

COMMUNITY LEGAL CENTRES TASMANIA

10 September 2021

Inquiry Secretary
Legislative Council Select Committee
Parliament House
Hobart TAS 7000
attn: Tim Mills

via email: rst@parliament.tas.gov.au

Dear Secretary,

Re: Inquiry into Road Safety in Tasmania

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to respond to the Legislative Council's *Inquiry into Road Safety in Tasmania*.¹ Our response focuses on recidivist drink and drug drivers and why addressing the causes of the offending will improve road safety. We also call for a review of our drug driving laws and in particular the effects of both illicit and pharmaceutical drugs on driving impairment.

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.

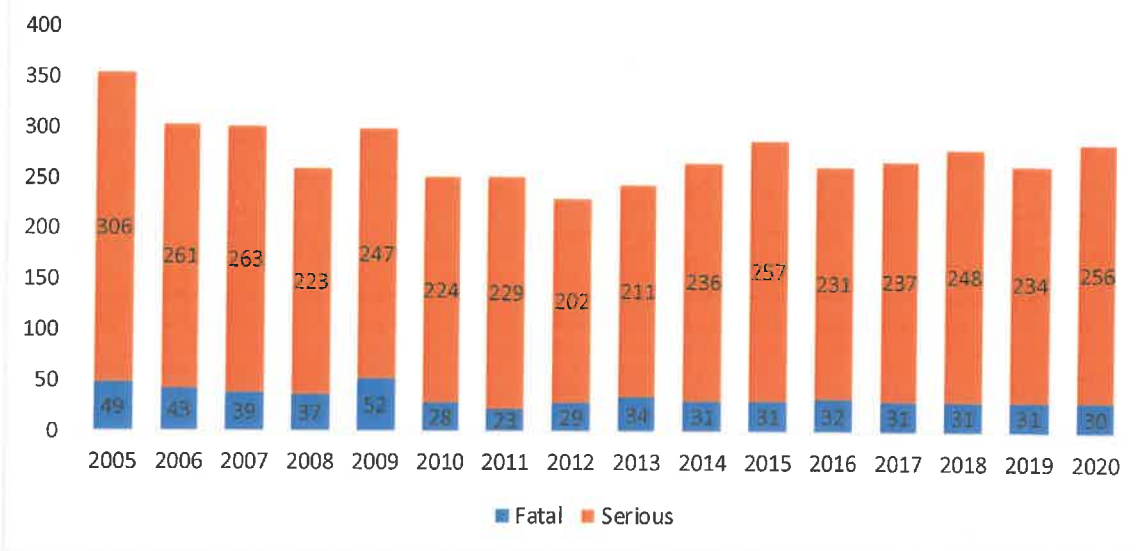
Over the last few decades there has been a downward trend in road fatalities and crashes resulting in serious injury across Australia. This trend has been attributed to "law enforcement measures such as random breath testing, lowering the legal limit of alcohol concentration in the blood, the compulsory wearing of seat belts, and the installation of speed cameras, as well as safer cars and better roads".² Nevertheless, more can be done with Tasmania having a higher proportion of fatalities than any other Australian jurisdiction except Western Australia and the Northern Territory.³ As the following graph highlights, there are around 34 fatalities and more than 241 crashes result in serious injury on Tasmanian roads each year:

¹ CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our enquiries.

² Kate Warner, 'Sentencing Review 2012–2013' (2013) 37 *Criminal Law Journal* 390 at 397.

³ Australian Government, Department of Infrastructure, *International Road Safety Comparisons 2018*, Table 1.1. As found at https://www.bitre.gov.au/sites/default/files/documents/international_2018.pdf (Accessed 10 September 2021).

Death and Serious Injury on Tasmanian Roads 2005-2020



Source: Crash Data, Department of State Growth

Drink and Drug Driving as Contributory Factors

More than 1500 Tasmanians are sentenced each year for drink and drug driving.⁴ The high number of offenders is worrying given that alcohol and other drugs -both illicit and pharmaceutical- remain one of the primary causes of road fatalities and crashes resulting in serious injury in Australia.⁵ For example, recently released data from South Australia reports that “34 per cent of drivers and motorcycle riders killed tested positive to either drugs or alcohol or a combination of both for the five year period 2015-2019”.⁶ This corroborates earlier research which identifies alcohol impaired driving as “the leading contributing factor in around 30 per cent of fatal crashes in Australia”.⁷ In Tasmania, the likely presence of alcohol and drugs was listed as a contributory factor in around 28.5 per cent of all crashes:⁸

⁴ Our data relates only to cases where a single sentence was imposed for the charge. The data excludes cases where a global sentence was imposed (a single sentence for several charges) as well as offenders sentenced under the *Youth Justice Act 1997* (Tas), Supreme Court cases and breaches of court orders or applications.

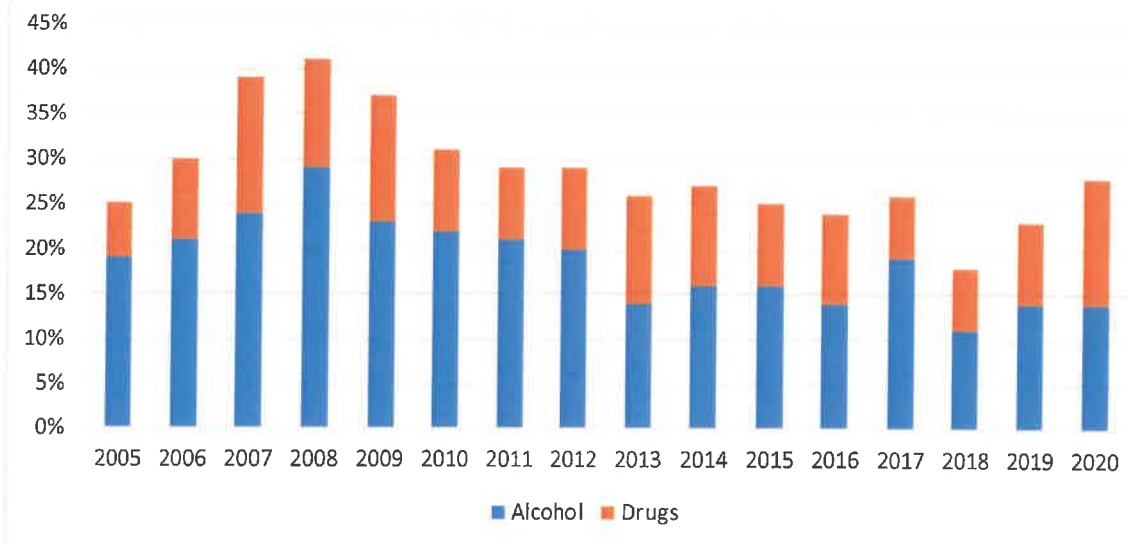
⁵ Australian Transport Council, *National Road Safety Strategy 2011-2020* at 87-88. As found at <https://www.roadsafety.gov.au/nrss> (Accessed 10 September 2021).

⁶ Government of South Australia, Department for Infrastructure and Transport, *Alcohol and Drugs in Road Crashes in South Australia* (December 2020). As found at https://dpti.sa.gov.au/data/assets/pdf_file/0006/247308/Alcohol_and_Drugs_-_Road_Crash_Fact_Sheet.pdf (Accessed 10 September 2021).

⁷ Lisa Wundersitz and Simon Raftery, ‘Understanding the context of alcohol impaired driving for fatal crash-involved drivers: A descriptive case analysis’ (2017) 18(8) *Traffic Injury Prevention* 781.

⁸ This figure may be higher given there were around 250 ‘undetermined’ crashes between 2005-2020 (around 6 per cent) which may have involved alcohol and/or drugs. As well, the Coroner provides toxicology laboratory results to the crash data unit of the Department of State Growth only after the coronial process is complete, which can sometimes take years, meaning that the data may be updated at a later date: Emails received from Simon Buddle, the Manager of Crash Data with Department of State Growth on 11 August and 30 August 2021.

Likely presence of Alcohol and Drugs as a contributory factor in fatal and serious injury crashes 2005-2020



Source: Crash Data, Department of State Growth

With the research demonstrating that around one in three fatal crashes is attributable to alcohol and/or other drugs, this equates to around 10 Tasmanians losing their lives and 80 suffering serious injuries in Tasmania each year because of drink and drug driving.

Sentencing Drink and Drug Drivers

Section 7 of the *Sentencing Act 1997* (Tas) provides that drink and drug drivers may be sentenced to a range of different sentences including a fine, community service order or a probation order. For more serious offences, the court may impose imprisonment or imprisonment that is either partly or fully suspended. A partly suspended sentence means that the offender is in prison for a specified period of time before being released into the community whilst a fully suspended sentence means that the entire prison sentence is not activated and the offender is immediately released into the community.⁹

Drink and Drug Driving Sentencing Statistics

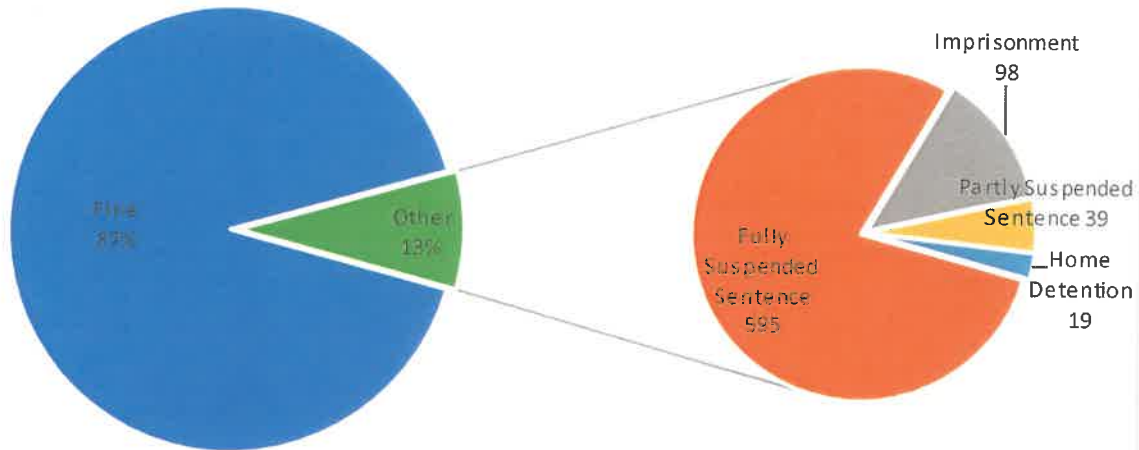
The Sentencing Advisory Council's sentencing database (SAC Stats) makes sentencing data for the Magistrates Court of Tasmania available online.¹⁰ The data demonstrates that between 1 July 2015 - 16 April 2021 there were 9135 drink- and drug-drivers sentenced in the Magistrates Court, around 1500 each year.¹¹ Of these offenders, 8031 (87 per cent) were sentenced to a fine.

⁹ In addition, under section 8 of the *Sentencing Act 1997* (Tas), the court has the power to combine a number of sentencing orders, including a term of imprisonment, a community service order, a probation order (if a conviction is recorded) and a fine with a driving disqualification order.

¹⁰ Sentencing Advisory Council, *Sentencing statistics*. As found at <https://www.sentencingcouncil.tas.gov.au/statistics/magistratescourt> (Accessed 10 September 2021).

¹¹ The data relates only to cases where a single sentence was imposed for the charge. The data excludes cases where a global sentence was imposed (a single sentence for several charges) as well as offenders sentenced under the *Youth Justice Act 1997* (Tas), Supreme Court cases and breaches of court orders or applications.

Drink- and Drug-Driving Sentences 2015-2021



Of more interest are the 751 persons who were sentenced to either imprisonment, a suspended sentence or home detention as it signifies a history of drink or drug driving warranting a more severe sentence. Of these offenders a fully suspended sentence is the most common sentence (79 per cent) followed by imprisonment (13 per cent), a partly suspended sentence (5 per cent) and home detention (3 per cent).

Of the 98 offenders sentenced to imprisonment between 2015-2021, it is likely that most were previously sentenced to custodial sentences including partly or fully suspended sentences and imprisonment. A review of Magistrates Court data from 2007/08 to 2012/13 for example found that more than four in five offenders drink drivers in prison (88.8 per cent) had previously served a custodial sentence for drink driving.¹² This data is corroborated in more recent Magistrates Court research which found that 61 per cent of recidivist drink drivers sentenced to a custodial sentence had previously received a fully suspended sentence for a drink driving offence, 21 per cent had previously received a partly suspended sentence and 16 per cent had received a fixed term of imprisonment.¹³

Whilst the courts have traditionally observed that “imprisonment can have a most salutary effect [by providing a] shock [that] may prompt him to revise his lifestyle and abstain from drink driving”¹⁴ this view should be questioned on the basis that the imprisonment imposed is unlikely to be long enough to allow the offender to undertake any rehabilitation and as a result the underlying cause of their offending is not addressed.

¹² Tasmania Law Reform Institute, Responding to the Problem of Recidivist Drink Drivers (Final Report No. 24: March 2018) at 22.

¹³ Tasmania Law Reform Institute, Responding to the Problem of Recidivist Drink Drivers (Final Report No. 24: March 2018) at 23.

¹⁴ *Jarvis v Brown and McDonald* [1998] TASSC 120 per Evans J.

According to the Sentencing Advisory Council's sentencing database, more than 70 per cent of the 98 persons sentenced to imprisonment for drink or drug driving between 2015-2021 were sentenced to imprisonment of less than three months (n = 70) and; 20 per cent were sentenced to imprisonment of between three-six months (n = 20). Only three per cent of drink or drug driving offenders were sentenced to between 6-12 months' imprisonment (n = 3) and 5 per cent were sentenced to more than 12 months' imprisonment (n = 5).

Should we sentence drink and drug drivers more harshly?

Despite harsher penalties for drink driving having been introduced in many jurisdictions, the research points to its limitations. In New South Wales for example, maximum penalties were doubled in 1998 for both first offences and subsequent drink-driving offences. The harsher penalties included doubling the maximum jail time, doubling the maximum licence disqualification periods and the maximum monetary fines for all drink-driving offences. In *The Impact of Increased Drink-Driving Penalties on Recidivism Rates in NSW* the author reviewed the harsher laws, finding that doubling the penalties had no impact on the recidivism rates of drivers in the Sydney metropolitan area and only a three per cent reduction in re-offending in regional NSW.¹⁵

In another study, the authors reviewed more than 12,000 drink-driving offenders and despite substantial variation in the fines imposed by magistrates on drink-drivers, the authors concluded that "higher fines are not a specific deterrent to drink-driving". In other words, harsher monetary penalties "have little or no bearing on the risk of reoffending among drink drivers".¹⁶

Finally, in its report *Responding to the Problem of Recidivist Drivers* the Tasmania Law Reform Institute also reviewed the literature concluding that the "research has generally shown that increasing the severity of traditional sentencing options has little or no impact on drink driving rates or recidivism rates for drink driving".¹⁷

In Tasmania, our harshest sentence is imprisonment. But, of those drink and drug drivers who are imprisoned, more than 90 per cent are released within six months. Even if we doubled the sentence the offender would still be released within a year. In short, harsher sentencing is pointless if it does not address the underlying cause of the offending.

Rehabilitation programs for drink and drug drivers in Tasmania

The Tasmanian Government offers three rehabilitation programs to drink and drug driver offenders, the community-based Sober Driver program, EQUIPS Addictions which is available in both the community and in prison and the Apsley Alcohol and Drug Treatment Unit which is only available in prison.

¹⁵ Suzanne Briscoe, *The Impact of Increased Drink-Driving Penalties on Recidivism Rates in NSW* (2004) 5 *Alcohol Studies Bulletin* 1 at 8.

¹⁶ Don Weatherburn and Steve Moffatt, *The Specific Deterrent Effect of Higher Fines on Drink-driving Offenders* (2011) 51 *British Journal of Criminology* 789 at 799.

¹⁷ Tasmania Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers* (Final Report No. 24: March 2018) at 26.

- **Sober Driving program**

In 2008 the Sober Driver program was introduced for recidivist drink-drivers in Tasmania. In most cases, Magistrates will order offender participation in the program as a condition of a suspended sentence, or as part of a probation order or community service order.¹⁸ Up to 20 people participate in each program which generally runs as an up to six-hour group session, once a week for three weeks. The program is an educational and skill-based group program focused on:¹⁹

- Consequences of drink driving on yourself and others;
- Demands of safe driving;
- Effect of alcohol and individual drink driving situations;
- Management of drinking and driving situations;
- Avoidance of relapse;
- Completion of a 4-week drinking diary; and
- Completion of a step-by-step program workbook (which contains information sheets relating to safe drinking levels).

Eligibility requirements include that the offender must be over 18 years of age; have been convicted of two or more drink driving offences within a 5-year period and; ensure sufficient time in their sentence to complete the program. Suitability is assessed on the basis of a number of factors including employment, available transport to attend sessions, mental health issues and literacy.

Failure to attend or actively participate in the program is a breach that may result in the offender being returned to court where the Magistrate may reconsider the sentence imposed. Completion rates remain high as the following table below demonstrates:²⁰

Sober Driving Program

	2011/2012	2012/2013	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Commenced	89	171	174	237	183	151	109	115
Completed	79	143	136	199	159	128	84	91
Completion Rate	88%	83%	78%	84%	87%	85%	77%	79%

There has not been a Tasmanian evaluation of the Sober Driver program but in New South Wales a review found that it “has been shown to reduce the rate of recidivism in those who have participated compared to a comparison group who did not participate in the

¹⁸ Sections 24(2), 28(g) and 37(2)(a) of the *Sentencing Act 1997* (Tas).

¹⁹ Department of Justice, *Sober Driver Program*. As found at <https://www.justice.tas.gov.au/communitycorrections/programs/soberdriving> (Accessed 10 September 2021). Persons who live in remote/rural areas and have limited access to transport or can participate in a condensed program as can persons whose employment would be significantly impacted. For these participants the group sessions are five hours once a week for three weeks.

²⁰ Department of Justice, *Annual Report 2018/19*, Table 5.11.

program”.²¹ Similarly, a review in Queensland found that offenders were 15 per cent less likely to re-offend in the two years following completion of the course.²²

Although there is no targeted drink or drug driving program within the Tasmanian Prison Service there are several programs offered to inmates whose use of alcohol and/or drugs contributed to their offending behaviour.

- **EQUIPS Addiction**

EQUIPS Addiction commenced in 2017 and is available both through Community Corrections and the Tasmanian Prison Service. The program runs over 10 weeks with up to 12 participants who within the last twelve months have been “assessed as having a high level of drug or alcohol abuse”.²³ Participants are encouraged to “share their experiences with each other and to develop future focused plans and strategies to address their addictive behaviour”.²⁴

- **Apsley Alcohol and Drug Treatment Unit**

The Apsley Alcohol and Drug Treatment Unit (‘Apsley’) was opened in 2015. It is a twelve-week ten-bed facility located within maximum security and is focused on offenders “who have struggled with drug abuse for a long time”.²⁵ Apsley is only available to male prisoners and there is no like program available for women prisoners.²⁶ In its most recent annual report the Custodial Commissioner notes that there has been a “discontinuation of the male prisoners alcohol and treatment program which previously operated in the Apsley unit”.²⁷ This has been confirmed by the Attorney-General who conceded in June 2021 that “the alcohol and drug therapeutic program known as Apsley was suspended in February 2020”.²⁸

In summary, the Tasmanian Government provides one education program (the Sober Driving program) for persons subject to a community corrections order. It is limited to drink driving and treats all offenders the same. Education about alcohol and its effects on driving is beneficial for some offenders. However, the program is ill-equipped to assist persons for whom alcohol dependence is a significant problem. In other words, the focus of the Sober Driving program is on *education* and does not provide *treatment* for alcohol dependence. EQUIPS Addiction is available to drink drivers through Community

²¹ Evalynn Mazurski, Daya Withaneachi and Scott Kelly, *The NSW Sober Driver Program: Recidivism Rates and Program and Parameters* (2012) at 9. As found at <https://acrs.org.au/article/the-nsw-sober-driver-program-recidivism-rates-and-program-parameters/> (Accessed 10 September 2021).

²² Gavan Palk and Mary Sheehan, ‘Review of the Under the Limit Drink Driving Rehabilitation Program (Centre for Accident Research & Road Safety, 2006) at 55. As found at <https://eprints.qut.edu.au/41648/> (Accessed 10 September 2021).

²³ Community Corrections, *EQUIPS programs*. As found at https://www.justice.tas.gov.au/communitycorrections/programs/Getting_SMART (Accessed 10 September 2021).

²⁴ Custodial Inspector of Tasmania, *Inspection of Adult Custodial Services in Tasmania 2017 - Care and Wellbeing Inspection Report* (October 2018) at 101.

²⁵ Sentencing Advisory Council, *Mandatory Treatment for Alcohol and Drug Affected Offenders* (Draft Research Paper No. 2).

²⁶ Custodial Inspector of Tasmania, *Inspection of Adult Custodial Services in Tasmania 2017 - Care and Wellbeing Inspection Report* (October 2018) at 101.

²⁷ Custodial Inspector of Tasmania, *Annual Report 2020-21* (August 2021) at 26.

²⁸ Tasmanian Parliament, House of Assembly, *Hansard*, 29 June 2021.

Corrections but is only theoretically available within the Tasmanian Prison Service due to the program being oversubscribed and the short prison sentences imposed.²⁹ Apsley has been “discontinued”. In short, those high-risk offenders who are most in need of rehabilitation are the least likely to receive the treatment they need.

What are the solutions?

It is clear that there is a wide spectrum of drink and drug driving, from social drinking and drug taking coupled with poor decision-making all the way through to addiction. In sentencing, a fine is an appropriate sentence for most offenders, education programs are useful for some offenders and licence disqualification and alcohol interlock should remain sentencing options available for more severe offending. Nevertheless, it is also clear that “these approaches alone, while necessary, do not appear to be effective for a group of core drink driving offenders who continue to reoffend”.³⁰

The ineffectiveness of our current criminal justice approach to recidivist drink drivers is highlighted in a study carried out in 2018 by the Tasmania Law Reform Institute and the Tasmanian Institute for Law Enforcement Studies. The TLRI/TILES research sought to construct a profile of recidivist drink driving offenders in Tasmania by identifying all drink drivers (n = 730) who had received a custodial sentence between 2008/09 and 2013/14 and then examining in detail a sample of around 10 per cent.³¹ The results emphasise the significant health issues confronted by many recidivist drink drivers:³²

... where the information was available, it disclosed that nearly 85 per cent of offenders had a history of alcohol abuse, and nearly three quarters had a history of problematic drug use. Additionally, many offenders (over three quarters) were identified as having mental health issues.

For these offenders our current sentencing responses are futile and “what is needed is a more interactive, actively interventionist approach, something that enables on-going assessment and supervised treatment of the offender as well as recognition of the specific criminogenic needs of individual offenders”.³³

- Drug Treatment Orders

In 2007 Tasmania introduced drug treatment orders with its primary goal “to break the drug-crime cycle by involving offenders in treatment and rehabilitation programs”.³⁴ Part

²⁹ Custodial Inspector of Tasmania, *Inspection of Adult Custodial Services in Tasmania 2017 - Care and Wellbeing Inspection Report* (October 2018) at 105-106.

³⁰ Liz Richardson, *A Driving While Intoxicated/Suspended Court List for Victoria*, (Australian Centre for Justice Innovation, Monash University, Background Paper: 2013) at 3.

³¹ The sample was reduced to 72 offenders with one offender excluded because their custodial sentence was subsequently found not to have been imposed in the reference period.

³² Tasmania Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers* (Final Report No. 24: March 2018) at 29.

³³ Isabelle Bartkowiak-Théron and Terese Henning, ‘Therapeutic Justice and Recidivist Drink Drivers: Irreconcilable and Compatible Issues?’ *Tiles Briefing Papers*, Tasmania (2016) 1. As found in Tasmania Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers* (Final Report No. 24: March 2018) at 35.

³⁴ Department of Justice, Community Corrections, *Court Mandated Diversion*. As found at <https://www.justice.tas.gov.au/communitycorrections/court-mandated-diversion/intent-of-program> (Accessed 10 September 2021).

3A of the *Sentencing Act 1997* (Tas) sets out the circumstances in which a drug treatment order may be made. Relevantly, a court may make a drug treatment order if satisfied that the offender has a “demonstrable history of illicit drug use” and “illicit drug use contributed to the commission of the imprisonable offence”.³⁵ As well, the order may be made if the Court considers that, but for the order, it would have sentenced the offender to a term of imprisonment and would not have suspended the sentence, either in whole or in part.³⁶

The advantage of a drug treatment order is that it provides judicial officers with the ability to be actively involved in the treatment and monitoring of the offender with the court able to vary the order based on progress made, 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.³⁷

Currently, drug treatment orders are not available to persons with alcohol dependence. The Sentencing Advisory Council,³⁸ the Tasmania Law Reform Institute³⁹ and the Alcohol Tobacco and Other Drugs Council of Tasmania⁴⁰ have all recommended extending drug treatment orders to include alcohol dependence, where the substance abuse has contributed to the offending behaviour.

Recommendation: That the Tasmanian Government expand drug treatment orders to include alcohol dependence where the substance abuse has contributed to the offending behaviour.

Drug Driving

Section 6(1) of the *Road Safety (Alcohol and Drugs) Act 1970* (Tas) provides that a person commits an offence if they drive and “alcohol in present in his or her breath in a concentration greater than the prescribed concentration”. This can be contrasted with illicit drugs which provides that a person “who drives a motor vehicle while a prescribed illicit drug is present in his or her blood or oral fluid is guilty of an offence”.⁴¹ Expressed in another way, drink driving laws adopt a legal limit in which an offence is only committed if the limit is exceeded. Drug driving laws on the other hand adopt a zero-tolerance approach, in which any detectable amount of an illicit drug is an offence.

³⁵ Section 27B(1)(b) of the *Sentencing Act 1997* (Tas).

³⁶ Section 27B(1)(c) of the *Sentencing Act 1997* (Tas).

³⁷ Section 27H of the *Sentencing Act 1997* (Tas).

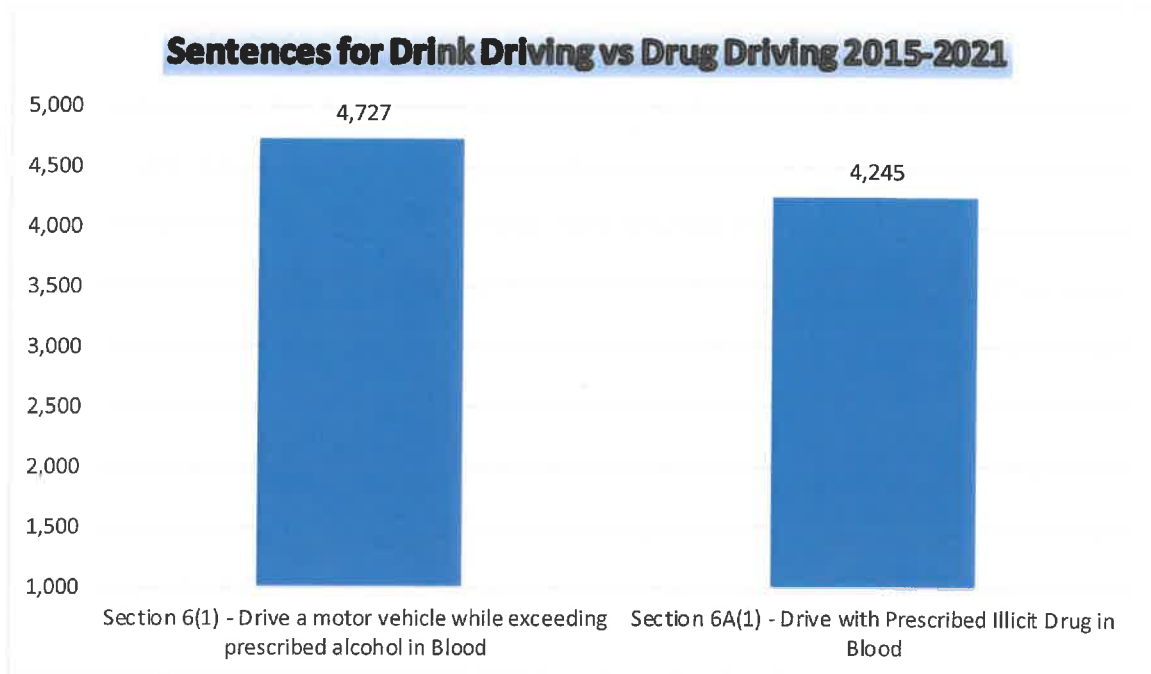
³⁸ Sentencing Advisory Council, *Phasing Out of Suspended Sentences* (Final Report No. 6: March 2016) Recommendation 6.

³⁹ Tasmania Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers* (Final Report No. 24: March 2018) at 61.

⁴⁰ Alcohol Tobacco and Other Drugs Council of Tasmania, *Strengthening Tasmania’s justice response to problematic alcohol and other drug use* (September 2019).

⁴¹ Section 6A(1) of the *Road Safety (Alcohol and Drugs) Act 1970* (Tas). Pursuant to regulation 15 of the *Road Safety (Alcohol and Drugs) Regulations 2018* (Tas) there are currently 18 prescribed illicit drugs listed in the including cocaine, ecstasy heroin, ketamine, LSD and magic mushrooms.

Drug driving offences in Tasmania are now almost as common as drink driving with the Sentencing Advisory Council's sentencing database highlighting that 53 per cent of offenders are sentenced for drink driving and 47 per cent for drug driving.



Nevertheless, the road safety objective of deterring drink and drug driving is brought into disrepute when our laws are inconsistently applied, as has been pointed out in academic research:⁴²

To drive while 'drunk' is regarded as unacceptable because the scientific evidence shows that this carries an elevated risk of accident due to diminished driver capacity. By contrast, contemporary drug driving laws in Australia are not strongly linked to scientific evidence about the relationship between substance use and driver capacity. The road safety justification for treating the presence of a particular drug in a driver's oral fluid as synonymous with impairment is open to question, just as it would be if the trace detection of a minute quantity of alcohol in any driver's breath were to be regarded as a sufficient basis for criminal punishment.

We strongly support the Alcohol, Tobacco and Other Drugs Council of Tasmania (ATDC) who maintain that the current drug testing regime does not adequately measure impairment for those who use illicit drugs, and in doing so brings people in front of the justice system for reasons other than promoting road safety. In our opinion, it is grossly unfair that the presence of illicit drugs in saliva is an offence, despite the presence not necessarily resulting in impaired driving. For example, a recent article published in the *Australian Journal of General Practice* found that "moderate doses of inhaled cannabis are unlikely to impair driving performance for more than four hours"⁴³ despite THC (the active ingredient in cannabis) remaining detectable for up to 12 hours after use for those

⁴² Julia Quilter and Luke McNamara, "Zero tolerance' drug driving laws in Australia: A gap between Rationale and Form?" (2017)(6) *International Journal for Crime, Justice and Social Democracy* at 61.

⁴³ Thomas Arkell, Danielle McCartney and Iain McGregor, 'Medical cannabis and driving', (2021) 50(6) *Australian Journal of General Practice* 357 at 358.

who use cannabis infrequently and for up to 30 hours in those who use cannabis frequently.⁴⁴

The advantage of moving to an impairment threshold would also ensure that legally prescribed pharmaceutical drugs were included, some of which are proven to adversely affect driving performance.⁴⁵ As a result, we endorse ATDC's view that road safety laws should be reviewed to ensure that drug testing regimes adequately measure driving impairment. In our opinion, a legal limits model should be adopted.

A number of studies have now been carried out that recommend legal limits for illicit drugs. In *Driving Under the Influence of Drugs, Alcohol and Medicines in Europe (DRUID)*, the European Monitoring Centre for Drugs and Drug Addiction reviewed Europe's drug driving laws including alcohol and both illicit and pharmaceutical drugs. The report concluded that THC is much less impairing than most illicit drugs and that 3.8 ng/mL THC was as impairing as 0.5 g/l alcohol.⁴⁶ This led the report to recommend that:⁴⁷

A risk threshold should be introduced for THC, equivalent to 0.5g/l BAC, at 3.8 ng/ml serum, plus a value to take account of measurement errors and the confidence interval, and minus a value to take into account the metabolism between the stop/crash and sampling.

The report also recommended that a two-tier system be introduced in which both a legal limit and an impairment approach was adopted for all psychoactive drugs. Under this model there would be "a less severe sanction when drugs are present above the legal limit and a more severe sanction when the driver is also impaired".⁴⁸

Similarly, a report from the Department for Transport's expert panel on drug driving in the United Kingdom considered legal limits for drug driving. The report recommended a legal limit approach with risk thresholds "based on the detection of a drug in a driver above a defined cut-off concentration (threshold) in blood that could be related to the risk of a road traffic accident".⁴⁹ The report also recommended that the following

⁴⁴ Alcohol and Drug Foundation, *Roadside Drug Testing*. As found at <https://adf.org.au/insights/roadside-drug-testing/> (Accessed 10 September 2021).

⁴⁵ Horst Schulze, Markus Schumacher, Raschid Urmeew, Kerstin Auerbach, Javier Alvarez, Inger Marie Bernhoft, Han de Gier, Marjan Hagenzieker, Sjoerd Houwing, Anja Knoche, Monika Pilgerstorfer and Bojan Zlender, *Driving Under the Influence of Drugs, Alcohol and Medicines in Europe - findings from the DRUID project* (European Monitoring Centre for Drugs and Drug Addiction, Lisbon: 2012) at 20. As found at https://www.emcdda.europa.eu/publications/thematic-papers/druid_en (Accessed 10 September 2021)

⁴⁶ 3.8 ng/mL THC was as impairing as 0.5 g/l alcohol means 3.8 nanograms per millilitre THC was as impairing as 0.5 grams per litre alcohol.

⁴⁷ Horst Schulze, Markus Schumacher, Raschid Urmeew, Kerstin Auerbach, Javier Alvarez, Inger Marie Bernhoft, Han de Gier, Marjan Hagenzieker, Sjoerd Houwing, Anja Knoche, Monika Pilgerstorfer and Bojan Zlender, *Driving Under the Influence of Drugs, Alcohol and Medicines in Europe - findings from the DRUID project* (European Monitoring Centre for Drugs and Drug Addiction, Lisbon: 2012) at 48.

⁴⁸ Horst Schulze, Markus Schumacher, Raschid Urmeew, Kerstin Auerbach, Javier Alvarez, Inger Marie Bernhoft, Han de Gier, Marjan Hagenzieker, Sjoerd Houwing, Anja Knoche, Monika Pilgerstorfer and Bojan Zlender, *Driving Under the Influence of Drugs, Alcohol and Medicines in Europe - findings from the DRUID project* (European Monitoring Centre for Drugs and Drug Addiction, Lisbon: 2012) at 48.

⁴⁹ United Kingdom Department for Transport, *Driving under the influence of drugs* (March 2013) at 37. As found at

micrograms per litre of blood ($\mu\text{g/L}$) threshold limits should be adopted for drug driving including both illicit drugs and pharmaceutical drugs:

- an amphetamine threshold of 600 $\mu\text{g/L}$
- a cannabis threshold of 5 $\mu\text{g/L}$
- a Clonazepam threshold of 50 $\mu\text{g/L}$ (a hypnotic drug prescribed for anxiety)
- a cocaine threshold of 80 $\mu\text{g/L}$
- a Diazepam threshold of 550 $\mu\text{g/L}$ (a hypnotic drug prescribed for anxiety)
- a Flunitrazepam threshold of 300 $\mu\text{g/L}$ (a hypnotic drug prescribed for insomnia);
- a ketamine threshold of 200 $\mu\text{g/L}$
- a Lorazepam threshold of 100 $\mu\text{g/L}$ (a hypnotic drug prescribed for anxiety)
- an MDMA 'ecstasy' threshold of 300 $\mu\text{g/L}$
- a methamphetamine threshold of 200 $\mu\text{g/L}$
- a methadone threshold of 500 $\mu\text{g/L}$ (prescribed for heroin dependence)
- a morphine threshold of 80 $\mu\text{g/L}$
- an Oxazepam threshold of 300 $\mu\text{g/L}$ (a hypnotic drug prescribed for anxiety)
- a Temazepam threshold of 1000 $\mu\text{g/L}$ (a hypnotic drug prescribed for anxiety and insomnia).

Although the United Kingdom Government did not adopt the expert panel's recommendations in relation to illicit drugs, it was accepted that "a road safety risk-based approach" should be adopted for pharmaceutical drugs and the recommended threshold limits were subsequently adopted.⁵⁰

Finally, we note that from 1 July 2021 medicinal cannabis has become more accessible following the State Government's decision to allow General Practitioners to prescribe medicinal cannabis.⁵¹ Over time, it is likely that there will be a significant increase in the amount of medicinal cannabis being prescribed with Tasmania currently having the lowest rate of medicinal cannabis of any State in Australia.⁵² However, without law reform to our drug driving laws, many patients may not want to be prescribed medicinal cannabis. This view is encapsulated in the observations of a 62-year-old female patient who had ovarian cancer for 10 years that formed part of a presentation by Professor Iain McGregor at the ATDC Conference held in June 2021.⁵³

After exhausting all conventional treatments, I received medicinal cannabis as part of a clinical trial and found the results to be favourable. I want to continue via a prescription from my GP, however, the police informed me that even though it was medically prescribed, I would be fined and have to go to court should I ever take a roadside drug test.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/167971/drug-driving-expert-panel-report.pdf (Accessed 10 September 2021).

⁵⁰ United Kingdom Government, *Changes to drug driving laws*. As found at <https://www.gov.uk/government/collections/drug-driving> (Accessed 10 September 2021).

⁵¹ Department of Health, *Medicinal Cannabis*. As found at http://www.dhhs.tas.gov.au/psbtas/medicinal_cannabis (Accessed 10 September 2021).

⁵² Iain McGregor, Driving stoned: Crash risk, duration of impairment and roadside drug testing, presentation at the Alcohol, Tobacco and Other Drugs Council of Tasmania Conference, 10 June 2021.

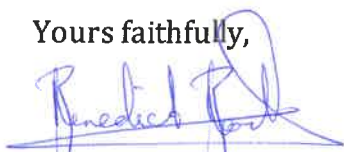
⁵³ Iain McGregor, Driving stoned: Crash risk, duration of impairment and roadside drug testing, presentation at the Alcohol, Tobacco and Other Drugs Council of Tasmania Conference, 10 June 2021.

We endorse the recommendations of the Senate Inquiry into *Current barriers to patients access to medicinal cannabis in Australia* which recommended that drug driving laws and their implications for patients with legal medicinal cannabis prescriptions be reviewed.⁵⁴

Recommendation: That the Tasmanian Government conduct a review of current drug driving laws and in particular the effects of both illicit and pharmaceutical drugs on driving impairment.

If you have any queries, or would like to discuss our submission further, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

⁵⁴ Commonwealth of Australia, *Current barriers to patients access to medicinal cannabis in Australia*, (Community Affairs References Committee, March 2020). As found at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Medicinalcannabis/Report (Accessed 10 September 2021).