Statistics and Research.
- Weatherburn, D., Yeong, S., Poynton, S., Jones, N. and Farrell, M. (2020). *The Long-term Effect of the NSW Drug Court on Recidivism*. NSW Bureau of Crime Statistics and Research.
- Wellways Australia (nd). *Detention Exit Community Outreach (DECO)*. <https://www.wellways.org/our-services/detention-exit-community-outreach-deco>.

Wexler, D. and Winick, B. (1996). *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence*. Carolina Academic Press.

Wexler, D.B. and Winick, B.J. (1991). *Essays in Therapeutic Jurisprudence*. Carolina Academic Press.

Winick, B.J. (2003). Therapeutic jurisprudence and problem-solving courts. *Fordham Urban Law Journal*, 30: 1044-1090.

Winick, B.J. and Wexler, D.B. (2002). Drug treatment court: Therapeutic jurisprudence applied. *Touro Law Review*, 3: 479-485.

### Cases Cited\*

*R v Dowling (No 1)* [2020] ACTSC 374

*R v Ingram* [2016] ACTSC 199

*R v Kelly* [2021] ACTSC 143

*R v Loulanting* [2015] ACTCS 172

*R v McMahon (No 2)* [2017] ACTSC 299

*R v Moore* [2021] ACTSC 333

*R v Ngerengere (No 3)* [2016] ACTSC 299

*R v Pelecky (No 4)* [2021] ACTSC 343

*R v Reid (No 1)* [2021] ACTSC 334

*R v Sheather* [2021] ACTSC 290

*R v Slifkas* [2019] ACTSC 40

*R v Tonna (No 2)* [2020] ACTCS 360

\*In this report, we have anonymised additional cases where the decision is unpublished or to protect the anonymity of our research participants.

## Legislation Cited

*Crimes (Sentencing) Act 2005* (ACT)

*Crimes Act 1900* (ACT)

*Drug Court Act 1998* (NSW)

*Legislation Act 2001* (ACT)

*Magistrates Court Act 1930* (ACT)

Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Bill 2019 (ACT)

*Supreme Court Act 1933* (ACT)

## Appendix I. Participant Information Sheet for Stakeholders and DASL Participants



Australian  
National  
University

### Participant Information Sheet for Professional Stakeholders

#### Evaluation of the ACT Drug and Alcohol Sentencing List (DASL)

##### Researchers:

Researchers from the Centre for Social Research and Methods at the Australian National University (ANU), Professors Meredith Rossner and Lorana Bartels, together with Professor Jason Payne from the University of Wollongong and Dr Karen Gelb, an independent consultant, are conducting research to evaluate the DASL program. We are committed to working with you and staff from Health, Corrections and the courts to understand how the DASL program is functioning.

##### General Outline of the Project:

- **Description and Methodology:** The DASL program is a new program in the ACT which aims to improve access to treatment for drug users in the criminal justice system. Through treatment and case management, the DASL program seeks to improve the health and social circumstances of participants and thereby contribute to a reduction in both drug use and crime.
- The project team will work with you to understand how the DASL program operates. We will do this by talking to people who are involved in the program, including participants, staff and service providers. We will then look at all this information, together with program data from DASL, to see what people have said about the program and the changes it has made to people's lives.
- **Participants:** We aim to talk to about 50 people who are or will be involved in the DASL program here in Canberra.
- **Use of the Data and Feedback:** The findings of this project will be presented to the ACT Supreme Court and published in research reports, journal articles and conference presentations. The DASL Coordinator will distribute a summary of findings to participants once the evaluation is complete. This summary will be made available for you to download.
- **Project Funding:** This research is funded by the ACT Supreme Court.

##### Participant Involvement:

- **Voluntary Participation & Withdrawal:** Your participation in this evaluation is **voluntary**. If you do consent to take part, you have the **right to withdraw** your participation at any stage of the evaluation before our report is written. In case you wish to withdraw, please contact the research team at the ANU and any information you provided will be destroyed and not used.
- All information gathered will be de-identified and interviewee's identities kept confidential (see over page). Please remember that your decision whether to participate in this research (and what you say if you do participate) will have **no impact** on your employment or your relationship with the DASL program.
- **What does participation in the research entail?** Participation in this project is in the form of a face-to-face or online interview with a member of the evaluation team. The interview will ask you to reflect on the DASL program, your participation in it in general, and specifically the program's implementation and outcomes. Where relevant, questions will also focus on your engagement with program participants, both in the court and in the community. This evaluation also includes observations of the court-room procedures. If you do not wish us to observe court, you can withdraw consent at any time.
- **Audio-recording:** You will be asked if it's OK to audio-record the interview (to more accurately capture what you say), but if you do not want this to happen, you can tick 'No' on the consent form and the interview will not be recorded. If you do not wish for your interview to be recorded, the researcher will write notes during the interview instead.

- **Location and Duration:** Interviews will take approximately 40 minutes and, with your permission, will be audio-recorded for accuracy. The interviews will take place at your office, the court or the ANU, or online, whichever is more convenient for you.
- **Risks:** As DASL is a small program, there is a small risk that someone may be able to identify you from the information you provide, however well it has been de-identified. All effort will be made to protect your privacy, including the de-identification of all data in any reports and/or publications.
- **Benefits:** We believe these interviews will provide better understanding of how the DASL program works and where there is room for improvement. This information is vital to ensuring that future participants receive the best possible treatment with the greatest scope for success.

#### Confidentiality:

- Unidentifiable, general feedback from the interviews will be provided to the ACT Supreme Court to inform the delivery of the program as the project continues. The results may also be published in journal articles and/or presented at conferences, but your individual identity will not be disclosed. The confidentiality of information can only be guaranteed as far as the law allows. All interview information will be password-protected at the ANU. Only those researchers directly involved in the research project can access the interview results.
- In the event of unintentional **reidentification** of a participant, due to the small number of interviewees, the participant will be contacted, informed of the risk and given the opportunity to withdraw or have their material redacted from the final report.

#### Privacy Notice:

In collecting your personal information within this research, the ANU must comply with the *Privacy Act 1988 (Cth)*. The ANU Privacy Policy is available at [https://policies.anu.edu.au/ppl/document/ANUP\\_010007](https://policies.anu.edu.au/ppl/document/ANUP_010007) and it contains information about how a person can: access or seek correction to their personal information; complain about a breach of an Australian Privacy Principle by ANU; and how ANU will handle the complaint.

#### Data Storage:

- **Where:** The information you provide will be handled with care. All information collected will be stored under secure password-protected conditions. Hard-copy data will be stored in locked filing cabinets in the researchers' office on the ANU campus. Electronic data will be kept on the secure ANU server. Only those researchers directly involved in the evaluation will have access to either form of data.
- **How long:** Data will be kept for 5 years following publication, in accordance with the ANU Code of Research Conduct. If you consent, the information you give us can be stored through the Australian Data Archive. This will mean that, after the project is finished, the information will be preserved and protected indefinitely. The reason for doing this is that community members, community groups and/or future researchers may wish to access this information. All such information will be stored confidentially.

#### Queries and Concerns:

- **Contact Details for More Information:** If you have any questions of complaints about this project please feel free to contact the lead researcher, Professor Rossner ([meredith.rossner@anu.edu.au](mailto:meredith.rossner@anu.edu.au) or (02) 6125 0787).
- **Contact Details if in Distress:** If you experience any distress as a result of participating in this project, please contact Lifeline Australia anytime on 13 11 14, or visit the website: <https://www.lifeline.org.au>. Alternatively, you can call the domestic and family violence counselling and information referral service on 1800 RESPECT.

#### Ethics Committee Clearance:

The ethical aspects of this research have been approved by the ANU Human Research Ethics Committee (Protocol 2019/918). If you have any concerns or complaints about how this research has been conducted, please contact:

Ethics Manager  
The ANU Human Research Ethics Committee  
The Australian National University  
Telephone: +61 2 6125 3427  
Email: [Human.Ethics.Officer@anu.edu.au](mailto:Human.Ethics.Officer@anu.edu.au)



### Participant Information Sheet for Clients:

#### Evaluation of the ACT Drug and Alcohol Sentencing List (DASL)

##### Researchers:

Researchers from the Centre for Social Research and Methods at the Australian National University (ANU), Professors Meredith Rossner and Lorana Bartels, together with Professor Jason Payne from the University of Wollongong and Dr Karen Gelb, an independent consultant, are conducting research to evaluate the DASL program. We are committed to working with you and with staff from health, corrections and the courts to understand if the DASL program is working the way it's meant to work.

##### Project Title: Process and Outcome Evaluation of the ACT Drug and Alcohol Sentencing List (DASL)

##### General Outline of the Project:

- **Description and Methodology:**
- The project team will work with you to understand how well the DASL program operates and how successful it is in achieving its main aims. We will do this by talking to people like you who are involved in the program as participants, as well as the DASL program staff. We will then look at all this information, to see what people have said about the program and what changes the program has made to people's lives.
- Importantly, we won't ask you to talk about specific events or the times when you've been involved in crime. We are only interested in how the program has worked for you and its impact on you and your life.
- **Participants:** We will talk to about 50 people involved in the DASL program over the next two years.
- **Use of the Data and Feedback:** The findings of this project will be presented to the ACT Supreme Court and published in research reports, journal articles and conference presentations. The DASL Coordinator will make sure that you're offered a summary of our findings once the project is complete.
- **Project Funding:** This research is funded by the ACT Government.

##### Participant Involvement:

- **Voluntary Participation & Withdrawal:** You do not have to be involved in this research unless you want to. If you choose not to take part, it will have no impact on your relationship with the DASL program and will not affect your involvement with DASL. If you do decide to participate in this research, please remember that you can change your mind and pull out of the research at any time without telling us why. If you do pull out, we will not use what you told me unless it has already been used in a report or publication. To withdraw, all you have to do is contact the research team at the ANU before the project report is written and any information you have given will not be used.
- **What does participation in the research involve?** With your consent, we would like to interview you on multiple occasions throughout this evaluation. The first interview will happen when you have been on the DASL program for a little while (probably in Phase 3). For each interview, we will ask you again if you agree to participate, so participating in the first interview does not commit you to doing later interviews. For each interview, a member of the research team will ask you to think about your experiences on the DASL program and your feelings about participating in it. We will also ask about your engagement with the DASL team and any other relevant community services that you have used while on the DASL program. Remember, you are free to skip any question you would prefer not to answer.

- After the interview, we will also look at the DASL case management files, where the DASL team has recorded notes about your time on the program. We will be looking for things which help us to understand how well the DASL program has worked and what could be improved.
- Finally, we will also visit the court from time to time to watch the DASL program in action. There is a chance that we might be visiting on a day when you're there. In the first interview, we will ask for your consent to attend, then confirm that consent on each day.
- **Audio Recording:** You will be asked if it's OK to audio-record the interview (to more accurately capture what you say) but if you do not want this to happen you can tick 'No' on the consent form and the interview will not be recorded. If you don't want your interview to be recorded, the researcher will write notes during the interview instead. If you do agree to have the interview recorded, it will be transcribed by a professional transcriber and the original recording will then be destroyed. Only the research team will have access to the interview transcript.
- **Location and Duration:** The interview will take about 40 minutes and will take place face-to-face at the ACT Court House, or at another place arranged between you and the researchers.
- **Compensation:** We appreciate the time and effort it will take for you to participate in this research. To recognise and compensate for this, we are giving all participating clients a \$30 gift voucher at the time of interview. This small gift of our appreciation should not influence your decision whether to participate in this interview, and you are still free to withdraw from the study at any time.
- **Risks:** It may be uncomfortable or distressing for you to think about the events or things that have happened before or during your time on the DASL program. If you do happen to become upset at any time during the interview, please let the interviewer know. You can also pause or stop the interview at any time. A few days after the interview, someone from the research team can contact you to make sure you are still ok.

We are not talking to a lot of people as part of this project and so there is a small risk that you may be able to be identified from the information you provide. We will do our best to make sure this does not happen, but if you are worried about it, you can withdraw your name and information from the study. Importantly, if we think that there is a risk that you could be identified in the research report (even though we won't be using your name anywhere), we will contact you to ask for your permission for publication.

- **Benefits:** We believe that these interviews will provide a better understanding of how the DASL program works and what areas are in need of improvement. This information will be very useful for improving the effectiveness of the DASL program for current and future participants.

#### Confidentiality:

- Anonymous, general feedback from the interviews will be provided to the DASL Coordinator and DASL Team to help them to improve the delivery of their program as the project continues. The results may also be published in journal articles and presented at conferences, but your individual name and details will not be disclosed. All interview information will be password protected at the ANU. Only those researchers directly involved in the research project can access the interview results.
- Due to the small number of interviewees it might be possible for someone to identify you based on what you say. If this happens, we will tell you of the risk and give you the option to withdraw or have your information taken out of the final report.
- The confidentiality of information can only be guaranteed as far as the law allows. Disclosure of any crimes and/or violence that haven't been prosecuted will be need to be reported. **Importantly**, the ANU research team has a responsibility to talk the police if there is a reasonable belief that someone (including yourself) is at risk of immediate harm or danger.

#### Privacy Notice:

In collecting your personal information within this research, the ANU must comply with the Privacy Act 1988. The ANU Privacy Policy is available at [https://policies.anu.edu.au/ppl/document/ANUP\\_010007](https://policies.anu.edu.au/ppl/document/ANUP_010007) and it contains information about how a person can: access or seek correction to their personal



information; complain about a breach of an Australian Privacy Principle by ANU, and how ANU will handle the complaint.

#### Data Storage:

- **Where:** The information you provide will be handled with care. All information collected will be stored under secure password-protected conditions. Hard copy data will be stored in locked filing cabinets in the researcher's offices on the ANU campus in Canberra. Electronic data will be kept on the secure ANU server. Only those researchers directly involved in the evaluation will have access to either form of data.
- **How long:** Data will be kept for 5 years following publication in accordance with the ANU Code of Research Conduct. If you consent, the information you give us can be stored through the Australian Data Archive. This will mean that after the project is finished the information will be preserved and protected indefinitely. The reason for doing this is that community members, community groups and/or future research projects may wish to access this information. All information will be stored confidentially and your name and identifying details will not be made available.

#### Ethics Committee Clearance:

The ethical aspects of this research have been approved by the ANU Human Research Ethics Committee (Protocol 2019/918). If you have any concerns or complaints about how this research has been conducted, please contact:

Ethics Manager  
The ANU Human Research Ethics Committee  
The Australian National University  
Telephone: +61 2 6125 3427  
Email: [Human.Ethics.Officer@anu.edu.au](mailto:Human.Ethics.Officer@anu.edu.au)

#### Questions and Concerns:

- **Contact Details for More Information:** If you have any questions or complaints about this project please feel free to contact the ANU Project Manager Meredith Rossner ([Meredith.rossner@anu.edu.au](mailto:Meredith.rossner@anu.edu.au)), or (02) 6125 0787.
- **Contact details if upset:** If you feel upset as a result of participating in this project, please contact your case-worker immediately. If you do not have someone to contact, please call:

#### Emergency services include (available 24/7)

- **Police/ambulance/fire: 000**
  - For assistance in life-threatening or time critical emergency situations only.
- **Lifeline Australia** anytime on 13 11 14, or visit the website: <https://www.lifeline.org.au>.
  - A provider of general and emergency counselling, information, and referrals.

#### Other services include (available 24/7):

- **BeyondBlue:** 1300 224 636
  - Counselling service for depression and anxiety.
- **SANE Australia:** 1800 187 263
  - Information about mental illness, treatments, where to go for support and help carers
- **Relationships Australia:** 1300 364 277
  - A provider of relationship support services for individuals, families, and communities.
- **Family Drug Support Australia:** 1300 368 186
  - A telephone support service for users, families, and carers in crisis due to alcohol and other drug use.
- **Counselling Online AU (Drug and Alcohol):** (02) 6207 9977 – A.C.T number
  - Free, confidential counselling for people affected by alcohol and other drugs. This service is also available to friends and family of people experiencing drug and alcohol concerns.

Other services include (weekday availability only):

- **Men's Referral Service:** 1300 766 491 (available 9am-9pm Monday- Friday)
  - Confidential telephone service for men by men. This service helps men who want to stop their abusive or violent behaviour towards their family members. Women can also seek information and help for their male partner, relative, or friend.
- **Parentline ACT:** (02) 62 873 833 (available 9am-5pm Monday – Friday)
  - Confidential counselling service for parents and carers. They can offer immediate counselling, information, and referrals.
- **Centrelink Crisis Payment:** 13 28 50 (available Mon-Fri, 8am-5pm)
  - A one-off Centrelink payment if you are in severe financial hardship and extreme circumstances.
- **Centrelink Employment Services:** <https://www.humanservices.gov.au/individuals/subjects/looking-work>
  - Centrelink information website including information on where to get payments while you look for work, support to help you find work, and information related to other government and community support services.
- **Social Work Services:** 13 28 50 (available Mon-Fri, 8am-5pm) or <https://www.humanservices.gov.au/individuals/services/social-work-services>
  - Information, support, and short term counselling.
  - This service can provide help relating to;
    - personal and family crisis,
    - mental health concerns,
    - family and domestic violence,
    - health services,
    - legal services,
    - emergency accommodation and housing support,
    - financial help.

## Appendix II. Stakeholder and Participant Consent Forms



WRITTEN CONSENT for DASL Staff and Stakeholders  
**Evaluation of the ACT Drug and Alcohol Sentencing List (DASL) Program**

I have read and understood the Information Sheet you have given me about the research project, and I have had any questions and concerns about the project (listed here

\_\_\_\_\_ )

addressed to my satisfaction.

I agree to participate in the project. YES  NO

I agree to this interview being audio-recorded. YES  NO

I understand that the Evaluation Team may observe DASL program proceedings when I am involved. I consent to this observation, but recognise that I can withdraw my consent on the day. N/A  YES  NO

I agree to be identified in the following way within research outputs (tick one):

Pseudonym YES  No attribution YES

Signature:.....

Date:.....



WRITTEN CONSENT for DASL Participants  
**Evaluation of the ACT Drug and Alcohol Sentencing List (DASL) Program**

I have read and understood the Information Sheet you have given me about the research project, and I have had any questions and concerns about the project (listed here

\_\_\_\_\_ )

addressed to my satisfaction.

I agree to participate in this project. YES  NO

I agree to participate in today's interview. YES  NO

I agree for today's interview to be recorded. YES  NO

I understand that the researchers may watch in court when my case is being discussed. I agree to this now, but I know that I can change my mind on the day. YES  NO

I agree that the researchers can see my DASL case-management notes. N/A  YES  NO

I agree to be identified in the following way in research reports and publications (tick one):

Pseudonym (made up name) YES  No attribution (no name used) YES

Signature:.....

Date:.....