

BRIEFING

ACT Drug and Alcohol Sentencing List:

Process and Outcome Evaluation Final Report

This report presents the findings of a process and outcome evaluation of the Australian Capital Territory (ACT) Drug and Alcohol Sentencing List (DASL), conducted by the Australian National University (ANU). It represents a synthesis of the three elements of the evaluation, conducted 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;
2. a process evaluation of fidelity to best practice standards during implementation; and
3. an outcome evaluation.

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, and qualitative analysis of stakeholder and participant experiences.

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). As at 31 March 2022, there had been 56 DATOs imposed. 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 complex personal histories and a range of other criminogenic needs that are well-suited to the therapeutic, holistic approach that a drug court offers. Despite the small number of DASL participants to date, it appears that the program is generally appropriately reaching its target cohort.
- **Pathways into DASL:** 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. Stakeholders suggested that DASL eligibility should be expanded to include people on shorter orders as well. In terms of suitability, the lack of housing that 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.

- **Cooperation and collaboration between stakeholders:** The DASL team has developed an effective and collaborative working relationship. The Treatment Order Team, including the DASL Judge and staff from ACT Health, ACT Corrective Services, the Director of Public Prosecutions, Legal Aid, and ACT Police, meet at a weekly case conference, where they discuss each participant's progress. The team's inter-disciplinary approach enables a holistic and therapeutically-oriented response for participants.
- **DASL in practice:** 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, although there are concerns about the inconsistent application of the behavioural contract protocol. Challenges in managing caseloads suggests that DASL may need additional resources to continue to meet clients' complex needs, including more – and more varied – treatment options. The DASL judge is widely recognised by participants and stakeholders to be fair, thoughtful, and committed to participants' best interests and TJ principles.

Part II: Outcome Evaluation

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

- **In-program outcomes:** There were 15 cancelled cases, out of the 56 that entered the program during the evaluation period (27% of cases). Both younger and Indigenous participants were disproportionately represented in cancelled cases, compared to graduations. Our survey with 20 current DASL participants found that 85% were satisfied with their experience of DASL so far and 95% were satisfied with the judge. Data from ACT Health showed a marked improvement in DASL participants' drug use scores. Analysis of participants' status reports demonstrated the dynamic nature of their trajectories during DASL, with setbacks being common, even among eventual graduates. A preliminary economic assessment of DASL estimated that up to \$14 million has been saved, due to avoided prison time.
- **Social integration outcomes:** Participation in DASL has led to positive outcomes in psychological and physical health, quality of life, relationships, employment, emotional maturity, and hope and optimism about the future. Participants' ratings of their psychological health increased, as did the proportion employed. Relationships with loved ones, especially children, also improved. However, inconsistent data collection limited the strength of conclusions on these outcomes.
- **Recidivism:** As DASL has only been operational for a limited period, and there have been only a small number of participants to date, analysis of ACT Policing data needs to be treated with caution. Nevertheless, there is initial evidence that the DASL is an effective program to reduce re-offending, even among those whose orders were cancelled. When there was re-offending, this was generally less serious than prior to entering DASL.

- **Principles of therapeutic jurisprudence:** The evaluation highlighted the judge's and treatment team's therapeutic relationship with clients, with DASL adhering well to most of the measures of a successful drug court. Improvements could be made, in relation to enhancing access for historically disadvantaged groups, improving consistency in the use of the behavioural contract protocol, addressing systemic issues in relation to housing, and establishing stronger data collection to monitor and evaluate the program. A whole-of-government approach will be needed to address some of these issues.

Part III: Legal Analysis

Drawing on analysis of the legislation and case law, it is clear that the legislation underpinning DASL is complex and excessively lengthy, urgently needing amendment in several respects:

- 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.

It would be timely to take steps to simplify the DATO legislation more generally, to ensure a more workable legislative framework.

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.

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