

SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

PRACTICE DIRECTION NO 1 OF 2010

Using CADAS in the Supreme Court

1. With the repeal of Part 9 (Treatment) of the *Drugs of Dependence Act 1989* (ACT)(DODA) by the *Health Legislation Amendment Act 2010* (ACT) on 16 August 2010, the Supreme Court (the Court) will no longer have the option in the pre sentence stage of proceedings to order assessments under DODA for persons who have committed drug or drug-related offences.
2. The intention of the repeal, as expressed in the Explanatory Statement, is to ensure that all rehabilitation programs upon sentence would be dealt with under Part 6.2 of the *Crimes (Sentencing) Act 2005* (ACT). A rehabilitation program, for a good behaviour order under Part 6.2 of the *Crimes (Sentencing) Act 2005* (ACT), includes an alcohol or drug rehabilitation program provided by an entity under an agreement with the Territory under s.101 of the *Crimes (Sentence Administration) Act 2005* (ACT) or with consent of the Chief Executive.
3. As a result, the Court and ACT Health have agreed that the Court Alcohol and Drug Assessment Service (CADAS) (which is currently operating in the Magistrates Court under Magistrates Court Practice Direction 2 of 2001) will now be available to assist the Court in providing reports about offenders to assist in sentencing in accordance with this Practice Direction, the *Crimes (Sentencing) Act 2005* (ACT) and the *Crimes (Sentence Administration) Act 2005* (ACT) and in considering bail applications by accused persons.
4. CADAS is a service within the ACT Health Alcohol and Drug Program's Diversion Service. It is funded under the Commonwealth Illicit Drug Diversion Initiative. The Diversion Service staff are health professionals with extensive experience in the alcohol and drug sector.
5. CADAS will, under these arrangements, be responsible for alcohol and other drug assessments, making recommendations to the Court on suitable treatment programs for offenders, facilitating access to treatment services and providing the Court with information on the offender's progress in relation to the treatment programs that have been arranged. Its role will also be to monitor progress, that is to check on the person's treatment or counselling, keep contact with rehabilitation agencies, record progress and if ACT Corrective Services is appointed to supervise, to report to that agency on its monitoring.
6. CADAS works closely with ACT Corrective Services and, where appropriate, provides that agency with advice and information. Accordingly, if supervision is required, the Court will order the accused to accept supervision by an officer of ACT Corrective

Services appointed by the Chief Executive or her delegate. That officer will ordinarily be given a power to give the person reasonable directions, especially as to drug and alcohol treatment and counselling. The staff of CADAS will not ordinarily be given power to give the person any directions.

7. Arrangements are being made for ACT Corrective Services ordinarily to accept CADAS recommendations as to treatment or counselling and to give appropriate directions to persons that are being supervised.

Application for referral for CADAS assessment

8. Application for referral for a CADAS assessment may be made by an accused or offender, his or her counsel or a prosecutor. The application may be made orally or in writing. The Court may make a referral for assessment on its own initiative. A referral for assessment can, however, only be made by the Court. The Court may satisfy itself as to the suitability of a referral for a CADAS assessment as it thinks fit. An application for referral of a CADAS assessment may be made:
 - with a bail application;
 - at a directions hearing, prior to the sentence date; or
 - at sentencing.

Bail Applications

9. If an application for bail is lodged by a person in custody not less than 4 days before the return date for the application and a request for a CADAS assessment in connection with the application is noted in the appropriate way on the bail application, the Court may make a request for CADAS to prepare an assessment for the bail application. A short form report for bail takes 3 days to prepare for an applicant in custody.
10. It can be assumed that a CADAS worker will not attend personally on the hearing of a bail application unless special arrangements are made for such attendance.
11. If a referral for a CADAS assessment is not sought in the bail application or because insufficient time has been allowed for an assessment to be prepared or an assessment has otherwise not been prepared, the accused may apply at the hearing of the bail application for a referral to CADAS for assessment. That will obviously require an adjournment of the application.
12. In relation to bail applications, the Court may make one or more (but not all) of the following orders:
 - the preparation of a CADAS assessment report which will usually be a short form report. This will, of course, require an adjournment of the bail application;

- a bail condition requiring the accused to undertake such treatment as may be recommended by CADAS;
- a bail condition requiring the accused to accept supervision by an officer of ACT Corrective Services appointed by the Chief Executive or her delegate and obey all reasonable directions of that officer, particularly as to drug and alcohol treatment or counselling;
- a bail condition requiring the accused to submit to monitoring by CADAS and consent to the provision by CADAS of any information reasonably required by the officer delegated to provide supervision; or
- a bail condition requiring the accused to report forthwith to ACT Corrective Services at Eclipse House, London Circuit, Canberra City and thereafter but, in any event within 24 hours (or longer), to CADAS at the Alcohol and Drug Program, Level 1, ACT Health Building, 1 Moore Street, Canberra City.

13. It should be noted that any breach action will be taken by ACT Corrective Services.

Sentence Proceedings

14. If an offender has drug and alcohol misuse issues that are relevant to the sentence to be imposed for an offence to which he or she has pleaded guilty, then a full CADAS assessment may be ordered. Where a person has been committed to the court for sentence, it would be appropriate for it to be ordered at the first directions hearing after committal.
15. If such a report is ordered, a written report will be provided to the Court 2 days prior to the sentencing date with, where appropriate, a recommendation for treatment or counselling. The Court will endeavour to provide a copy to the parties. If parties complete and file the form currently provided to request fax or e-mail receipt of Pre-Sentence Reports, that form will be used also to request fax or e-mail receipt of CADAS reports. This form is also now available on the Court's website at www.courts.act.gov.au/Supreme.
16. It can be assumed that the author of the report or, if the author is unavailable, another CADAS worker will attend the sentencing proceedings.
17. A report from CADAS will ordinarily take 3 weeks to prepare when the offender is not in custody and 2 weeks to prepare when the offender is in custody.
18. If an offender has been released on bail subject to CADAS monitoring, the Court may also request a full report from CADAS to be prepared for the sentencing at the time when bail is granted.
19. In relation to sentence proceedings, the Court may make one or more (but not all) of the following orders:

- the preparation of a CADAS full assessment report, including options for drug and alcohol treatment or counselling. This will, of course, require an adjournment of the sentencing proceedings;
- a condition to a good behaviour order requiring the offender to complete a treatment program recommended by CADAS;
- a condition to a good behaviour order requiring the offender to accept supervision by an officer of ACT Corrective Services appointed by the Chief Executive or her delegate and to obey all reasonable directions of that officer, particularly as to drug and alcohol treatment or counselling;
- a rehabilitation program condition to a good behaviour order in accordance with Part 6.2 of the *Crimes (Sentencing) Act 2005* (ACT) to undertake rehabilitation that has been recommended by CADAS;
- a condition to a good behaviour order requiring the offender to submit to monitoring by CADAS and to consent to the provision by CADAS any information reasonably required by the officer delegated to provide supervision; or
- that the offender report forthwith to ACT Corrective Services at Eclipse House, London Circuit, Canberra City and thereafter, but in any event, within 24 hours (or longer), to CADAS at the Alcohol and Drug Program, Level 1, ACT Health Building, 1 Moore Street, Canberra City.

By Direction of the Judges.

ANNIE GLOVER
Registrar
ACT Supreme Court

3 August 2010