COMMUNITY
LEGAL CENTRES
TASMANIA

17 September 2021

Sentencing Advisory Council
GPO Box 825
Hobart TAS 7000
attn: Rebecca Bradfield *via email:* sentencingadvisory.council@justice.tas.gov.au

Dear Rebecca Bradfield,
Re: Review of the *Sentencing Amendment (Phasing Out of Suspended Sentences) Act 2017*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to respond to the Sentencing Advisory Council's review of the *Sentencing Amendment (Phasing Out of Suspended Sentences) Act 2017*. Our response focuses on drug treatment orders and reforms that would make the order more accessible. We also call for an extension of the period of review so that more significant data sets can be collected, analysed and a better-informed assessment made of alternative sentencing options and their suitability as a replacement for suspended sentences.

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.

Drug Treatment Orders

In an article to be published in the upcoming *Law Letter*, the Law Society of Tasmania member journal, we review drug treatment orders made in the Supreme Court and consider whether reforms are necessary (see attached). Our research found that over the last three years (2017/18 – 2019/20) the Supreme Court has made around 13 referrals each year[1] with eligible persons required to be assessed as suitable for a drug treatment order.[2] Of those persons referred from the Supreme Court for assessment, 60 per cent were assessed as eligible and suitable and the drug treatment order was made.[3]

[1] There were 13 referrals in 2017/18, 9 referrals in 2018/19 and 18 in 2019/20.

[2] Sections 27B and 27D of the *Sentencing Act 1997* (Tas).

[3] 24 out of 40 referrals were assessed as both eligible and suitable. Persons whose referral resulted in a different community-based order (including a deferred sentence) or a sentence in the Magistrates Court have been excluded. Interestingly, 75 per cent of women (6 out of 8) who were assessed were found eligible and suitable and the drug treatment order was made. This can be contrasted with a 56 per cent success rate for men (18 out of 32).

Notwithstanding that persons may be both eligible and suitable for a drug treatment order, the Supreme Court is still required to be "satisfied in all the circumstances that it is appropriate".[4] In *Tasmania v Joseph*[5] the appropriateness of a drug treatment order was considered by Brett J in circumstances where the 23-year-old offender had "had an illicit drug problem for some years" and had committed armed robbery "as an act of desperation in order to obtain illicit drugs".[6] Importantly, after reviewing the relevant provisions of the *Sentencing Act 1997* (Tas) his Honour concluded that as a matter of statutory construction "it would, in most circumstances, be inappropriate to make a drug treatment order if the custodial component will exceed two years".[7]

On the facts before him, Brett J acknowledged Joseph's history of substance use and that the armed robbery was committed in order to obtain illicit drugs, but was nevertheless "satisfied that the only appropriate sentence in this case is a significant term of imprisonment".[8] Joseph was thereafter sentenced to three years imprisonment.

Brett J's finding that a drug treatment order would be inappropriate for sentences of more than two years was affirmed in the Court of Criminal Appeal decision of *Bell v Tasmania*[9] and has subsequently been applied in a number of Supreme Court cases.[10]

The two-year limitation currently in place in Tasmania can be contrasted with the Australian Capital Territory Supreme Court and the Victorian County Court where drug treatment orders are able to be imposed on persons who would otherwise be imprisoned for up to four years imprisonment.[11]

In the Australian Capital Territory where the model has been in place since 2019, the drug and alcohol treatment order is available to persons with alcohol or illicit drug dependency and where eligibility is available to those who plead guilty to an offence other than a sexual offence or a serious violence offence.[12] Successful completion of the drug and alcohol treatment order means that the remainder of the offender's custodial sentence is replaced with a good behaviour bond.[13] A review of the case law demonstrates that aggravated robbery, aggravated burglary and aggravated dangerous driving are all offences for which the ACT Supreme Court has been prepared to grant a drug and alcohol treatment order.[14]

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[4] Section 27B(3)(a) of the *Sentencing Act 1997* (Tas).

[5] [2017] TASSC 23.

[6] *State of Tasmania v Benjamin Joseph* (comments on passing judgment) 27 April 2017 per Brett J.

[7] [2017] TASSC 23 at para. 34.

[8] [2017] TASSC 23 at para. 35.

[9] [2021] TASCCA 3 at para 32 per Martin AJ; Marshall AJ and Porter AJ in agreement. See also *State of Tasmania v Cameron Clark* (comments on passing sentence) 6 November 2018 per Estcourt J.

[10] *State of Tasmania v Adam Halbwirth* (comments on passing sentence) 6 December 2018; *State of Tasmania v Brook Targett* (comments on passing sentence) 12 February 2019 per Brett J.

[11] See section 12A(1)(b) of the *Crimes (Sentencing) Act 2005* (ACT); section 18Z(1)(d)(ii) of the *Sentencing Act 1991* (Vic).

[12] See subsections 12A(1)(a) and 12A(1)(9) of the *Crimes (Sentencing) Act 2005* (ACT).

[13] Section 80ZA of the *Crimes (Sentencing) Act 2005* (ACT).

[14] For example, *R v Jake Blackburn* [2020] ACTSC in which the offender was sentenced to three years and six months imprisonment for a range of offences including aggravated burglary, theft, assault and

In Victoria, the Magistrates Court has been able to sentence persons to drug and alcohol treatment orders since 2002. However, the program was recently expanded to the County Court with the establishment of a pilot program, meaning that persons who are liable for a maximum sentence of up to four years are also eligible. Persons convicted of sexual offences and offences involving the infliction of actual bodily harm will remain ineligible and in the County Court a number of other offences including aggravated home invasion and aggravated carjacking also result in exclusion.[15] Similar to the Australian Capital Territory model, completion of the drug and alcohol treatment order means that the person is able to remain in the community until the inactive custodial sentence ends.

It is also worth noting that in Queensland magistrates are able to refer offenders to the Drug and Alcohol Court. In order to be eligible, offenders must reside within the district of the Brisbane Magistrates Court and be sentenced to imprisonment of up to four years i.e. a summary offence or an indictable offence dealt with summarily.[16]

We strongly believe that the *Sentencing Act 1997* (Tas) should be broadened to allow for the imposition of drug treatment orders for persons who would otherwise be imprisoned for up to four years imprisonment. This reform would bring Tasmania into line with the Australian Capital Territory, Queensland and Victoria. Importantly, the reform is likely to broaden the range of offending behaviour subject to the order whilst also reducing recidivism with the cause of the offending more likely to be addressed.

Recommendation: That the *Sentencing Act 1997* (Tas) is amended to expressly provide that the statutory limit for imposing a drug treatment order is four years.

As well, any offender who can demonstrate that they have a history of drug use which contributed to their offending should be considered for a drug treatment order. In the Australian Capital Territory, Queensland and Victoria[17] drug treatment orders are able to be made where either alcohol and/or illicit drugs contributed to their offending. At the very least, drug treatment orders should be broadened to include alcohol. However, given Tasmania's high rate of pharmaceutical oxycodone and fentanyl abuse[18] we strongly believe that drug treatment orders should be a sentencing option for all drug abuse including alcohol, pharmaceutical and illicit drugs.

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aggravated dangerous driving; *R v Patrik Pelecky* (No 2) [2020] ACTSC 370 in which the offender was sentenced to four years imprisonment for 27 offences including aggravated dangerous driving and burglary; *R v Crystal Parker* [2020] ACTSC 38 in which the offender was sentenced to three years imprisonment for aggravated robbery; *R v Charles* [2020] ACTSC 39 in which the offender was sentenced to two year and one month imprisonment for offences including aggravated burglary with intent to cause harm.

[15] Section 18Z(2B) of the *Sentencing Act 1991* (Vic). These offences include aggravated home invasion and aggravated carjacking as well as certain offences against emergency workers, custodial officers and youth justice custodial workers on duty.

[16] Section 15E of the *Penalties and Sentences Act 1992* (Qld).

[17] Section 12A of the *Crimes (Sentencing) Act 2005* (ACT); Part 8A of the *Penalties and Sentences Act 1992* (Qld); Division 2, Subdivision (1C) of the *Sentencing Act 1991* (Vic).

[18] Australian Crime Intelligence Commission, *National Wastewater Drug Monitoring Program* (Report No. 13: 2021) at 14.

Recommendation: That the *Sentencing Act 1997* (Tas) is amended to expressly provide that drug treatment orders are a sentencing option available to any offender who has a history of alcohol and/or pharmaceutical and/or illicit drug use which contributed to their offending.

Extension of Transition Period

The inability to impose some alternative sentencing options due to COVID-19, the small number of offenders captured in each offence category and the resultant lack of meaningful data able to be collected by the Sentencing Advisory Council are all reasons to extend the period of review. In our opinion, a further three years should provide a more robust set of data that can then be analysed to assess the uptake of the new orders and their suitability as a replacement for suspended sentences.

Recommendation: That the review of the *Sentencing Amendment (Phasing Out of Suspended Sentences) Act 2017* be extended for a further three years.

National Agreement on Closing the Gap

Finally, we reiterate the concerns of the Tasmanian Aboriginal Legal Service who observed in its response, that the Terms of Reference for this review fail to address the *National Agreement on Closing the Gap.*[19] According to a 2018 Australian Law Reform Commission report, the Aboriginal and Torres Strait Islander population constitutes just 2 per cent of the Australian adult population but comprises 27 per cent of the national adult prison population.[20] The overrepresentation of Aboriginal and Torres Strait Islander people in Tasmania's prison system and the impact phasing out suspended sentences may have, is an issue that should be considered, particularly given the Closing the Gap target of reducing the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031.

Recommendation: That any future review of the *Sentencing Amendment (Phasing Out of Suspended Sentences) Act 2017* consider the impact on Aboriginal and Torres Strait Islander people.

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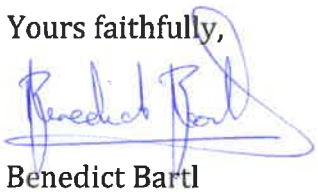
[19] Australian Government, *National Agreement on Closing the Gap* (July 2020). As found at https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap (Accessed 16 September 2021).

[20] In Tasmania, Aboriginal and Torres Strait Islander persons comprise 5 per cent of the adult population but 16 per cent of the adult prison population: Australian Law Reform Commission, Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133). Figure 3.1. As found at https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/3-incidence/over-representation/ (Accessed 16 September 2021).

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

enc: *A Review of Drug Treatment Orders in the Supreme Court* - Article for *Law Letter*

A review of Drug Treatment Orders in the Supreme Court

Benedict Bartl and Katherine Sproule*

Introduction

It is well known that many offenders sentenced to imprisonment have a history of substance abuse and many commit crimes whilst under the influence of alcohol and/or other drugs. The futility of sentencing offenders to imprisonment without addressing the underlying cause of the offending is borne out in recently released research which found that almost half of all Tasmanian offenders (47 per cent) return to prison within two years. Alarmingly, the same research found that over the last five years Tasmania has had the largest increase in offenders returning to prison within two years of any Australian jurisdiction.[1]

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".[2] Part 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".[3] 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.[4]

The advantage of a drug treatment order over other sentencing options including a suspended sentence 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.[5]

Initially, drug treatment orders in Tasmania were restricted to summary offences or indictable crimes that were able to be determined by the Magistrates Court but were extended in 2017 to allow persons charged with indictable offences in the Supreme Court to also be referred.[6] With the Sentencing Advisory Council currently reviewing the alternative sentencing options introduced as part of the State Government's intention to phase out suspended sentences, it is useful to take stock of drug treatment orders in the Supreme Court and to consider whether further reform is necessary.

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[1] There was an 18 per cent increase in Tasmanian offenders returning to prison within two years of their release. The next highest increase was Queensland at 10 per cent. As found at Productivity Commission, *Report on Government Services 2021*, Justice sector overview - Table CA.4.

[2] 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 14 June 2021).

[3] Section 27B(1)(b) of the *Sentencing Act 1997* (Tas).

[4] Section 27B(1)(c) of the *Sentencing Act 1997* (Tas).

[5] Section 27H of the *Sentencing Act 1997* (Tas).

[6] See amendment to definition of "court" in section 27A of the *Sentencing Act 1997* (Tas) following passing of *Sentencing Amendment Bill 2016* (51 of 2016).

Drug treatment orders and Supreme Court referrals

Over the last three years (2017/18 – 2019/20) the Supreme Court has made around 13 referrals each year[7] with eligible persons required to be assessed as suitable for a drug treatment order.[8] Of those persons referred from the Supreme Court for assessment, 60 per cent were assessed as eligible and suitable and the drug treatment order was made.[9]

Of the 40 per cent of persons assessed as ineligible or unsuitable, a small number were ineligible because they had been convicted of sexual offences or offences involving the infliction of actual bodily harm that was not minor harm.[10] The overwhelming majority were however rejected as unsuitable either by the assessor and/or the court for a variety of reasons including:

- an inability to recognise the significance of the offending;[11]
- continued re-offending whilst being assessed;[12]
- high risk of re-offending;[13]
- history of non-compliance with community-based orders;[14]
- Unavailability of suitable facilities and resources to enable supervision and treatment.[15]

Notwithstanding that persons may be both eligible and suitable for a drug treatment order, the court is still required to be "satisfied in all the circumstances that it is appropriate".[16] In *Tasmania v Joseph*[17] the appropriateness of a drug treatment order was considered by Brett J in circumstances where the 23-year-old offender had "had an illicit drug problem for some years" and had committed armed robbery "as an act of desperation in order to obtain illicit drugs".[18]

Brett J noted the focus of the drug treatment order was on the rehabilitation of the offender rather than meeting other sentencing aims such as deterrence and retribution:[19]

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[7] There were 13 referrals in 2017/18, 9 referrals in 2018/19 and 18 in 2019/20.

[8] Sections 27B and 27D of the *Sentencing Act 1997* (Tas).

[9] 24 out of 40 referrals were assessed as both eligible and suitable. Persons whose referral resulted in a different community-based order (including a deferred sentence) or a sentence in the Magistrates Court have been excluded. Interestingly, 75 per cent of women (6 out of 8) who were assessed were found eligible and suitable and the drug treatment order was made. This can be contrasted with a 56 per cent success rate for men (18 out of 32).

[10] Section 27B of the *Sentencing Act 1997* (Tas). Those offenders were *State of Tasmania v Zachary Wright* (comments on passing sentence) 5 July 2017 per Blow CJ; *State of Tasmania v Cameron Clark* (comments on passing sentence) 6 November 2018 per Estcourt J.

[11] *State of Tasmania v Erich Ungerhofer* (comments on passing sentence) 28 March 2018 per Porter AJ; *State of Tasmania v Jayde Jetson* (comments on passing sentence) 11 October 2019 per Porter AJ.

[12] *State of Tasmania v Gavin Cameron* (comments on passing sentence) 6 February 2018 per Slicer AJ.

[13] *State of Tasmania v Lai Le* (comments on passing sentence) 3 July 2017; *State of Tasmania v Darren Slattery* (comments on passing sentence) 18 August 2017 per Blow CJ; *State of Tasmania v Nicholas Clark* (comments on passing sentence) 4 March 2020 per Blow CJ.

[14] *State of Tasmania v Rebecca Dyett* (comments on passing sentence) 12 July 2019 per Porter AJ; *State of Tasmania v Glenn Brown* (comments on passing sentence) 16 December 2019 per Porter AJ.

[15] *State of Tasmania v Nathan Scott* (comments on passing sentence) 11 June 2020 per Brett J.

[16] Section 27B(3)(a) of the *Sentencing Act 1997* (Tas).

[17] [2017] TASSC 23.

[18] *State of Tasmania v Benjamin Joseph* (comments on passing judgment) 27 April 2017 per Brett J.

[19] *Tasmania v Joseph* [2017] TASSC 23 at para. 29.

> A drug treatment order is a sentencing option which places emphasis on the rehabilitation of the offender. It is not without punitive effect because it will require, on the part of the offender, onerous application to the program put in place by the order, and carries with it the potential for activation of the custodial component of the order in the event of default. However, it is still an alternative to imprisonment, where imprisonment would otherwise be the outcome. If a drug treatment order is made, the court is making a choice to place emphasis on rehabilitation as the primary sentencing aim in preference to other sentencing objectives such as general deterrence and retribution.

However, his Honour also observed that the "objective seriousness of the crime will affect the relative emphasis placed on competing considerations in the process of determining sentence" and "in order to be satisfied that a drug treatment order is appropriate in all of the circumstances, the court will need to be satisfied that the order will properly respond to the various aims of sentencing appropriate to the case".[20] Importantly, after reviewing the relevant provisions of the *Sentencing Act 1997* (Tas) his Honour concluded that as a matter of statutory construction "it would, in most circumstances, be inappropriate to make a drug treatment order if the custodial component will exceed two years".[21]

On the facts before him, Brett J acknowledged Joseph's history of substance use and that the armed robbery was committed in order to obtain illicit drugs, but was nevertheless "satisfied that the only appropriate sentence in this case is a significant term of imprisonment".[22] Joseph was thereafter sentenced to three years imprisonment.

Brett J's finding that a drug treatment order would be inappropriate for sentences of more than two years was affirmed in the Court of Criminal Appeal decision of *Bell v Tasmania*[23] and has subsequently been applied in a number of Supreme Court cases.

In a case of note *State of Tasmania v Adam Halbwirth*[24] a 31-year-old man pleaded guilty to one count of dangerous driving as well as a number of associated summary offences. He was assessed as eligible and suitable for a drug treatment order but in Brett J's view the "extremely serious example of dangerous driving" warranted a term of imprisonment that "will exceed the maximum sentence appropriate for [a drug treatment] order".[25] Halbwirth was sentenced to three years and two months imprisonment. Although Brett J was unable to impose a drug treatment order, he was optimistic that Halbwirth would continue to have access to rehabilitation services:[26]

> Rehabilitation starts with a personal decision and commitment towards reform. If you are genuine in that commitment, there will be resources available to you, whether it is in or outside prison.

Sadly, despite Halbwirth's best efforts he was unable to access rehabilitation services within the prison with the Parole Board of Tasmania recently observing that during his

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[20] [2017] TASSC 23 at para. 31.
[21] [2017] TASSC 23 at para. 34.
[22] [2017] TASSC 23 at para. 35.
[23] [2021] TASCCA 3 at para 32 per Martin AJ; Marshall AJ and Porter AJ in agreement. See also *State of Tasmania v Cameron Clark* (comments on passing sentence) 6 November 2018 per Estcourt J.
[24] *State of Tasmania v Adam Halbwirth* (comments on passing sentence) 6 December 2018.
[25] *State of Tasmania v Adam Halbwirth* (comments on passing sentence) 6 December 2018.
[26] *State of Tasmania v Adam Halbwirth* (comments on passing sentence) 6 December 2018.

nineteen months in prison he "attempted to engage in therapeutic inputs whilst serving his custodial sentence. Unfortunately, his referrals for Equips Addiction and Equips Foundation groups have been unsuccessful most likely due to resourcing issues in the prison".[27]

In another case of note, *State of Tasmania v Brook Targett* a 26-year-old woman pleaded guilty to armed robbery and was thereafter assessed for a drug treatment order. After receiving the report, Brett J observed that Targett was "an ideal candidate for a drug treatment order" which he would have imposed if not for "structural legislative constraints".[28]

> I am satisfied that there is a need to encourage and support your rehabilitation, and that remains an important sentencing consideration, but given the structural legislative constraints imposed on drug treatment orders, I do not think that such an [order] is an available sentencing option in this case. It would be an available sentencing option if the law was sufficiently flexible to allow me to impose a drug treatment order as part of a composite sentencing mix, including some time in prison.

As his Honour Brett J observed in all three of the cases noted above, the construction of Part 3A of the *Sentencing Act 1997* (Tas) meant that it was the legislature's intent that drug treatment orders should be restricted to offenders being sentencing to imprisonment of two years or less. However, in cases where an offender was going to be sentenced to more than two years imprisonment, his Honour believed that a composite order in which both imprisonment and a drug treatment order was able to be imposed would see the sentencing aims of deterrence, retribution and rehabilitation achieved.

Although published a number of years before Brett J's sentencing remarks were made, Tasmania's Sentencing Advisory Council does not appear to recommend composite orders in circumstances in which a sentence of imprisonment is also imposed. In their *Phasing Out of Suspended Sentences Final Report* it was observed that the common law sentencing aims of parsimony and restraint in the use of imprisonment remain relevant to the sentencing discretion meaning that "imprisonment should continue to be a sanction of last resort" and "the reforms to sentencing in Tasmania should be guided by the principle that imprisonment should only be used when no other sanction is appropriate".[29]

A compromise between composite orders and imprisonment as a last resort

A possible compromise between Brett J's proposed composite order and the Sentencing Advisory Council's view that imprisonment remain a sanction of last resort is a reform introduced in the Australian Capital Territory and Victoria, namely the ability to impose drug treatment orders on persons who would otherwise be imprisoned for up to four years imprisonment.[30]

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[27] Parole Board of Tasmania, Adam Halbwirth (8 May 2020). As found at https://www.justice.tas.gov.au/paroleboard/decisions-2020/halbwirth,-adam-michael (Accessed 6 June 2021).

[28] *State of Tasmania v Brook Targett* (comments on passing sentence) 12 February 2019 per Brett J.

[29] Sentencing Advisory Council, *Phasing out of Suspended Sentences Final Report* (No. 6: March 2016) at 9.

[30] See section 12A(1)(b) of the *Crimes (Sentencing) Act 2005* (ACT); section 18Z(1)(d)(ii) of the *Sentencing Act 1991* (Vic).

In the Australian Capital Territory where the model has been in place since 2019, the drug and alcohol treatment order is available to persons with alcohol or illicit drug dependency and where eligibility is available to those who plead guilty to an offence other than a sexual offence or a serious violence offence.[31] Successful completion of the drug and alcohol treatment order means that the remainder of the offender's custodial sentence is replaced with a good behaviour bond.[32] A review of the case law demonstrates that aggravated robbery, aggravated burglary and aggravated dangerous driving are all offences for which the ACT Supreme Court has been prepared to grant a drug and alcohol treatment order.[33]

In Victoria, the Magistrates Court has been able to sentence persons to drug and alcohol treatment orders since 2002. However, the program was recently expanded to the County Court with the establishment of a pilot program, meaning that persons who are liable for a maximum sentence of up to four years are also eligible. Persons convicted of sexual offences and offences involving the infliction of actual bodily harm will remain ineligible and in the County Court a number of other offences including aggravated home invasion and aggravated carjacking also result in exclusion.[34] Similar to the Australian Capital Territory model, completion of the drug and alcohol treatment order means that the person is able to remain in the community until the inactive custodial sentence ends.

The advantage of expanding drug treatment orders is that it reduces recidivism. In 2015 an evaluation of the Victorian Drug Court found a 23 per cent reduction in reoffending over the first 12 months post completion and a 29 per cent reduction in reoffending 24 months post treatment order. The evaluation also found an overall reduction in serious offences, including a 90 per cent reduction in trafficking offences and a 54 per cent reduction in assaults with a weapon.[35] Similarly, a review carried out in NSW found that participants in the NSW Drug Court were less likely to be reconvicted than offenders given conventional sanctions.[36] It is also worth acknowledging that successful completion of a drug treatment order not only reduces recidivism but also has positive flow on effects on police, court and prison resources.

Conclusion

In conclusion, the Supreme Court's ability over the last three years to make a drug treatment order has ensured that around 24 persons who would otherwise have been

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[31] See subsections 12A(1)(a) and 12A(1)(9) of the *Crimes (Sentencing) Act 2005* (ACT).

[32] Section 80ZA of the *Crimes (Sentencing) Act 2005* (ACT).

[33] For example, *R v Jake Blackburn* [2020] ACTSC in which the offender was sentenced to three years and six months imprisonment for a range of offences including aggravated burglary, theft, assault and aggravated dangerous driving; *R v Patrik Pelecky* (No 2) [2020] ACTSC 370 in which the offender was sentenced to four years imprisonment for 27 offences including aggravated dangerous driving and burglary; *R v Crystal Parker* [2020] ACTSC 38 in which the offender was sentenced to three years imprisonment for aggravated robbery; *R v Charles* [2020] ACTSC 39 in which the offender was sentenced to two year and one month imprisonment for offences including aggravated burglary with intent to cause harm.

[34] Section 18Z(2B) of the *Sentencing Act 1991* (Vic). These offences include aggravated home invasion and aggravated carjacking as well as certain offences against emergency workers, custodial officers and youth justice custodial workers on duty.

[35] KPMG, *Evaluation of the Drug Court of Victoria* (Final Report: December 2014) at 4.

[36] Don Weatherburn, Craig Jones, Lucy Snowball and Jiuzhao Hua, 'The NSW Drug Court: A re-evaluation of its effectiveness' (Crime and Justice Bulletin No 121, NSW Bureau of Crime and Statistics and Research, September 2008).

sentenced to a term of imprisonment have instead been able to access the treatment they need and thereby address the underlying cause of their offending. However, persons are continuing to be imprisoned despite the Supreme Court otherwise acknowledging the suitability of the drug treatment order. Legislative reform that expressly provides that drug treatment orders are available for persons who would otherwise be imprisoned for up to four years imprisonment would broaden the range of offending behaviour subject to the order whilst also reducing recidivism.

Benedict Bartl is a Policy Officer with Community Legal Centres Tasmania and the Principal Solicitor with the Tenants' Union of Tasmania. **Katherine Sproule** graduated with a BA/LLB from the University of Tasmania in 2018 and a Graduate Diploma of Legal Practice in 2021.