

2019

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**SENTENCING (DRUG AND ALCOHOL TREATMENT ORDERS) LEGISLATION
AMENDMENT BILL 2019**

EXPLANATORY STATEMENT

Presented by
Gordon Ramsay MLA
Attorney-General

**SENTENCING (DRUG AND ALCOHOL TREATMENT ORDERS) LEGISLATION
AMENDMENT BILL 2019**

Outline

Outline.....	1
Background.....	2
Purpose of the Bill	3
Human Rights Considerations	3
Detail.....	11
Part 1 – Preliminary	11
Part 2 – <i>Bail Act 1992</i>	11
Part 3 – <i>Births, Deaths and Marriages Registration Act 1997</i>	12
Part 4 – <i>Corrections Management Act 2007</i>	12
Part 5 – <i>Crimes (Sentence Administration) Act 2005</i>	13
Part 6 – <i>Crimes (Sentencing) Act 2005</i>	14
Part 7 – <i>Supreme Court Act 1933</i>	28

Background

In the Parliamentary Agreement for the 9th Legislative Assembly for the Australian Capital Territory, the ACT Government committed to establishing an ACT Drug and Alcohol Court (DAC) and associated support programs for the ACT as part of a goal to reduce recidivism (re-offending) by 25 per cent by 2025.

The development of a DAC aligns with a number of other Government policies and commitments that focus on reducing recidivism and addressing rates of incarceration. These include: the *ACT Drug Strategy Action Plan 2018-21*; the Justice Reinvestment Strategy; and the *Building Communities Not Prisons* project.

DACs deal with offences that relate to serious drug and alcohol use. They provide a unique response to a group of high risk and high need offenders who have serious issues with drug and/or alcohol use. They aim to achieve long-term behavioural change by taking a problem-solving approach to dealing with an offender's behaviour, and support the development of a pro-social lifestyle. DACs provide targeted and structured health and justice interventions while holding the person accountable for their offences.

An ACT DAC will help to address five justice system issues: recidivism; community safety; incarceration rates; reduce demand for alcohol and other drugs (demand reduction) (for example, supporting people to reduce harmful drug use and improve health outcomes); and social inclusion.

DACs have been operating in other Australian and international jurisdictions with clear benefits for offenders, their families, and the wider community. These benefits include:

- a safer community;
- reductions in offending;
- reductions in drug use and associated health issues;
- easing the burden on the health system;
- stabilised accommodation and housing;
- reconnection to family and the community;
- reengagement with education, training, and employment;
- management of physical and mental health needs;
- disconnection with antisocial and criminal peers; and
- development of essential pro-social life skills.

Purpose of the Bill

The policy objective of the Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Bill 2019 (the Bill) is to establish a DAC within the ACT Supreme Court.

The Bill amends the *Crimes (Sentencing) Act 2005* (the Sentencing Act) and other relevant legislation to establish processes for issuing a Drug and Alcohol Treatment Order (DATO) as an alternative sentence to imprisonment. The Bill includes amendments to do the following:

- a) provide legislative authority for the DAC to operate in the Supreme Court;
- b) create eligibility criteria in relation to offences and offenders;
- c) create a new sentence of a stand-alone DATO;
- d) allow an eligible matter to be referred to the Supreme Court for assessment for suitability for a DATO;
- e) ensure that the new sentence interacts effectively with the existing sentencing framework in the ACT;
- f) establish legislative authority for a scheme of sanctions and rewards to promote behaviour change in offenders together with authority to vary, discharge or cancel the DATO; and
- g) ensure appropriate appeal provisions are in place in relation to decisions made by the DAC.

Human Rights Considerations

The new sentencing option supports the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).¹ The Tokyo Rules provide that sentencing ‘should take into consideration... the rehabilitative needs of the offender, the protection of society and the interests of the victim’.² The DATO is specifically aimed at assisting offenders to rehabilitate by addressing the underlying alcohol and other drug issues which lead to offending, and the Bill allows the DAC Judge discretion to withdraw the order if it is in the interest of justice and the safety of the community is at risk.

When considering the post-sentencing stage of the justice process, the Tokyo Rules emphasise avoiding institutionalisation and assisting offenders to reintegrate with society.³

¹ *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)* General Assembly Resolution 45/110 (14 December 1990)

<<https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>>.

² Ibid [8.1].

³ Ibid [9.1].

There is a strong evidence base for the effectiveness of drug courts in Australia. For example, the second (and most recent) evaluation of the New South Wales drug court in 2008 by the Bureau of Crime Statistics and Research (BOSCAR) concluded that those who successfully completed the drug court program were 37 per cent less likely than offenders in the comparison group to be convicted of any offence at any point. Offenders who participated in the drug court program (whether ultimately successful on the program or not) were 17 per cent less likely to be reconvicted of any offence.⁴ This evidence demonstrates that the DATO has significant potential to support an offender's human rights by removing them from the cycle of criminal offending and related personal and social issues.

The amendments in this Bill balance the rights and interests of the community and offenders within the Territory's *Human Rights Act 2004* (HR Act).

Sentencing measures of any description can be expected to impact on the human rights of offenders and in broad terms, the Bill engages, and places limitations on, the following HR Act rights:

- Section 8 – Recognition and equality before the law
- Section 11 – Protection of family and children
- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security of person
- Section 21 – Right to a fair trial

The Bill also engages, and supports, the following HR Act rights:

- Section 11 – Protection of family and children
- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security of person
- Section 21 – Fair trial

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and

⁴ Don Weatherburn, Craig Jones, Lucy Snowball, and Jiuzhao Hua 'The NSW Drug Court: A re-evaluation of its effectiveness' (2008) 121 *Contemporary Issues in Crime and Justice – Bureau of Crime Statistics and Research* 1.

democratic society. Section 28 (2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

International human rights law places obligations on governments to “respect, protect and fulfil” rights. The obligation to respect means governments must ensure its organs and agents do not commit violations themselves; the obligation to protect means governments must protect individuals and groups from having rights interfered with by third parties and punish perpetrators; and the obligation to fulfil means governments must take positive action to facilitate the full enjoyment of rights.

The European Court of Human Rights has considered the positive obligation of governments to uphold rights in depth, noting government must put in place legislative and administrative frameworks to deter conduct that infringes rights, and to undertake operational measures to protect an individual who is at risk of rights infringement.⁵

Section 28 of the HR Act requires that any limitation on a human right must be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate. Proportionality can be understood and assessed as explained in *R v Oakes*.⁶ A party must show that:

[f]irst, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”⁷.

The limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve the purpose of providing an alternative sentencing option that aims to rehabilitate certain offenders while also protecting the community as a whole.

⁵ Madeleine Colvin & Jonathan Cooper O.B.E, *Human Rights in the Investigation and Prosecution of Crime* (Oxford University Press, 2009) 425. For more detail on positive obligations, see generally, J Akandji-Kombe, *Positive obligations under the European Convention on Human Rights* (Council of Europe, 2007).

⁶ [1986] 1 S.C.R. 103.

⁷ *R v Oakes* [1986] 1 S.C.R. 103.

Detailed human rights discussion

Rights engaged and supported

The Bill engages and supports a number of human rights as listed above. These are supported by all proposed amendments and are discussed briefly below.

The primary purpose of the Bill is to establish a DAC that is constituted by a therapeutic sentencing option that is an alternative to full-time imprisonment. In doing this, the Bill supports the listed rights by aiming to assist high risk and high need offenders to change their lives in a positive manner.

Rights engaged and limited

Section 8 – Recognition and equality before the law

The right to equal protection of the law prohibits discrimination in law or in practice in any field regulated by public authorities. It requires that no legislation should discriminate against an individual but formal equality may create unfair outcomes and so the **nature of the right** is not absolute. The right is engaged and limited by the requirement that an offender needs to live in the ACT for the term of the sentence, and that an indication of unsuitability for a DATO is if a person has no fixed address. The **purpose of the limitation** is to ensure that offenders who undertake a DATO in the DAC are given the best opportunity to succeed by ensuring that they have stable accommodation throughout their program. The nature of the DATO is that it requires intensive supervision by both the DAC and case managers, including through multiple urine tests per week in the early stages. The **nature and extent of the limitation** is restricted solely to those who are unable or unwilling to reside in the ACT and cannot live here for the entire duration of the DATO. This restriction is ameliorated by the fact that during the DATO assessment period, health and corrections officers will identify those potential participants who are homeless or at risk of homelessness and connect them with relevant services to try to find stable and ongoing accommodation. The limitation is the **least restrictive possible** as evidence from other drug courts in Australia demonstrates that stable housing is crucial to a participant's success.

This right is also engaged and limited by the fact that a DATO can only be ordered in relation to an adult offender. The **purpose of the limitation** is to ensure that the offenders who undertake a DATO are as far as possible only those offenders who are 'high risk and high need' so that they can receive the intensive supervision of the DAC. Young offenders have a special set of needs and requirements that is best managed through a dedicated court, the Children's Court. Children and young people do not require participation in the DATO sentencing option, as they are already managed intensively through the Children's Court, which has access to social workers and other resources of a therapeutic nature. In addition, allowing children and young people to be sentenced to a DATO would result in the need to appear before the Supreme Court, which is a court which for the vast majority of the time deals with adult offenders and does not have the expertise which comes from working in an

environment dedicated to the justice needs of young offenders, such as the Children’s Court. The **nature and extent of the limitation** is restricted solely to young people. The limitation is the **least restrictive possible** as it only prevents children and young people from accessing the DATO sentencing option.

Section 11 – Right to protection of family and children

The right is engaged by the imposition of a DATO and may be both supported and limited. It is supported as the offender may be required to undergo certain programs as part of their obligations under a DATO, which will assist the offender in meaningfully engaging with their family and children.

This right is engaged and limited by the requirement that the offender may need to reside separately from the family unit. This is balanced against the protection of the family and children from violence. The **nature of the right** is not absolute, but has been characterised as a protection against unlawful or arbitrary interference of the family unit. The **purpose of the limitation** is to protect victims of family violence, including to ensure the safety and protection of children, and to make perpetrators accountable for family violence. This is through the provision of tailored family violence programs. The **nature and extent of the limitation** is that by protecting one party in domestic and family violence, the other party’s rights are necessarily limited. These restrictions are proportionate to the aim of keeping people safe and are the **least restrictive means possible** in the circumstances. The means used are reasonable, considering the growing evidence that shows the persistence and prevalence of domestic violence.

In the event that the offence is one of family violence, for partners and children of the offender the right may be engaged and limited by a DATO being ordered instead of full-time imprisonment, meaning that the offender will remain in the community. As mentioned above, the **nature of the right** is not absolute, but has been characterised as a protection against unlawful or arbitrary interference with the family unit. The **purpose of the limitation** is to ensure that the offender can properly engage in the DATO, and in particular in therapeutic activities designed to reduce the offender’s drug or alcohol dependency and to address other aspects of the offender’s behaviour leading to offending. The **nature and extent of the limitation** is that the Bill provides for a DATO to be made which means that the offender will remain in the community. The limitation is the **least restrictive means possible** given that, as a matter of procedure, victims will be aware of the situation and can seek to have a protection order put in place if required. The court can also make a place restriction order, if required, which could restrict the locations that the offender can visit.

Section 12 – Right to privacy and reputation

The right is engaged and limited by the inclusion of powers which allow members of the treatment order team to share personal information about the offender with other members of the treatment order team. The **nature of the right** is not an absolute as any interference must

be unlawful, capricious, or arbitrary to breach in individual's human rights.⁸ The **purpose of the limitation** is to ensure that the DATO can operate effectively. DACs are by their nature therapeutic courts which aim to treat the offender's dependence on drugs and alcohol. Some treatments may be effective for some participants but not for others. The inclusion of this power allows the treatment team to share information about how the participant is progressing on any given course of treatment, and whether it is having the desired outcome. The **nature and extent of the limitation** is that members of the treatment order team will be able to share personal information about the participant with other members of the treatment order team. However, the information must have been obtained either through the assessment process, or during the administration of the order. This limits the type of information about the participant that can be shared. The information can then only be shared to another member of the treatment order team for the purposes of that other member, meaning that the other member has to have a legitimate purpose in having the information. The offender will have consented to the order being made, and will be free to withdraw their consent at any time. These restrictions are proportionate to the aim of helping offenders to succeed and are the **least restrictive means possible** in the circumstances. The means used are reasonable, considering the intensive nature of the DATO.

This right is engaged and limited by the inclusion of powers that assessors will have when determining suitability for a DATO. The **purpose of the limitation** is to ensure that assessors are able to gather a comprehensive picture of a potential participant's circumstances to ensure that they are suitable for a DATO and that if suitable, potential treatment plans are individualised and have the best chance of succeeding. The **nature and extent of the limitation** is that by ensuring that accurate and detailed information is available in regards to an offender's suitability for what is an intensive sentence, an offender's rights are necessarily limited. The limitation is mitigated by the fact that assessors will explain the process to offenders in detail and offenders will be required to give informed consent to serving their sentence as a DATO. The procedure expected to be followed for this will be that staff of ACT Corrective Services will meet with the offender and explain the order and what it entails, answer any questions the offender has, and then ask the offender to sign a form acknowledging the information they have been provided and their consent to order. The offender is also free to withdraw consent at any time. These restrictions are proportionate to the aim of helping offenders to succeed and are the **least restrictive means possible** in the circumstances. The means used are reasonable, considering the intensive nature of the DATO.

The right to privacy is also engaged and limited by the inclusion of a provision allowing a police officer to arrest a DATO participant without a warrant if the officer believes on reasonable grounds that an offender has breached a treatment order obligation. The **purpose of the limitation** is to ensure community safety and compliance with the order by the offender. When an offender is released on a DATO, it is in the alternative to the offender

⁸ UN Human Rights Committee, General Comment 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art 17), UN Doc CCPR General Comment 16 (1988), para.7.

serving a full-time sentence of imprisonment of between one and four years. The DATO is aimed at high risk, high-needs offenders who are being given the opportunity to participate in a therapeutic, non-adversarial, and problem solving court process to address the drug or alcohol dependency issues which significantly contributed to their offending. One of the key elements to this sentencing option is that the offender be required to comply with the order made by the court. While the Bill enables the police to apply for a warrant where possible, there are foreseeable circumstances where applying for a warrant would place the community at risk, or result in the court being unable to deal with the offender. This power already exists in the provisions relating to the intensive correction order (ICO), which is a subordinate order to the DATO in the sentencing hierarchy. The **nature and extent of the limitation** is that the offender will be liable to arrest if the offender has breached a condition of the DATO. These restrictions are the **least restrictive means possible** in the circumstances because they only apply once the offender has consented to the order being made and post-sentence, and exist in addition to, as opposed to instead of, the provision allowing application for a warrant from the court.

Section 13 – Freedom of movement

This right is engaged and limited by permitting a court to ensure a participant attends particular treatment services as per the DATO and to prohibit a participant from general movement, such as through a curfew or prohibiting contact with a specified person as prescribed by the DATO. The **nature of the right** is not absolute and so may be subject to reasonable limitations pursuant to section 28 of the HR Act. The **purpose of the limitation** is to rehabilitate the participant and the **nature and extent of the limitation** may vary. However, as previously stated, the nature and extent of the limitation is the **least restrictive possible** to ensure that the DATO is effective. In addition, a participant may apply to the court to amend or review the DATO in certain circumstances in relation to travel and related factors.

Section 18 - Liberty and security of person

Section 18 of the HR Act states that everyone has the right to liberty and security of person. The right is engaged by the imposition of a DATO and may be both supported and limited. The right is supported in that the offender's sentence of imprisonment is suspended and therefore not served within a prison or detention facility, but in the community. However, the right may also be engaged and limited in the event an offender is found to be in breach of the order because it could result in a period of full-time imprisonment.

The right is also engaged and limited by a power for a court to issue a warrant for a respondent's arrest in certain circumstances, such as breach of a DATO. If the breach is significant, a sentence of imprisonment may be ordered. If it is not significant, an accumulation of non-significant breaches could result in the imposition of a short period of incarceration. The **nature of the right** is not absolute and may be limited by grounds and in accordance with the procedures established by law. The **purpose of the limitation** imposed by the power to order that the offender must be imprisoned is essential for the DATO to be

enforced, in that sanctions are to be swift and fair. The participant will be aware that these are the conditions of having a DATO as a sentence and would have provided informed consent prior to the DATO being ordered. The **nature and extent of the limitation** is to ensure the most effective rehabilitation of the participant. The limitation is the **least restrictive possible** in that the participant is serving a suspended sentence which allows greater freedom than they would otherwise have.

Section 21 – Fair trial

The right to a fair trial includes all proceedings in a court or tribunal and all stages of proceedings. It is concerned with procedural fairness, that is, the right of all parties in proceedings to be heard and respond to any allegations and the requirement that the court be unbiased and independent. The **nature of right** may be absolute in itself, in that it can never be justified to hold an unfair trial, but many of the principles that characterise a fair trial are not absolute.⁹

The right is engaged and limited by the Bill as section 80ZM restricts any appeal rights of particular decisions, which includes a decision to make and not to make a DATO; that an offender breached the DATO; and any decision to amend the DATO. The **purpose of the limitation** is to ensure the proper functioning of the court which is of a consensual, therapeutic nature. The **nature and extent of the limitation** is to allow applications to be dealt with efficiently, noting that any right of appeal would necessitate a Court of Appeal sitting. This would significantly slow and impact on the therapeutic nature of the DATO and significantly increase the costs of making such an application. The limitation is the **least restrictive possible** to achieve the therapeutic aims of the DATO.

The right is also engaged and limited by the sections of the Bill which give the court the power to impose additional orders on offenders who have breached their DATO. The judge may make orders such as that the offender surrender a firearm in the offender's possession, or that the offender must stay at a place (such as a rehabilitation facility). The judge may also amend or cancel and resentence the offender. The **purpose of the limitation** is to ensure that high-level offenders are held accountable for any breaches of their obligations, and to allow flexible and individualised sentencing in line with the objects of the Sentencing Act. The **nature and extent of the limitation** is that a court may make a series of orders as appropriate in the circumstances, and is not limited to a set option, however it is intended that the court will make the least restrictive and onerous orders necessary in the circumstance. The limitation is the **least restrictive possible** to encourage rehabilitation of the offender and protect the community.

⁹ *Brown v Stott* (2003) 1 AC 681.

Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Bill 2019

Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Act 2019*.

Clause 2 — Commencement

This clause provides that the Act will commence on a day fixed by proclamation, or automatically 12 months after the notification day, whichever comes first.

Clause 3 — Legislation Amended

This clause lists the legislation amended by this Bill. This Bill will amend the:

- *Bail Act 1992*
- *Births, Deaths and Marriages Registration Act 1997*
- *Corrections Management Act 2007*
- *Crimes (Sentence Administration) Act 2005*
- *Crimes (Sentencing) Act 2005*
- *Supreme Court Act 1933*.

Part 2 – *Bail Act 1992*

Clause 4 — Entitlement to bail – breach of sentence obligations

New Section 8A(1)(aa)

Section 8A of the *Bail Act 1992* states that a person who is arrested or brought before the court in relation to a breach or anticipated breach of particular orders has the same entitlement to bail as they had for the offence which occasioned the order. This clause amends subsection (1) to include a treatment order obligation in the list of orders this section applies to.

Part 3 – *Births, Deaths and Marriages Registration Act 1997*

Clause 5 – Definitions – div 3.2

Section 22A, definition of *restricted person*, paragraph (a)

Division 3.2 of the *Births, Deaths and Marriages Registration Act 1997* requires certain people to apply to the relevant director-general for approval to make a change of name application. Section 22A of that defines ‘restricted person’ as including a person serving a sentence of imprisonment, a person on parole, or a person serving an Intensive Correction Order (ICO). In the ACT sentencing hierarchy, a Drug and Alcohol Treatment Order (DATO) comes below a sentence of imprisonment and above an ICO. It is appropriate that an offender sentenced to a DATO be subject to the same requirements.

The criteria that the director-general must look at are contained in section 22C(3) of this Act, and include whether the name change would be regarded as offensive by a victim of crime, or if the proposed change of name would be reasonably likely to jeopardise a person’s health or safety.

Part 4 – *Corrections Management Act 2007*

Clause 6 – When test sample *positive*

Section 133(1)

Orders such as the ICOs refer to the *Corrections Management Act 2007* for the purpose of determining whether a drug and alcohol test sample is ‘positive’. Because the provisions for the DATO are contained in the Sentencing Act, this section adds the Sentencing Act to the list of Acts under which a drug or alcohol testing direction can be given.

Clause 7 – Section 133(1)(d)

As mentioned in clause 5, section 133 sets out when a drug and alcohol test sample is taken to be ‘positive’. This clause amends section 133(1)(d) so that it will now apply to both ICOs and DATOs.

A test sample will be considered ‘positive’ under this section when the test sample shows:

- the offender has taken a drug.
- if the offender has a condition not to consume alcohol, has consumed alcohol.
- if the offender does not have a condition not to consume alcohol, has a blood alcohol concentration of the prescribed concentration or more. The prescribed concentration is 0.02g of alcohol per 100mL of blood.

Clause 8 – Section 133(5), new definition of *drug and alcohol treatment order*

This clause defines ‘drug and alcohol treatment order’ by reference to the appropriate section of the Sentencing Act.

Part 5 – *Crimes (Sentence Administration) Act 2005*

Clause 9 – New chapter 5A

This clause inserts new chapter 5A ‘Drug and alcohol treatment orders’ into the Sentence Administration Act, which deals with suspension and cancellation of a DATO, and general administrative provisions.

New part 5A.1 Preliminary

New Section 82 Application – ch 5A

This section provides that the chapter applies to an offender sentenced to a sentence of imprisonment that is suspended upon entering into a DATO.

New Section 82A Meaning of ‘drug and alcohol treatment order’ – ch 5A

This section defines ‘drug and alcohol treatment order’ by reference to the appropriate section of the Sentencing Act.

New part 5A.2 Drug and alcohol treatment orders – undertaking treatment

New Section 82B Drug and alcohol treatment order – drug and alcohol tests

Subsection (1) allows the responsible director-general to give an oral or written direction to a DATO offender requiring the offender to give a test sample. Subsection (3) defines ‘responsible director-general’ so as to allow officers delegated by either the Director-General for the Health Directorate or Justice and Community Safety Directorate to give directions to the offender.

Subsection (2) links this section to the provisions of the *Corrections Management Act 2007*, which sets out when a test given by an offender under a direction is taken to be positive.

New part 5A.3 Drug and alcohol treatment orders – effect of cancellation

New Section 82C Application – pt 5A.3

This section provides that the part applies to an offender whose DATO has been cancelled or suspended under specific provisions of the Sentencing Act.

New Section 82D Drug and alcohol treatment order – effect cancellation

This section applies when the court decides to suspend or cancel an offender’s DATO.

Subsection (3) sets out that if the offender’s DATO is suspended, then the offender must be kept in full-time detention for the period of the suspension. Because it will not be possible for

the offender to comply with some of their DATO obligations during the period of full-time detention, the offender is taken to comply with their obligations for the period of imprisonment.

Subsection (4) states that if the DATO is cancelled, the offender must be returned to full-time detention to serve the rest of their sentence, unless the court makes a different order. The Sentencing Act provisions allow for the court to make different orders based on the offender's individual circumstances.

New part 5A.4 Drug and alcohol treatment orders – reporting and records

New Section 82E *Record-keeping by director-general*

This section details the information to be recorded by the director-general. This will allow effective data capture to inform evaluation of the DATO.

New Section 82F *Authorised person may access data*

This section allows the director-general to authorise in writing access to the information kept in accordance with section 82E for the purposes of research, analysis and evaluation of the DATO sentencing option. Privacy of the offenders is maintained, as paragraph (b) provides that the director-general must not allow access to the data in a form that would allow the identity of the offender subject to the DATO to be worked out.

Clause 10 – Dictionary, new definition of *drug and alcohol treatment order*

This clause defines 'drug and alcohol treatment order' by reference to the appropriate section of the Sentencing Act.

Part 6 – *Crimes (Sentencing) Act 2005*

Clause 11 – Meaning of *offender*

Section 8, definition of *offender*, paragraph (b)

This clause amends the definition of *offender* to refer to the definition provided in section 46I of the Sentencing Act. This is because assessments for the DATO occur before the formal finding of guilt and sentencing of the offender, so a specific definition of offender is required.

Clause 12 – New section 8(2)

Following on from clause 11, this clause specifies that a 'treatment order provision' is for a Drug and Alcohol Treatment Order (section 12A), a Drug and Alcohol Treatment Assessment (part 4.2B), and Drug and Alcohol Treatment Order (part 5.4A).

Clause 13 – Suspended sentences

New section 12(7)

Section 12 contains provisions dealing with suspended sentences. While the DATO contains a sentence of imprisonment that is suspended, this clause explains that a sentence of imprisonment suspended for a DATO is not a ‘suspended sentence order’ as defined in subsection 12(2) for the purposes of the Act.

Clause 14 – New section 12A

The intention of this provision is to set out when the Supreme Court may make a DATO.

Subsections 12A(1) and (2) set out the prerequisites which must be met for the section to apply and for the court to make a DATO, suspending a sentence of imprisonment on the condition that the offender agrees to complete a treatment program.

Paragraph 12A(1)(a) sets out that the offender must have pleaded guilty to an eligible offence, because it is an important element of the order that the offender take responsibility for their actions. This is because an offender is more likely to benefit from the therapeutic treatment program if they acknowledge the behaviours, driven by the drug or alcohol dependency, which led to the offending. ‘Eligible offence’ is defined in subsection (9).

Paragraph 12A(1)(b) states that the offender needs to be sentenced by the Supreme Court to a sentence of imprisonment of at least one year but not more than four years. The effect of this paragraph is to limit the availability of the DATO firstly to indictable offences, and then further by requiring that the Supreme Court imposes a sentence of imprisonment of at least one year.

Paragraph 12A(1)(c) requires the offender not to be subject to a ‘sentencing order’ for another offence, as the DATO is a highly intensive order which requires the offender to engage with multiple agencies in order to address both the offender’s criminogenic and therapeutic risk factors. Requiring the offender to comply with multiple orders would undermine the basis for the order and would jeopardise the sentencing goals.

Paragraph 12A(2)(a) provides that the court needs to be satisfied on the balance of probabilities that the offender is dependent on alcohol or a controlled drug, and that this dependency substantially contributed to the commission of the offence. It also requires the offender to live in the Territory for the term of the sentence.

The requirement for the dependency to substantially contribute to the commission of the offence sets a minimum standard for participation in the DATO program. It means that offenders who offend while under the influence of drugs or alcohol, but who do not have a drug or alcohol dependency will not be eligible for the sentencing option. For example, an offender who drove while under the influence of alcohol, alcohol may be an influencing factor in the commission of the offence, but the offence may not have been caused by an alcohol dependency.

The requirement for the offender to live in the Territory for the term of the sentence is to allow the high-level supervision of the offender appropriate for a sentence of this kind, and to allow intensive treatment and supervision to occur. For example, offenders will be expected to undertake multiple drug tests at a predetermined location each week.

Paragraph 12A(2)(b) provides that, in considering whether the order is appropriate for the offender, the court needs to consider: the relevant sentencing considerations applying to the offender (as set out generally in the Sentencing Act, especially section 33); and the objects of the DATO. The objects of the DATO are set out in section 80O. Paragraph (b)(ii) requires that the court specifically consider any information given to the court relating to a victim's concerns about their safety or welfare.

Paragraph 12A(2)(c) requires that the offender has given informed consent to serving the sentence. It provides that an offender can give informed consent where they have been given a clear explanation of what the order entails, and have been given the opportunity to ask questions and have those questions answered. This reflects the nature of the order as one which requires voluntary commitment on the part of the offender to engage in the therapeutic process.

As with the ICO, the DATO requires an intensive effort from the offender to participate in the therapeutic program aimed at reducing the offender's drug or alcohol dependency. The offender is required to undertake urinalysis tests and attend multiple appointments each week. The DATO also relies on a high level of communication between government agencies, which the offender will need to understand and accept. It is therefore vital to the success of the DATO that the offender gives informed consent to the making of the order.

Subsection (3) states that a treatment order may be made in relation to more than one eligible offence. This is to allow for offenders subject to multiple charges to be sentenced to a DATO, without the need to create a new DATO for each offence. Subsection (4) continues that an offender must not be subject to more than one DATO at any particular time.

Subsection (5) provides that the court must not impose a lesser sentence of imprisonment on the offender than the circumstances would usually require to allow the court to make a treatment order. This is to clarify that, for an offender who is eligible to be sentenced to a DATO if they are sentenced to a period of imprisonment of between one and four years, the court should not impose a lower sentence of imprisonment than ordinary sentencing procedure would indicate with the aim of allowing the offender to participate in the DATO program.

Subsection (6) requires written notice of the sentence to be given to the offender, along with a copy of the order. Subsection (7) clarifies that non-compliance with subsection (6) does not invalidate the order.

Subsection (8) links section 12A to the part of the Sentencing Act which sets out the DATO requirements in detail.

Subsection (9) defines ‘eligible offence’ as being an offence which is not a serious violence offence or a sexual offence. A ‘serious violence offence’ is defined as meaning an offence of murder, manslaughter, or one of intentionally or recklessly inflicting grievous bodily harm. This is to reflect that the DATO is aimed at high-risk offenders. Violent offenders will still be ineligible if the court does not consider the order appropriate, or if their offending was not substantially contributed to by a drug or alcohol dependency.

Eligible offence is defined in this way to exclude offences in relation to which it would not be appropriate to make a DATO. This subsection also defines ‘sentencing order’ for the purposes of section 12A.

Clause 15 – Section 22

Section 22 lists orders where, if they are made, the court can also make a non-association or place restriction order which will also apply to the offender. This clause includes the DATO in this list.

Clause 16 – Non-association and place restriction orders – maximum period

Section 24(1)(a)(i)

Section 24 sets out the maximum length for a non-association or place restriction order. In general, the maximum order length is 12 months. This clause ensures that the DATO can be made for a period of up to 24 months. This is in line with the ICO, and is because of the high risk offender cohort the DATO is aimed at.

Clause 17 – New part 4.2B

This clause inserts new part 4.2B ‘Drug and alcohol treatment assessments’ into the Sentencing Act. As with other orders where assessment is required prior to sentencing (e.g. ICO, general pre-sentence reporting), this new part gives specified assessors the power to conduct assessments to determine whether an offender is suitable for a DATO.

New Section 46H *Meaning of ‘assessor’ – pt 4.2B*

This section defines ‘assessor’ as a public servant, or person with similar functions under the law of a State, whose functions include preparing drug and alcohol treatment assessments. This definition is in the same terms as an intensive corrections assessor which is defined under section 46A of the Sentencing Act.

New Section 46I *Application – pt 4.2B*

This section provides that new part 4.2B applies only where a person pleads guilty to, or indicates an intention to plead guilty to, an eligible offence. As the DATO has a therapeutic basis requiring the active participation of the offender, acceptance of responsibility for the offending is a preliminary requirement.

Subsection (1)(a) requires the offender to be at least 18 years old. The DATO is intended to only apply to adults.

New Section 46J *Drug and alcohol treatment assessments - order*

This section provides that, if the court is considering making a DATO for an offender, the court may order a drug and alcohol treatment assessment to be prepared and adjourn the matter pending preparation of the report. The section states that an assessment must be ordered by the court before any DATO is made.

Subsection (4) provides that if an assessment order is made, the ‘responsible director-general’ must arrange for an assessor to prepare the assessment.

Subsection (5) states that the assessment must address the matters in new section 46K.

Subsection (6) defines the responsible director-general as the health director-general and the director-general responsible for the Sentencing Act.

New Section 46K *Drug and alcohol treatment assessments – drug and alcohol treatment assessment matters*

As with the existing ICO scheme (section 46D of the Sentencing Act), matters which must be reported on are listed in column 2 of the table contained in this new section. Indicators of when the matter may lead to the offender being unsuitable for sentencing to a DATO are set out in column 3.

As the intention of the DATO as an order is to assist high risk offenders with long-term drug and alcohol dependencies, who can have multiple contributing issues relating to criminal history and mental health, indicators of unsuitability for this order are framed in terms of whether or not the offender will be able to comply with the order.

New Section 46L *Drug and alcohol treatment assessments – powers of assessors*

This section gives the assessors the powers they require to investigate matters the assessor considers appropriate, and to request the provision of relevant information from certain entities for the purpose of the assessment. This is because it is important for the court to have all relevant information before sentencing an offender to a DATO who would otherwise be sentenced to imprisonment.

Subsection (2) provides that if an assessor requests the information from an administrative unit, a territory authority, or a statutory office holder, the information must be provided promptly.

Given that some of the information required to be provided to the assessor may be protected information, subsection (3) states that if the entity provides the information honestly and with reasonable care in response to a request by an assessor, then the providing of the information is not a breach or grounds for a proceeding as listed.

Subsection (5) allows for a regulation to make provisions relating to the preparation and provision of the drug and alcohol treatment assessments.

New Section 46M *Drug and alcohol treatment assessments – provision to court*

This section, mirroring equivalent provisions for pre-sentence reports and ICOs, provides that the assessment may be given to the court either orally or in writing. While in general most reports will be written, this section allows for updates and additions to the report to be given orally to the court as required.

New Section 46N *Drug and alcohol treatment assessments – cross-examination*

This section allows the assessor who prepared the drug and alcohol assessment to be cross-examined by the prosecutor and the defence.

Subsection (2) defines ‘defence’ to include the offender if the offender is not legally represented.

Clause 18 – Application – pt 5.2

Section 64(2), definition of *excluded sentence of imprisonment*, new paragraph (aa)

Section 65 of the Sentencing Act sets out when nonparole periods must be set in relation to a sentence. A nonparole period does not have to be set for an excluded sentence. As with the ICO, because the DATO is a sentence being served in the community the court is not required to set a nonparole period for the custodial portion of the sentence. To reflect this, this clause includes the DATO in the definition of ‘excluded sentence of imprisonment’.

Clause 19 – New part 5.4A

This clause inserts new part 5.4A ‘Drug and alcohol treatment orders’ into the Sentencing Act.

New Division 5.4A.1 *Preliminary*

New Section 80M *Definitions – pt5.4A*

This section defines various terms used in conjunction with the DATO. This includes a definition of the ‘treatment order team’, which will include representatives from the Supreme Court, the Director-General responsible for the Sentencing Act, the Health Director-General, the Director of Public Prosecutions (DPP), Legal Aid ACT, ACT Policing, and any other entity that the court considers necessary to include in the team in relation to a particular DATO.

New Section 80N *Application – pt5.4A*

This section states that part 5.4A only applies if the court is considering making, or makes, a DATO for an offender.

New Section 80O *Object of drug and alcohol treatment orders*

This section sets out that the objects of the DATO include facilitating rehabilitation, reducing the offender’s dependency on alcohol or controlled drugs, and assisting with the offender’s reintegration into the community.

New Division 5.4A.2 Drug and alcohol treatment orders - general

New Section 80P Drug and alcohol treatment orders – offender obligations

This section sets out that, in order to comply with a DATO, the offender must comply with: core conditions; treatment program conditions; and any other obligation made by the court in relation to the order.

New Section 80Q Court may make ancillary orders to achieve object of treatment order

Section 80Q generally allows the court to either reward or sanction the offender based on their compliance with and participation in the DATO. This is an important element of the sentence structure, as it encourages the offender to participate fully in the treatment program and to engage positively in the supervision process.

Subsection (1) allows the court to make any order that is not inconsistent with either the Sentencing Act or the Sentence Administration Act. Any ancillary order needs to be one which the court considers appropriate to achieve the object of the treatment order.

Subsection (2) provides some of the reward and sanction orders that can be made by the court under this section. These include changes to the frequency of supervision, treatment, and drug testing, or in other ways prescribed by regulation. Sanctions and rewards will be imposed by the treatment order judge.

New Division 5.4A.3 Drug and alcohol treatment orders – eligibility and suitability

New Section 80R Application – div 5.4A.3

This section provides that Division 5.4A.3 applies if the court is considering whether to make a DATO when sentencing an offender.

New Section 80S Drug and alcohol treatment orders – eligibility

The section sets out the criteria the court must be satisfied of before making a DATO, including that a DATO would be suitable (under section 80T) and that it is appropriate for the offender to serve a suspended sentence in accordance with the DATO.

Subsection (1)(c) states that one eligibility criteria is that appropriate arrangements for the administration of a DATO are practicable. There will be a limited number of places available for offenders to be sentenced to a DATO. This mechanism is common across Australian jurisdictions with drug courts, and is due to the intensive resources required across multiple government agencies to assist an offender to address their dependency.

New Section 80T Drug and alcohol treatment orders - suitability

As with the ICO, the DATO involves a two-stage sentencing approach where first the court considers it likely that only a term of imprisonment between one and four years is appropriate for the offender, and then considers whether it would be appropriate for that sentence to be suspended upon the offender entering into a DATO. In order to ascertain this, subsection (1)

provides that the court must not make a DATO unless they have considered both any presentence report already prepared, and a drug and alcohol treatment assessment for the offender.

Subsection (2) requires the court to consider any specific recommendations contained in the assessment mentioned in subsection (1), any medical report provided to the court, and any evidence provided by a member of the treatment order team (including the assessor who prepared the drug and alcohol treatment assessment). Subsection (3) notes that this does not limit the matters that the court may consider.

Subsection (4) states that the court must consider the indicators of unsuitability mentioned in the table in section 46K that are stated in the drug and alcohol treatment assessment to apply to the offender.

Subsections (5) to (7) provide that the court can make, or decline to make, a DATO even if the drug and alcohol treatment assessment does not recommend this decision. This is to preserve the independence of the judiciary in the sentencing process. To ensure transparency of decision making, the court is required to record its reasons if the court's decision is contrary to the recommendations in the drug and alcohol treatment assessment. A failure to record the decision will not, however, invalidate the DATO.

New Division 5.4A.4 *Drug and Alcohol treatment orders – content*

New Section 80U *Content of treatment orders*

This section sets out what must be included in a DATO. The DATO consists of a custodial part, which runs the entire length of the sentence. The custodial part is then suspended, releasing the offender into the community to fulfil their obligations under the treatment and supervision part of the order.

New Division 5.4A.5 *Drug and alcohol treatment orders – custodial part*

New Section 80V *Custodial part of treatment orders*

This section clarifies what is meant in section 80U when it says that the DATO must include 'a custodial part'.

Subsection (1) states that a sentence of imprisonment of at least 1 year and not more than 4 years must be imposed, and then fully suspended by the court.

Subsection (2) states that the court must not set a nonparole period for the custodial part, even though (due to the length of the sentence of imprisonment) the court could impose one under section 65. This is because the DATO is served within the community and so a nonparole period is not required. Provisions allowing the court to set a nonparole period in the event that the custodial part of the sentence is imposed are contained elsewhere in the Bill.

Subsection (3) clarifies that the sentence of imprisonment imposed and then suspended under subsection (1) is only to be served in full-time detention if the court both: cancels the order;

and imposes the sentence of imprisonment. It is necessary to establish this as some sections under the Sentence Administration Act allow for the order to be cancelled without returning the offender to full-time imprisonment (for example, where the offender has successfully dealt with their dependence on alcohol and other drugs and graduated from the program).

However, subsection (4) states that where the offender is being returned to full-time imprisonment, the court must state when the detention starts and ends, and may set a non-parole period.

New Division 5.4A.6 *Drug and alcohol treatment orders – treatment and supervision part*

New Section 80W *Treatment and supervision part of treatment orders*

This section, as with 80V, clarifies what is meant in section 80U when it says that the DATO must include a treatment and supervision part.

Subsection (1) sets out that treatment and supervision part has two elements: core conditions and treatment program conditions. These are set out in sections 80X and 80Y respectively.

Because the offender may not need to be subject to the treatment and supervision part for the entirety of the order, subsection (2) states that the treatment and supervision part is in force from when the DATO is made till the date stated by the court, or until cancelled. Cancellation of the treatment and supervision part is not the equivalent of cancelling the DATO.

Subsection (3) clarifies that the treatment and supervision part cannot run longer than the sentence length imposed by the sentencing judge (the custodial part).

New Section 80X *Core conditions*

Section 80X(1) sets out the core conditions that apply to every DATO, dealt with in turn below:

- The offender must not commit another offence, and must tell the responsible director-general if they are charged with another offence, in Australia or elsewhere.
- The offender must report to a member of the treatment and supervision team, and receive visits from the treatment and supervision team, as directed.
- The offender must not return a positive test sample to a drug and alcohol test. Subsection (3) defines ‘positive’ for a drug or alcohol test sample by reference to the appropriate section of the *Corrections Management Act 2007*.
- The offender must tell the responsible director-general of any change in contact details as soon as possible, but in any event within one day of becoming aware of the change of contact details. Section 151A of the *Legislation Act 2001* provides that if something must be done on a particular day and that day is not a working day, the thing must be done on the next day that is a working day. For example, if an offender changes their telephone number on a Saturday, they are not able to report this on the

Sunday, which is not a working day, therefore need to report it on the Monday. If the Monday is a public holiday, they will need to report it on the Tuesday.

- The offender must not stay outside the ACT for a continuous period longer than 24 hours without permission of the court, and must comply with any conditions imposed by the court if given permission to leave the Territory.
- The offender must appear before the court as directed, and generally comply with the directions of the court.
- The offender must comply with any reasonable direction given by a member of the treatment and supervision team for the order, or a person prescribed by regulation.

Subsection (2) states that the court must not amend a core condition listed in subsection (1). That is because these are the fundamental requirements to allow the management and supervision of the offender within the community on a DATO.

Subsection (3) defines what is meant by the offender's 'contact details' for the purposes of section 80X(1)(f). It also defines 'responsible director-general' so as to allow the offender to provide the required information to, or take directions from an officer delegated by the Director-General for the Health Directorate or Justice and Community Safety Directorate.

New Section 80Y *Treatment program conditions*

This section sets out the treatment program conditions which the offender will be required to comply with while subject to a DATO.

Subsection (1) provides that the DATO offender must complete a program of treatment in relation to the alcohol or drug dependency of the offender ordered by the court, and must comply with any other condition imposed by the court necessary to achieve the treatment program purpose.

Subsection (2) sets out some of the orders that a court can impose under (1)(b). These are various conditions which can be imposed depending on the individual circumstances of the offender, and include things such as psychological and psychiatric treatment, participation in vocational/educational programs, and submitting to detoxification in a stated facility.

New Section 80Z *Good behaviour order to apply after treatment and supervision part ends*

Because the DATO consists of two parts (being the custodial part and the treatment and supervision part), there is the potential for the treatment and supervision part to end before the expiry of the custodial part. If that occurs, this section provides that the court must make a good behaviour order which will cover the remainder of the sentence. The general provisions relating to the making of a good behaviour order under the Sentencing Act, and its administration under the Sentence Administration Act will apply.

This section applies if the treatment and supervision part 'ends' while other provisions within the Bill apply to the cancellation and suspension of the treatment and supervision part.

New Division 5.4A.7 Drug and alcohol treatment orders – breaches

New Section 80ZA Breach of treatment order – other than commission of offence

This section provides that if the court is satisfied on the balance of probabilities that a DATO offender has breached a condition of their DATO, but the breach was not the commission of a further offence, the court must make one or more orders taking action on the breach. Based on the seriousness of the breach, the court can take actions ranging from a warning and no further action, or cancellation of the order and the return of the offender to full-time detention.

Subsection (3) provides that an order made by the court in response to a breach can be dealt with, if breached by the offender, in the same way as a breach of the original order.

Subsections (4) and (5) provide that the court can make the order on their own initiative or on application by: the offender; the DPP; a member of the treatment and supervision team; or a person prescribed by regulation. Written notice of the order is to be given to the offender, and to any other person the court considers should receive the notice, as soon as practicable after the order is made.

New Section 80ZB Provisional breach of treatment order – offender in custody

In order to comply with their obligations under the treatment and supervision part of a DATO, the offender must be within the community to attend appointments and participate in programs. This section applies if the offender is held in custody after being charged with further offences, and provides for the time spent in custody on remand to be counted towards the completion of the order. The court must make an order provisionally suspending the treatment and supervision part of the DATO until the offender is no longer in custody, or the court makes an order cancelling the DATO.

Subsection (4) defines ‘in custody’ to include where the offender is being detained in the ACT under the *Mental Health Act 2015*, or in another jurisdiction under a corresponding law.

New Section 80ZC Breach of treatment order – commission of offence

If an offender is convicted of a further offence punishable by a sentence of imprisonment, the offender is in breach of the DATO.

Section 80ZC(2) provides that if the sentence handed down for the new offence is not one of imprisonment, the court has the discretion to deal with the order by: taking no further action; giving the offender a warning; amending the treatment and supervision part of the DATO; cancelling the order and imposing the suspended sentence of imprisonment; or, if appropriate in the circumstances, cancelling the order and resentencing the offender.

Section 80ZC(3) and (4) provide that if the sentence handed down for the new offence is one of imprisonment, the court must cancel the DATO and impose the suspended sentence of imprisonment to be served by full-time imprisonment at a correctional centre.

Subsections (5) and (6) provide that the court can make the order on their own initiative or on application by: the offender; the DPP; a member of the treatment and supervision team; or a person prescribed by regulation. Written notice of the order is to be given to the offender, and to any other person the court considers should receive the notice, as soon as practicable after the order is made.

New Section 80ZD *Cancellation of treatment order – unsatisfactory circumstances*

Section 80ZD(1) allows for the court to cancel an offender’s DATO in specific circumstances, such as where the offender is unwilling to comply with the order, where the offender withdraws their consent to the order, or where the offender poses an unacceptable risk to the safety or welfare of any person.

Section 80ZD(2) provides that if a court cancels a DATO, the court must either impose the sentence of imprisonment that was suspended as part of the DATO, or (if the court considers it appropriate in the circumstances) resentence the offender. The new sentence cannot be a DATO.

Section 80ZD(3) states that if a court orders the imposition of a sentence of imprisonment, it must order whether the offender is to serve all or part of that sentence by full-time imprisonment. Paragraph (b) further states that the court can reduce the period the offender is to serve in custody, taking into account the extent to which the offender has complied with the order.

Subsections (4) and (6) provide that the court can make the order on their own initiative or on application by: the offender; the DPP; a member of the treatment and supervision team; or a person prescribed by regulation. Written notice of the order is to be given to the offender, and to any other person the court considers should receive the notice, as soon as practicable after the order is made.

New Section 80ZE *Cancellation of treatment order – satisfactory circumstances*

In certain circumstances, the offender may be complying with the conditions of the DATO, but it would be appropriate for the court to cancel the order because it is no longer necessary for the offender to be subject to the intensive supervision and allocation of therapeutic resources made available to DATO participants. This section allows the court to cancel an order if they are first satisfied that the offender has fully or substantially complied with the order, and that the continuation of the order is no longer necessary to achieve the objects of the order.

New Division 5.4A.8 *Drug and alcohol treatment orders – review by court*

New Section 80ZF *Application – div 5.4A.8*

This section provides that Division 5.4A.8 applies to the review of a DATO.

New Section 80ZG *Drug and alcohol treatment orders – review*

This section allows for the court to review DATOs. This is an essential element of drug and alcohol courts in other jurisdictions, as it allows the judge overseeing the proceedings to

interact with the offender. Subsection (3) allows the court to carry out a review in any way it considers appropriate.

Subsection (4) provides that the court must conduct a hearing for a review if cancelling or suspending the DATO, or resentencing the offender. This is to allow for procedural fairness in circumstances where the offender is at risk of being returned to full-time detention.

New Section 80ZH *Drug and alcohol treatment orders – notice of review*

Following on from section 80ZG, this section provides for the offender, and any lawyer representing the offender, to be given notice of a hearing for a review. Subsection (2) provides that the lack of notice does not invalidate a review.

New Division 5.4A.9 *Drug and alcohol treatment orders – miscellaneous*

New Section 80ZI *Arrest warrant – breach of treatment order obligations*

This section allows for a judge to issue a warrant if satisfied that an offender has failed to comply, or will fail to comply, with their DATO obligations. The section provides that, following arrest, the offender must be brought as soon as practicable before the court.

New Section 80ZJ *Arrest without warrant – breach of treatment order obligations*

The DATO is a high-level sentence and a last alternative to the imposition of a sentence of full-time imprisonment. In order to protect the community, this section provides police officers with the power to arrest an offender subject to a DATO if the police officer believes on reasonable grounds that the offender has failed to comply, or will fail to comply, with their DATO obligations.

In order to ensure that this power is only used as necessary, subsection (1)(b) provides that the section only applies where it is not practicable in the circumstances to obtain a warrant.

New Section 80ZK *Drug and alcohol treatment orders – outstanding warrants*

This section provides that if an offender has a warrant issued for their arrest, and they are not in custody, the time the offender is not in custody does not count towards the completion of the sentence. This reflects the seriousness of the order, being one which is used as a last alternative to the imposition of a sentence of full-time imprisonment.

Subsection (3) defines ‘in custody’ in the same terms as section 80ZB.

New Section 80ZL *Immunity from criminal liability*

One of the elements of the DATO regime is the appearance of the offender before a judge to discuss how the offender is progressing on the order. This section provides that any admissions of guilt in relation to drug offences made by the offender during assessment for or administration of the order cannot be used as evidence in a criminal proceedings against the offender. This reflects the therapeutic nature of the order, and the need for open and honest communication concerning drug or alcohol use to facilitate treatment.

New Section 80ZM *No appeal against particular decisions*

This section limits the types of decision that an offender can appeal in relation to a DATO. It does not limit the offender's existing ability to appeal against a sentence handed down or a conviction.

The reason that it is necessary to limit appeals in certain DATO decisions is rooted in the basis of the sentencing option. The theory underlying drug and alcohol courts in other jurisdictions is that the implementation of a problem-solving, non-adversarial order can assist an offender to overcome the drug or alcohol dependency which leads to their offending. The courts are generally based on theories of therapeutic justice, and work on the basis that an offender is likely to need multiple attempts at resolving their dependency before they succeed.

There will be a limited number of places available for offenders desiring to be sentenced to a DATO. This is common across Australian jurisdictions, and is due to the intensive resources required across multiple government agencies to assist an offender to overcome their dependency.

New Section 80ZN *Evidentiary certificates*

This section allows for evidentiary certificates to be used as evidence of the matters stated in the certificates.

Subsection (3) allows the Director-General to appoint 'analysts' who may sign evidentiary certificates for this part. These appointments will be notifiable instruments.

New Section 80ZO *Information exchanges – treatment order team*

An important element of the DATO is the ability for agencies to share information to ensure that the treatment order is being implemented successfully. It is anticipated that this could occur either through case conferences, or in the general course of daily treatment and supervision of the offender.

Subsection (1) provides that the section applies only to personal information about an offender which is held due to the assessment process or due to the administration of the order. This ensures that the offender's privacy is protected to the greatest possible extent while allowing for the effective operation of the DATO.

Subsection (2) explicitly allows members of the treatment order team to give information to other members of the treatment order team for the purposes of that other member.

New Section 80ZP *Review of drug and alcohol treatment order provisions*

This section creates a statutory review provision in relation to the DATO.

A review must occur after three years, with a report being tabled in the Legislative Assembly before the end of the section's fourth year of operation.

Clauses 20, 21, 22, 23 – Dictionary, new and amended definitions

These clauses insert new definitions, and amends existing definitions, associated with the DATO into the Sentencing Act definitions.

Part 7 – *Supreme Court Act 1933*

Clause 24 – Exercise of jurisdiction by associate judge

New section 9(1)(c)

Section 9 of the *Supreme Court Act 1933* provides that the associate judge can exercise any power that can be exercised by a single judge, apart from those matters listed. This section adds the jurisdiction of the court in relation to the DATO to this list, with the result that the jurisdiction of the DATO may only be exercised by a full judge of the Supreme Court.

Clause 25 – New part 2AA

This clause inserts new part 2AA ‘Drug and alcohol treatment order jurisdiction’ into the *Supreme Court Act 1933*.

New Section 37SA Definitions – pt 2AA

This section defines the terms used in the new part.

New Section 37SB Drug and alcohol treatment order jurisdiction

This section gives the Supreme Court jurisdiction to hear and decide all matters relating to a DATO made in relation to an offender.

New Section 37SC Court not bound by rules of evidence

The DATO sentencing model runs on a therapeutic, as opposed to an adversarial, system. Given this basic structure, combined with the fact that the offender has already been convicted and sentenced for the original offence, it would not be beneficial to require the treatment team and the treatment order judge to strictly adhere to the rules of evidence as would apply in adversarial matters. This section provides that the court may inform itself of anything in a manner it thinks appropriate.

New Section 37SD Treatment order judge may convene case conference

One of the key aspects of DATO sentencing option procedure is the case conference. During the case conference, the judge meets with the treatment team in the absence of the participant to determine how the participant has been progressing on the order, and what next steps need to be taken to assist the participant. A representative of Legal Aid is a member of the treatment team.

Clauses 26 – Dictionary, new definitions

These clauses insert new definitions concerning the DATO jurisdiction in the Supreme Court.