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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY  
Mr Jeremy Hanson MLA (Chair), Dr Marisa Paterson (Deputy Chair), Ms Jo Clay MLA

## Submission Cover Sheet

### Inquiry into Community Corrections

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Standing Committee on Justice and Community Safety  
ACT Legislative Assembly  
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## **Inquiry into Community Corrections**

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## Introduction

The Alcohol, Tobacco and Other Drug Association ACT (ATODA) represents the Alcohol Tobacco and Other Drug (ATOD) sector in the ACT. Members include specialist alcohol and other drug treatment organisations, distinguished drug experts with deep knowledge of the criminal justice system and population health; the group representing families and friends who have lost loved ones to drugs; and the peer-based organisation for people with lived experience of drug use in the ACT.

ATODA welcomes this Inquiry and its Terms of Reference. Given our sector's particular areas of expertise, this submission focuses on:

- *Item 4) Drug and alcohol treatment orders*, with consideration given to opportunities to improve the implementation and ongoing effectiveness of the Drug and Alcohol Sentencing List (DASL), informed by the experience of specialist AOD services participating in the DASL.
- *Item 8) Any other relevant matter*, with consideration given to the need for appropriate investment in specialist AOD services accessible by all individuals supported through Community Corrections, given higher rates of consumption of drugs or alcohol amongst individuals who interact with the criminal justice system.

## Drug and Alcohol Sentencing List – Opportunities for Improvement

ATODA remains supportive of the Drug and Alcohol Sentencing List (DASL) in the ACT, and notes the literature indicating the effectiveness of drug and alcohol treatment orders.<sup>1-3</sup> With the commitment from specialist AOD services, the DASL has the potential to be an important therapeutic intervention for vulnerable Canberrans. The ACT Government has worked collaboratively with specialist AOD services in relation to some aspects of the DASL delivery, for example allowing flexibility during COVID-19 for places allocated for DASL referrals to be used for other clients when not required by the courts.

However, there are opportunities to improve the functioning of the DASL, in terms of eligibility, contractual arrangements with specialist AOD services, and evaluation. The identification of these opportunities has been informed by the experience of ATODA's members, including all specialist AOD services participating in the DASL.

### **1. Extend 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**

- To be eligible to participate in the DASL, the individual must be likely to be imprisoned between one and four years. This means that individuals who may benefit from this intervention are potentially excluded, for example individuals with recurring minor charges, or individuals who due to range of extenuating factors may be more likely to be sentenced for shorter periods of time. To ensure that as many individuals as possible who could benefit from a drug and alcohol treatment order rather than a custodial sentence are supported, the DASL eligibility criteria should be expanded to include those sentenced to less than one year in prison. Involvement with DASL should not be mandated for longer than a likely prison sentence.

- The *Crimes (Sentencing) Act 2005* details the assessment criteria for drug and alcohol treatment orders, and indicates that major psychiatric or psychological disorders or medical conditions likely to prevent compliance may exclude some people from being assessed as suitable for a drug and alcohol treatment order. These criteria should be reconsidered to ensure the maximum number of people can be diverted from incarceration to the DASL, with the DASL resourced accordingly to provide appropriate care through additional supports. If there are insurmountable barriers to some individuals with comorbidities being supported through DASL, appropriate therapeutic alternatives should be made available.
- Ongoing monitoring and evaluation of DASL should also consider whether any adjustments are required to the program to ensure equitable access to this therapeutic alternative for women, noting the limited numbers of women supported through the program to date.

## **2. Address the limitations of the implementation process and thoroughly cost the DASL in future years, taking into account potential savings and costs for both the justice and health systems**

- With the support of the AOD sector, the DASL was established quickly in late 2019. The AOD sector was not consulted with until 31 July 2019, with the release of a Discussion paper *Alcohol and other drugs treatment services supporting the ACT Drug and Alcohol Court* released on 20 September 2019, after repeated requests from the sector and in the context of a predetermined start date of the Drug and Alcohol Court of December 2019 (first attendance was on 3 December 2019). The AOD sector raised a number of concerns which remain relevant and which were not addressed due to the compressed timeframes in late 2019: 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%).<sup>4</sup> The DASL has contributed to the need for increased investment in the AOD sector.
- There is a need for thorough costing of the DASL and the preferred treatment models, and better coordination and considerations of potential savings and costs across both the justice and health systems. There would also be benefit in scoping whether a broader range of treatments could be considered by the Court, noting a preference for residential care to date however residential care can be scaled up least effectively in times of increased demand. 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' 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.

- 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.

### **3. Ensure DASL providers are provided appropriate notice of contract extensions and variations and are involved in the co-design of any new procurement process**

- 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.
- ATODA understands upcoming contract extensions will have provisions for continued funding for individual clients if a specialist AOD service does not win subsequent DASL work beyond 30 June 2022. This is useful to ensure continuity of client care.
- 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.

### **4. Ensure ongoing flexibility for DASL providers regarding demand gaps**

- 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 the DASL were given the flexibility to use those places to support other individuals. Given the likelihood of continued peaks and troughs in referrals and increased demand on services from the broader population, services require ongoing flexibility to utilise available places as most appropriate.

### **5. Ensure future evaluations of the DASL incorporate the experience of specialist AOD services and consider both therapeutic and judicial outcomes**

- ATODA understands that the current evaluation of the DASL has yet to be finalised, and that to date it has not included meaningful consideration of the experience of specialist AOD services participating in the DASL. This is a missed opportunity, as these services are critical to an effective DASL. Future evaluations of the DASL should include consideration of the experience of specialist AOD services with the DASL process and consideration of the extent

to which DASL participants were offered treatment that matched their needs. It is also important the evaluation consider the impact on broader service delivery at the AOD treatment site, for example implications for typically voluntary treatment environments when individuals are mandated to participate. Specialist AOD services are confident in the quality of their care and welcome the opportunity for further scrutiny and dialogue about how to improve client outcomes.

- 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.

#### **6. Work with Housing ACT (Community Services Directorate) to address access to stable accommodation for individuals in Community Corrections**

- ATODA is aware of 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. This has the potential to disrupt the quality of care for other clients, and prevent individuals who do require residential rehabilitation from accessing this treatment option. The ACT Justice and Community Safety Directorate, ACT Health Directorate and ACT 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.

These adjustments to the functioning of the DASL will support an improved therapeutic option for individuals impacted by alcohol and other drug issues and a more effective diversion process from the criminal justice system.

#### **Investment in the specialist AOD Sector**

An effective DASL depends on a viable, sustainable and accessible specialist AOD sector in the ACT. In addition to providing treatment to individuals sentenced through the DASL, specialist AOD sectors can also support referrals for other individuals supported through Community Corrections, and indeed this group may be more likely to seek support given higher rates of consumption of alcohol and other drugs amongst people in contact with the criminal justice system than the general population.<sup>5</sup>

There is significant gap in investment in AOD services both nationally and locally. At the national level investment in AOD treatment needs to at least double to meet the demand for services.<sup>6</sup> This accords with waiting lists for treatment programs and the experiences of people who use drugs in the ACT.

ATODA refers the Committee to the Select Committee Inquiry on the Drugs of Dependence (Personal Use) Amendment Bill 2021 Report, which recommends a significant increase in investment in specialist AOD services,<sup>7</sup> and ATODA's submission to that Inquiry which provides further detail on the need for increased investment in the ACT.<sup>8</sup>

## About ATODA

ATODA is the peak body for the alcohol, tobacco and other drug (ATOD) sector in the ACT. Its purpose is to lead and influence positive outcomes in policy, practice and research by providing collaborative leadership for intersectoral action on the social determinants of harmful drug use, and on societal responses to drug use and to people who use drugs.

ATODA's vision is a healthy, well and safe ACT community with the lowest possible levels of alcohol, tobacco and other drug related harms. Underpinning ATODA's work is a commitment to health equity, the social and cultural determinants of health, and the values of collaboration, participation, diversity, respect for human rights, social justice and reconciliation between Aboriginal and Torres Strait Islander people and other Australians.

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