

**Speech Given at the Ceremonial Sitting on the Occasion of
the Opening of the Legal Year 2020,
the Opening of the Supreme Court Heritage Building, and
the Commencement of the Drug and Alcohol Sentencing List**

28 January 2020

Supreme Court of the Australian Capital Territory

Acting Justice Walker

I thank the Chief Justice for the opportunity of a few minutes in today's proceedings to focus attention on the brave new world of sentencing now available to the denizens of the ACT: the Drug and Alcohol Sentencing List. I acknowledge our Indigenous peoples and their elders, past and present, whose community has been so intensely affected by contact with the criminal justice system. A warm welcome to those here today.

You will note that we do not have a drug court per se. No separate court has been created – rather, a sentencing option in the *Crimes (Sentencing) Act 2005* to be heard in the Drug and Alcohol Sentencing List. Groovy new options require catchy titles – so our acronym is DASL!

In the DASL, a person may be sentenced to a DATO (a Drug and Alcohol Treatment Order). As of 3 December last year, this sentence is available to a targeted group whose substance use substantially contributed to their offending. It is by way of alternative to full-time imprisonment.

It involves close supervision in the community addressing damaging substance use and related factors such as poor mental health, homelessness, or inadequate life, parenting or employment skills. The aim is to equip the person for a more constructive lifestyle, to the benefit of the whole community.

Five things set the DATO apart from other community-based supervision orders:

1. There is dedicated funding across a range of government services, not just Corrections. Also, the court can partner with non-government organisations to support participants.
2. The judge remains involved post-sentence. There is a greater opportunity to support the participants' efforts, but also to keep them accountable.
3. The judge is part of a multi-disciplinary team, each of whom bring to bear their specialist knowledge, skills and perspectives. Prosecution and defence, corrections, health, police and the judge, plus others by invitation, assess a

persons' suitability for an order, develop an appropriate plan, monitor progress, and deal with success or breach. The combined strength of this team to exchange knowledge and ideas to know, understand and support a participant is powerful.

4. The order can be closely tailored to the participant's needs and circumstances and modified as required. Breaches can be dealt with proportionately whilst allowing the order to continue, in recognition of the reality that addressing addiction is rarely a linear process. The process can incorporate current scientific knowledge about behavioural change.
5. Finally, and importantly, the participant chooses this path. It is they who must first put up their hand to be considered for a DATO. It is they who must demonstrate a willingness and ability to comply and it is they who must consent. Once accepted onto an order, it is the participant who may choose to opt out of what is for some just too hard.

Which leads me to the why.

There is a tangible financial saving in reducing prison time. But the repercussions of breaking the cycle of incarceration are potentially far greater than savings associated with one person. The downstream effects of restoring a person to positive engagement in the community are potentially huge: they include savings in the social security and health budgets, for the individual and their families, and hence the community as a whole.

But why bother with this group? Aren't we just talking about a group of junkies, meth heads, alcos? Don't they choose to use? It is so easy to see people who use substances which cause them harm as 'the other'. Drug policy defines them, our language stigmatises them. Yet disadvantage (social, cultural, economic, emotional, or otherwise), mental health issues or plain bad luck have the potential to turn anyone, even you or me, to substance use. None of us are immune. Once out of control, this is likely to lead to criminal conduct in some form. Whether it be the child of a politician, a judge, a refugee, or one born to a family plagued by intergenerational trauma or poverty, the repercussions are the same.

So, if a person is prepared to commit to their own recovery, surely that warrants a civilised society, including its judiciary, to commit to supporting them? The DATO allows a judge, with the team's support, greater scope than the traditional sentencing process to both define and address challenges.

What will success look like? The process will be measured by our evaluation team, Lorana Bartels and Jason Payne, from the ANU. They will assess against a wide range of measures, including reduced criminal offending, better health, education,

employment and parenting outcomes. Community acceptance will be an important yardstick.

I am confident that this will be an effective program for many. As George Michael said, you gotta have faith. Perhaps more reassuringly, there is a strong evidence base for the success of over 4000 such programs in the USA and Australia, including over 30 years of the New South Wales Drug Court, on which our own Chief Justice served.

A great many people have been involved in establishing the DASL – in government, the Court and the wider community. I applaud the leadership of the Chief Justice and Justice Burns of this Court, the Attorney-General who made and delivered on his commitment, Philippa Spence and her team in JACS, Amy Faden and the DASL team and their agencies, and so many others. I am delighted that, at the invitation of the Chief Justice, three of them sit before you today (Amy Faden, Leah Robinson and Alex Honeykats). We welcome partnership with the drug and alcohol sector.

The DASL gestation was not an easy one. I have been privileged to be the midwife. The babe is now born. It will take our village to raise it.