

COMMUNITY LEGAL CENTRES TASMANIA

5 June 2017

Sentencing Advisory Council
GPO Box 825
Hobart TAS 7001

via email: sac@justice.tas.gov.au

To the Sentencing Advisory Council,
Re: *Mandatory Treatment for Alcohol and Drug Affected Offenders Research Paper*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Mandatory Treatment for Alcohol and Drug Affected Offenders Research Paper*.¹

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We do not support the introduction of mandatory alcohol and other drug treatment for adult offenders in prison and in the community. In our opinion, there is sufficient legal coercion placed on offenders to engage with alcohol and other drug treatment without the need for the treatment to be mandatory. We also believe that with demand for treatment programs greater than the level of supply, mandatory treatment is an inefficient allocation of resources.

Already significant legal coercion

When considering a prisoner's eligibility for parole, the Parole Board is required to consider a range of factors including the protection of the public, the chance of the prisoner re-offending, the rehabilitation of the prisoner, the likelihood of compliance with parole conditions, the behavior of the prisoner during their imprisonment and any reports tendered to the Board on the prisoner.² All of these factors are addressed in the offender's participation in alcohol and/or other drug

¹ We confirm that this is a public submission. We therefore have no objection to the Sentencing Advisory Council making reference to our submission in relevant publications.

² Section 72(4)(a)-(l) of the *Corrections Act 1997* (Tas).

treatment. In other words, there is already significant legal coercion on prisoners to undertake rehabilitation in prison, as parole will not be granted without the prisoner demonstrating that they have completed treatment or shown significant improvement in their rehabilitation.

Best use of limited resources

We strongly believe that all offenders who require alcohol and/or other drug treatment should have access to this treatment within prison and in the community. Treatment has the potential to reduce recidivism and address a range of health risks associated with problematic drug use including hepatitis C, mental health issues and overdose.³

We commend the State Government's recent legislative amendment to allow the Supreme Court to make drug treatment orders but remain concerned that the eligibility criteria remains too narrowly defined. For example, section 27B(1)(a)(ii) of the *Sentencing Act 1997* (Tas) provides that a drug treatment order cannot be made for offences 'involving the infliction of actual bodily harm that, in the court's opinion, was not minor harm'. The effect of this provision is that many offenders who would otherwise be eligible are deemed ineligible. Additionally, drug treatment orders are not available for alcohol or pharmaceutical drug misuse.⁴ A final concern is the Supreme Court's recent finding that it "would, in most circumstances, be inappropriate to make a drug treatment order if the custodial component will exceed two years".⁵

It is also clear that current levels of government funding for offenders in need of alcohol and/or other drug treatment in the community and in prison remain inadequate. According to Government data, there is more demand for treatment programs in Risdon Prison than there are places available.⁶ And in the community the Court Mandated Diversion program has long been recognised as operating at capacity with Government data demonstrating that the program is currently at its limit.⁷

³ Stuart Kinner, *The Post-release Experience of Prisoners in Queensland* (Trends and Issues in Crime and Criminal Justice No. 325, 2006) at 2.

⁴ Section 27B(1)(b)(i) of the *Sentencing Act 1997* (Tas) provides that the court may only make a drug treatment order if 'satisfied on the balance of probabilities that the offender has a demonstrable history of *illicit* drug use' [emphasis added].

⁵ *Tasmania v Joseph* [2017] TASSC 23 at para. 34.

⁶ Information provided by Erin Hunn, Program Facilitator with the Department of Premier and Cabinet to the Sentencing Advisory Council notes 'that 43 offenders who have been assessed as in need of treatment who are currently on the waiting list for programs [and] 19 prisoners currently on the waiting list for the Alcohol and Drug Treatment Unit who have not been assessed by an AOD Counsellor and 5 prisoners who are currently on the waiting list who have been assessed by an AOD Counsellor'. As found at Sentencing Advisory Council, *Mandatory Treatment for Alcohol and Drug Affected Offenders* (Draft Research Paper No. 2) at 25.

⁷ Information provided by Tristan Bell, Senior Practice and Policy Officer with the Department of Justice to the Sentencing Advisory Council notes 'that as of 30 September 2016, there were 67 offenders participating in the CMD Program and 23 offenders at the assessment stage'. Importantly, the program is capped at 80 participants which includes both offenders on a DTO and those being assessed for suitability. As found at Sentencing Advisory Council, *Mandatory Treatment for Alcohol and Drug Affected Offenders* (Draft Research Paper No. 2) at 28.

We strongly recommend that appropriate levels of treatment be provided at Risdon prison that will meet demand. That is, any prisoner who demonstrates a history of problematic drug use and is committed to treatment receives the treatment they need.

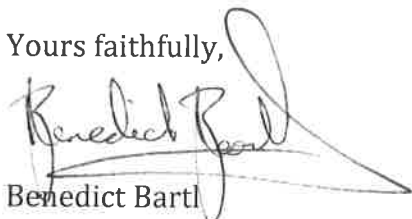
We also recommend that the eligibility criteria for a drug treatment order in the community should be broadened. As well as allowing offenders who have inflicted bodily harm that is more than minor harm,⁸ and offenders who have a licit drug problem to be eligible for a drug treatment order, we also believe that eligibility should extend to offenders sentenced to custodial sentences of more than two years.

For offenders sentenced to imprisonment of more than two years, the drug treatment order should be able to be served in the community in the final two years of their sentence. And in circumstances where the offender is committed to treatment but in the court's view must serve a short prison sentence we believe that the drug treatment order should be able to be partly served in prison and upon their release, in the community. With research demonstrating that shorter sentences are associated with a higher risk of reoffending,⁹ it is important that offenders are given every opportunity both pre- and post-release to engage in treatment.

In summary, the introduction of mandatory alcohol and other drug treatment for adult offenders in prison and in the community is unnecessary with resourcing currently inadequate for offenders who want to voluntarily access treatment. Nevertheless, we believe that there are a number of reforms that should be introduced including the provision of treatment to all offenders committed to treatment, broadening the eligibility for offenders wanting to access drug treatment orders and ensuring that continuous treatment is available both pre- and post-release.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer
Community Legal Centres Tasmania

⁸ We recommend adoption of the NSW model which provides that offenders are eligible for a drug treatment order if convicted of an offence other than murder, manslaughter and attempted murder: section 5A of the *Drug Court Act 1998* (NSW). We also recommend eligibility be broadened to include alcohol and pharmaceutical drug misuse.

⁹ Robin Fitzgerald, Adrian Cherney and Lachlan Heybroek, *Recidivism Among Prisoners: Who Comes Back?* (Trends and Issues in Crime and Criminal Justice No. 530, Australian Institute of Criminology, 2016) at 8.