# Drug and Alcohol Treatment Orders in the Magistrates’ Court

## Information for Lawyers

**Mandatory criteria for a Drug and Alcohol Treatment Order (DATO)**

* **Guilty plea** - Your client must be pleading guilty to all charges before the Drug Court[[1]](#footnote-1). Disputed charges must be resolved by summary case conferencing before referral to the Drug Court.
* **Link to drug or alcohol dependency** - The Drug Court must be satisfied on the balance of probabilities that your client is dependent on drugs or alcohol and that the dependency contributed to the commission of the offence[[2]](#footnote-2).
* **A prison sentence would otherwise be appropriate** – The offending would ordinarily attract a prison sentence not exceeding two years[[3]](#footnote-3).
* **Consent to a DATO** – Your client must agree to the making of the DATO and to comply with the treatment and supervision part of the order[[4]](#footnote-4).
* **Catchment area** – Your client’s usual place of residence (if they have one) must be within the [gazetted catchment area of a Drug Court](https://www.mcv.vic.gov.au/sites/default/files/2018-12/Drug%20Court%20catchment%20area.pdf)[[5]](#footnote-5). If your client is homeless or does not have an ordinary place of residence, they may apply to access Drug Court. A decision will be made by a magistrate in relation to eligibility and suitability based on a wide range of factors including available accommodation options and your client’s capacity and ability to access Drug Court premises.

**When a DATO cannot be made**

* For a sexual offence or an offence causing actual bodily harm unless that harm is of a minor nature[[6]](#footnote-6).
* If your client is on parole or subject to a sentence of the County or Supreme Courts[[7]](#footnote-7).

**What your client should know about** **a DATO**

* A DATO is an intensive order.
* When your client is sentenced to a DATO, their remaining custodial sentence is put on hold, to allow for treatment and supervision to take place.
* The treatment and supervision part will focus on treating your client’s drug or alcohol dependency, as well as assistance for other issues, such as: housing; employment and income stability; education and training; family and positive social relationships; physical and mental health; and general wellbeing.
* Core conditions of the DATO include[[8]](#footnote-8):
	+ Not to commit any criminal offences that are punishable by imprisonment.
	+ Attend weekly review hearings with a Drug Court Magistrate in court.
	+ Report to the Drug Court immediately upon release.
	+ Undergo intensive treatment for drug or alcohol dependency under the guidance of case managers, clinical advisors and counsellors.
	+ Accept visits from members of the Drug Court team.
	+ Tell the Drug Court team before changing address.
	+ Not to leave Victoria without permission.
	+ Obey all other lawful instructions from Drug Court.
* Depending on your client’s needs and progress on the DATO, the Drug Court Magistrate may attach other conditions to the order including[[9]](#footnote-9):
	+ Attend supervised urine screens for drug and alcohol testing, up to three times a week.
	+ Attend withdrawal, detox or other treatment facility.
	+ Attend educational, training, employment or other programs.
	+ Attend a medical, psychiatric or psychological assessment and receive treatment as directed.
	+ Not to associate with specified persons.
	+ Reside at a specific place and abide by a curfew as directed.
	+ Comply with anything else the Drug Court considers necessary or appropriate relating to the drug or alcohol dependency, or the personal factors that contributed to the criminal behaviour.
* Failing to comply with the DATO conditions can result in accruing sanctions, with the result that your client may be required to serve seven days in custody. This is designed to encourage a change in behaviour.
* Demonstrating compliance with the conditions of the DATO on the other hand, can see your client receive rewards and progress through the different phases of the order, to ultimately promote a lifestyle that moves away from drug or alcohol dependence.
* If your client re-offends or continues to demonstrate poor compliance with the DATO, they will be at risk of their order being cancelled, and some or all of their remaining custodial sentence being imposed.
* Having a DATO cancelled could be detrimental in any future sentencing, as it can be interpreted as indicating low prospects of rehabilitation. It is therefore important that your client feels ready to undertake a DATO.
* We encourage you to contact the Victoria Legal Aid (VLA) Drug Court teams to discuss client eligibility and suitability for a DATO.

**Referral process**

* Make a referral by contacting the relevant Drug Court registry. Once a screening hearing date is provided, send a [Request to access the Drug Court form](https://www.mcv.vic.gov.au/form-finder/request-access-drug-court-form) to the relevant Drug Court registry. See also information on the [Magistrates’ Court of Victoria website](https://www.mcv.vic.gov.au/about_us/drug-court).

Melbourne Drug Court

2/233 William Street, Melbourne 3000

drugcourtmelbourne@courts.vic.gov.au

Dandenong Drug Court

35 Pultney Street, Dandenong 3175

drugcourtdandenong@courts.vic.gov.au

Shepparton Drug Court

18 High Street, Shepparton 3630

drugcourtshepparton@courts.vic.gov.au

Ballarat Drug Court

100 Grenville Street South, Ballarat 3350

drugcourtballarat@courts.vic.gov.au

* Your client’s matter will be allocated a date for a screening hearing where the Drug Court Magistrate will review whether your client is eligible for a DATO. Your client must attend this hearing, either in person or via video link.
* If your client is found eligible at the screening hearing, the matter will be adjourned to a sentencing hearing and your client will be required to undergo assessments with a Drug Court clinical advisor and a Corrections case manager[[10]](#footnote-10).
* If your client is found not eligible at the screening hearing, the Drug Court Magistrate will either sentence your client, or refer the matter to the mainstream court.
* The plea takes place at the sentencing hearing and the Drug Court Magistrate considers the assessment reports. Your client must attend this hearing.
* If the Drug Court Magistrate finds your client suitable and imposes a DATO, your client becomes a Drug Court participant.
* If your client is found not suitable for a DATO, the Drug Court Magistrate will either sentence your client, or refer the matter to the mainstream court[[11]](#footnote-11).

**Grants of legal assistance**

* The fees for the screening and sentencing hearings are payable under a standard summary grant of legal assistance in [Table A of the VLA Handbook](https://handbook.vla.vic.gov.au/handbook/24-payments-to-lawyers-and-service-providers/costs-payable-in-criminal-law-matters/fee-schedule-1-lump-sum-and-other-fees-payable-in-criminal-law-matters/table):
	+ Screening hearing – Drug Court mention fee
	+ Sentencing hearing – Daily appearance fee.
* Once your client is placed on a DATO, the VLA Drug Court team will assist them on their Order.

**Queries**

* The VLA Drug Court teams are happy to answer any questions about client eligibility and suitability for a DATO and are available to appear in screening and sentencing hearings.
* You can contact the VLA Drug Court teams at:

Melbourne team - MelbourneVLADrugCourt@vla.vic.gov.au

Dandenong team - DandenongVLADrugCourt@vla.vic.gov.au

Shepparton team – SheppartonVLADrugCourt@vla.vic.gov.au

Ballarat team – BallaratVLADrugCourt@vla.vic.gov.au.

1. Section 18Z(1)(a) *Sentencing Act 1991* [↑](#footnote-ref-1)
2. Section 18Z(1)(c) *Sentencing Act 1991* [↑](#footnote-ref-2)
3. Section 18Z(1)(d) *Sentencing Act 1991* [↑](#footnote-ref-3)
4. Section 18Z(3)(b) *Sentencing Act 1991* [↑](#footnote-ref-4)
5. Section 4B(1)(b) *Magistrates’ Court Act 1989* [↑](#footnote-ref-5)
6. Section 18Z(1)(a) *Sentencing Act 1991* [↑](#footnote-ref-6)
7. Section 18Z(2)(a) and (c) *Sentencing Act 1991*  [↑](#footnote-ref-7)
8. Section 18ZF *Sentencing Act 1991* [↑](#footnote-ref-8)
9. Section 18ZG *Sentencing Act 1991*  [↑](#footnote-ref-9)
10. Section 18ZQ *Sentencing Act 1991* [↑](#footnote-ref-10)
11. Section 18ZB *Sentencing Act 1991* [↑](#footnote-ref-11)