**Suitability assessment protocol**

**Suitability assessment conditions**

Section 46J(3) of the *Sentencing Act* requires the Court to order a drug and alcohol treatment assessment before making a DATO. The order for assessment will be directed to both ACTCS and CHS on behalf of their Directors-General.

An offender may be assessed whilst in custody or on bail. However, the preference is for assessment on bail unless a proper application of the law prohibits that. The usual period for an in-custody assessment is four weeks, and six weeks for an assessment in the community.

ACTCS and CHS will each assess the offender in accordance with their practice and policies, and the requirements of Part 4.2B of the *Sentencing Act*. Each agency will prepare a separate report which will be provided to all treatment order team members and the Court at least two business days before the listed suitability assessment conference.

The Court will only impose a DATO if a highly suitable program is identified by the assessment process and is available for the offender to commence immediately. That may mean that certain lesser interventions operate to hold an offender pending access to another intervention, for example, counselling pending residential rehabilitation. However, the highly suitable program must be achievable within a reasonable time having regard to the length of the order and the expectation of phase progression detailed in the treatment program protocol. Offenders on bail may be required to attend court weekly during the suitability assessment phase.

**Assessment contents**

Each report will provide an assessment as to:

* the offender’s suitability for a treatment order from that agency’s perspective;
* a proposed treatment program addressing aspects of the offender’s rehabilitation that the agency would supervise or coordinate;
* a copy of the offender’s signed consent to participate in the program recommended by that agency.

The offender will be listed for a suitability mention and sentencing submissions (‘the sentencing proceeding’) usually no later than six weeks from the date of referral for suitability assessment. Pursuant to s12(2)(c) of the *Sentencing Act*, if the offender is to be sentenced to a DATO, the judge will address the issue of consent in Court prior to making the order.

If the offender is in custody at the time of referral for assessment, the Court may hear a bail application to determine whether the assessment will take place in custody or in the community. The Court recognises that assessment in the community allows for better assessment of suitability matters detailed in s46K of the *Sentencing Act*; in particular, assessment of the offender’s capacity and willingness to comply with directions. It will also allow earlier access to medically supervised detoxification and treatment. The Court will consider this as a relevant factor in all cases. However, if s9D of the *Bail Act 1992* (ACT) applies, a determination of suitability will not ordinarily amount to special or exceptional circumstances absent other relevant factors.

**Cross-examination of assessors**

If either party wishes to cross-examine an assessor, following consultation with the other party, the party requiring an assessor for cross-examination must notify the DASL conference co-ordinator by email two clear business days prior to the sentencing proceeding. The notification must provide details of what arrangements have been made for the assessor’s attendance, any other evidence to be relied upon and an estimate of time required to present the evidence.