

COMMUNITY LEGAL CENTRES TASMANIA

25 August 2017

Responding to the Problem of Recidivist Drink Drivers Issues Paper
Tasmanian Law Reform Institute
Private Bag 89
HOBART TAS 7001
attn: Rebecca Bradfield

via email: law.reform@utas.edu.au

Dear Rebecca,

Re: Responding to the Problem of Recidivist Drink Drivers Issue Paper

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the Tasmanian Law Reform Institute's *Responding to the Problem of Recidivist Drink Drivers Issues 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 strongly support the introduction of a specialist driving whilst intoxicated/under the influence (DWI) court list. We recommend the adoption of a hybrid model that provides the courts with flexibility and we support the broadening of court mandated diversion to include alcohol.

Recidivist Drink Drivers and the limitations of Tasmanian Sentencing

It is incontrovertible that community attitudes towards drink driving have changed. Random breath tests, the lowering of the legal limit of permitted alcohol concentration in the blood, more severe penalties, television advertisements and other education campaigns have all contributed to the lowering of death and injury as a result of drink driving. Nevertheless, despite increased education and more

¹ CLC Tas would like to acknowledge Elizabeth Reed who assisted in the preparation of this response.

punitive law enforcement measures, the statistics still point to drink driving being identified as a factor in one-quarter of all crashes resulting in death.²

As well, research carried out by the Tasmanian Law Reform Institute and the Tasmanian Institute of Law Enforcement Studies of offenders sentenced to custodial sentences in the period 2008-09 to 2013-14 found that nearly 85 per cent of offenders had a history of alcohol abuse, almost 75 per cent had a history of problematic drug use and more than 75 per cent were identified as having mental health issues.³

Importantly, there is a small number of recidivist drink drivers ultimately sentenced to imprisonment, with the former Chief Magistrate Michael Hill noting that 88.8 per cent of drink drivers in prison had previously served a custodial sentence for a drink driving offence.⁴

The case for a specialist DWI Court List

The high incidence of recidivism, alcohol and other drug abuse and mental illness all point to the need for a more targeted response 'tailored to the individual needs of each offender in terms of their offending behavior, severity of alcohol abuse problems and psychiatric condition'.⁵ We therefore strongly support the introduction of a specialist driving whilst intoxicated/under the influence (DWI) court list.

Our recognition of the need for a DWI court list is validated in the acknowledgement that the overwhelming majority of recidivist drink drivers sentenced to actual imprisonment (rather than having any portion suspended) receive sentences of less than six months, a term of imprisonment that excludes them from custodial rehabilitation programs.

In implementing a DWI court list we recommend the adoption of a hybrid model with the flexibility to either defer proceedings or to impose court mandated diversion and/or impose a community corrections order with judicial monitoring and treatment conditions.

Ideally, we would like to see the imposition of deferred sentences for recidivist drink driver offenders in need of attitudinal change. Completion of the Sober Driver program or similar program could be a condition of the sentence, with its focus on

² E Richardson, 'A Driving While Intoxicated/Suspended Court List for Victoria' (Australian Centre for Justice Innovation, Monash University, Background Paper, 2013) at 5.

³ As found in Tasmanian Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers* (Issues Paper No 23) at 12. These statistics are similar to those found in other studies. For example, research conducted in Western Australia found that 90 per cent had a defined alcohol-related disorder: S Lenton, J Fetherston and R Cercarelli, 'Recidivist Drink Drivers' Self-Reported Reasons for Driving Whilst Unlicensed – A Qualitative Analysis' (2010) 42 *Accident Analysis and Prevention* 637 at 639.

⁴ M Hill, 'Driving While Intoxicated (DWI) Courts: A Vital Part in the Battle to End Recidivist Drink Driving' (Paper presented at Alcohol, Tobacco and other Drugs Council of Tasmania (ATDC) Conference Vision and Values – Setting the Scene for the Future, Hobart, 7–8 May 2014).

⁵ E Richardson, 'A Driving While Intoxicated/Suspended Court List for Victoria' (Australian Centre for Justice Innovation, Monash University, Background Paper, 2013) at 7.

issues associated with drink driving, including the consequences of drink driving, the effects of alcohol on driving, managing drinking situations, alternatives to drink driving and relapse prevention and stress management.

At the same time court mandated diversion should also be a sentencing option, particularly for offenders who abuse alcohol or have a recognised alcohol addiction.⁶ The advantage of court mandated diversion is that there is judicial oversight over the course of the order and the court has the ability to vary the order based on the offender's progress, including adding or removing program conditions, varying conditions to adjust the frequency of treatment, the degree of supervision and the type or frequency of vocational, educational, employment or other programs that the offender must attend.⁷ Additionally, if community correction orders are added to the suite of sentencing options available to the courts under the *Sentencing Act 1997* (Tas) we would also support the ability of the courts to impose a community corrections order with judicial monitoring and treatment conditions.

The advantage of both court mandated diversion and the proposed community corrections order is that both of these sentences provide the court with judicial supervision and the ability 'to interact with the participants, engage them in their treatment plan, set goals for their recovery, listen to them and to encourage or motivate [them] to comply with the order'.⁸

In our opinion, providing the courts with the flexibility of imposing either a deferred sentence, court mandated diversion or a community corrections order is that the important sentencing principle of proportionality is assured. Offenders with an alcohol or poly-drug addiction and/or mental health issues may require at least two years of court mandated diversion or a community corrections order to appropriately address the cause of their offending whereas someone who is simply acting thoughtlessly or irresponsibly in repeatedly drink driving may simply require a short nine-week education course. However, if there is only one model, we recommend the adoption of a post-sentence model in which court mandated diversion and a community corrections order with conditions –such as participation in the Sober Driver program- are sentencing options.

Expansion of CMD to include alcohol

We strongly support the expansion of court mandated diversion to include alcohol. Although it is conceded that this reform will mean that offenders with a recognised alcohol problem -but sentenced for crimes other than drink driving- will also be eligible, we see no good policy reason why there should be a restriction on the types of offenders eligible for the order.

⁶ Court mandated diversion may also be appropriate for persons with mental health issues and poly drug addictions.

⁷ Section 27] of the *Sentencing Act 1997* (Tas).

⁸ E Richardson, 'A Driving While Intoxicated/Suspended Court List for Victoria' (Australian Centre for Justice Innovation, Monash University, Background Paper, 2013) at 21.

Amendment to the Road Safety (Alcohol and Drugs) Act 1970 (Tas)

We also note -as the TLRI has pointed out- that if community service orders are available to the courts as a sentencing option that the *Road Safety (Alcohol and Drugs) Act 1970 (Tas)* will have to be amended so that it can be imposed as an alternative to a fine and/or imprisonment.⁹

Offence qualifiers

Consistent with the findings in our recently released report *The Case for Health Focused Response to Drug Use in Tasmania's Legal System* we strongly believe that all drug use should be treated as a health issue and not as a criminal justice issue.¹⁰ As a result, as long as the recidivist drink driver recognizes that they have a drinking problem and want to access treatment¹¹ we see no reason why there should be any further eligibility restrictions imposed on them.

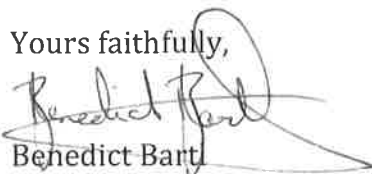
DWI Court Lists and other drugs

Finally, we strongly recommend that a driving whilst intoxicated/under the influence court list expressly provides that offenders charged with both alcohol and other drug driving are eligible. This is particularly important given that the *Road Safety (Alcohol and Drugs) Act 1970 (Tas)* imposes sanctions for both types of offending and because some offenders will have a history of poly-drug abuse.

In summary, we strongly support the introduction of a DWI court list with judicial flexibility to impose a sentence tailored to the individual needs of each offender.

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

Yours faithfully,



Benedict Bart
Policy Officer

Community Legal Centres Tasmania

⁹ See Tasmanian Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers* (Issues Paper No 23) at 58.

¹⁰ Community Legal Centres Tasmania, *The Case for a Health Focused Response to Drug Use in Tasmania's Legal System* (July 2017). The report is available at <http://www.clctas.org.au/2017/07/drug-law-reform-report/> (Accessed 24 August 2017).

¹¹ Alternatively, a diagnosis of alcohol or poly-drug addiction from a suitably qualified professional and the offender voluntarily agrees to treatment.