

COMMUNITY LEGAL CENTRES TASMANIA

4 August 2023

Department of Health
Office of the Secretary
GPO Box 125
Hobart TAS 7001
attn: Dr Robyn Greaves

via email: mhadd@health.tas.gov.au

To Dr Greaves,

Re: Tasmanian Drug Strategy 2023-2028 Consultation Draft

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide feedback to the consultation *Tasmanian Drug Strategy 2023-2028* ('the Consultation Strategy').¹ We welcome the Government's commitment to community consultation and a vision that includes "a health response to illicit drug use"² However, the vision cannot be achieved as long as some drug use continues to be treated as a crime. If the Government genuinely wants to reorientate personal drug use as a health issue it must commit to law reform.

Our response is limited to 'Action 5: Illicit Drugs', making a number of recommendations including reviewing the Illicit Drug Diversion Initiative, expanding both Court Mandated Diversion and prison-based rehabilitation programs and undertaking a review of our drug driving laws. In the event that the *Tasmanian Drug Strategy* cannot commit to law reform, to move the debate forward we expressly call for a review of those jurisdictions that have moved to a health-focused response to illicit drug use.

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.

Action Area 5: Illicit Drugs

The Consultation Strategy lists seven priority action areas including illicit drug use. Action Area 5 of the Consultation Strategy is headed 'A health response to illicit drug use' and lists 5 'Key Activities' that will be committed to between 2023-2028, namely:

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

² Tasmanian Government, *Tasmanian Drug Strategy 2023-2028* (consultation draft) at 9.

Key Activities

5.1 Develop an Illicit Drugs Action Plan with a focus on preventing harm and disrupting, dismantling and reducing supply in Tasmania.

5.2 Expand overdose prevention initiatives, e.g. access to naloxone, develop safe festival guidelines, safer injecting and prevention of blood-borne infections, e.g. needle and syringe programs.

5.3 Support the expansion of the Court Mandated Diversion (CMD) program and other existing diversionary options for drug offences, including reviewing whether recent changes to the Illicit Drug Diversion Initiative (IDDI) have been effective.

5.4 Investigate expansion of therapeutic responses to drug use issues, e.g. prison-based rehabilitation programs with through-care services on release.

5.5 Form a cross-sectoral working group to investigate and report back on harm reduction or health-focused, evidence-based responses.

- Illicit Drug Diversion Initiative (IDDI)

It is concerning that the Illicit Drug Diversion Initiative (IDDI) is not being utilised to its full potential by Tasmania Police. A response provided by the Department of Justice observed that the number of cautions issued has dropped by 78 per cent (from 1398 in 2003/04 to 299 in 2019/20).³ And, over the same period, the number of persons referred to health interventions including treatment has dropped by 21 per cent (from 179 to 148).⁴

The Australian Institute of Criminology report that police drug diversion programs across Australia have a high level of compliance with significant improvements in the recidivism rates of most participants referred to diversion.⁵ Our research also shows support for IDDI among ATOD service providers in Tasmania.⁶ It is therefore unclear why Tasmania Police are not cautioning and/or diverting more persons to health interventions. We welcome the Consultation Strategy's commitment to review the IDDI on the basis that it will address existing barriers to implementation.

Recommendation: That the *Tasmanian Drug Strategy 2023-2028* expressly commit to review the barriers to implementation of the IDDI.

- Court Mandated Diversion

We support the Consultation Strategy's expansion of Court Mandated Diversion (CMD). Whilst the number of places made available should be increased, the eligibility criteria should also be expanded. Currently, CMD is not available to persons with an alcohol

³ *The case for a Health focused response to drug use in Tasmania's Legal System* (Update 2023) at 23.

⁴ *The case for a Health focused response to drug use in Tasmania's Legal System* (Update 2023) at 23.

⁵ J Payne, M Kwiatowski and J Wundersitz, *Police drug diversion: a study of criminal offending outcomes* (2008) Research and Public Policy Series Report 97. Canberra: Australian Institute of Criminology.

⁶ *The case for a Health focused response to drug use in Tasmania's Legal System* (Update 2023) at 18.

addiction. The Sentencing Advisory Council,⁷ the Tasmania Law Reform Institute⁸ and the Alcohol Tobacco and Other Drugs Council of Tasmania⁹ have all recommended extending CMD to include alcohol addiction, where the substance abuse has contributed to the offending behaviour.

As well, CMD is only available to offenders who would otherwise receive up to two years imprisonment, with Brett J for example ruling in *Tasmania v Joseph* that “it would, in most circumstances, be inappropriate to make a drug treatment order if the custodial component will exceed two years”.¹⁰ We strongly believe that the *Sentencing Act 1997* (Tas) should explicitly provide that CMD is available to offenders who would otherwise receive a sentence of imprisonment of up to four years. This is consistent with the position of the ACT, Queensland and Victoria.¹¹

Finally, we note that section 27B(1)(a)(ii) of the *Sentencing Act 1997* (Tas) provides that CMD is unavailable for offenders who have been convicted of 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. A model that should be considered is NSW where offenders are eligible for CMD if convicted of an offence other than murder, manslaughter and attempted murder.¹²

The advantage of expanding CMD both in the number of places available and the eligibility criteria 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.¹³ 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.¹⁴ It is also worth acknowledging that successful completion of CMD not only reduces recidivism but also has positive flow on effects on police, court and prison resources.

Recommendation: That the *Tasmanian Drug Strategy 2023-2028* expressly commit to an expansion of Court Mandated Diversion that includes both a broadening of the eligibility criteria and the number of places available.

⁷ Sentencing Advisory Council, *Phasing Out of Suspended Sentences* (Final Report No. 6: March 2016) Recommendation 6.

⁸ Tasmania Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers* (Final Report No. 24: March 2018) at 61.

⁹ Alcohol Tobacco and Other Drugs Council of Tasmania, *Strengthening Tasmania’s justice response to problematic alcohol and other drug use* (September 2019).

¹⁰ [2017] TASSC 23 at para. 34 per Brett J. Also see *Bell v Tasmania* [2021] TASC 3 at para 32 per Martin AJ; Marshall AJ and Porter AJ in agreement; *State of Tasmania v Cameron Clark* (comments on passing sentence) 6 November 2018 per Estcourt J.

¹¹ *Crimes (Sentencing) Act 2005* (ACT) s 12A(1)(a); *Penalties and Sentences Act 1992* (Qld). In Victoria, this only applies to orders made in the County Court: *Sentencing Act 1991* (Vic) s 18Z(1)(d)(ii).

¹² Section 5A of the *Drug Court Act 1998* (NSW).

¹³ KPMG, *Evaluation of the Drug Court of Victoria* (Final Report: December 2014) at 4.

¹⁴ 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).

- ***Prison-based rehabilitation programs***

The Consultation Strategy commits to investigating the expansion of prison-based rehabilitation programs. We strongly believe that prison-based rehabilitation programs must be a priority given the link between problematic drug use and crime. Australian studies have found that almost half (47 per cent) of all detainees surveyed in 2021 reported that use of alcohol and/or other drugs was a contributing factor to their most recent offending.¹⁵ Similar findings have also been found in Tasmania, with around two-fifths of persons in prison reporting that the main reason for committing the most serious offence for which they were currently incarcerated was drug related.¹⁶

Given the high proportion of persons entering prison with problematic drug use and the high likelihood on ongoing involvement with the criminal justice system post-release if ATOD issues are not addressed, imprisonment should be seen as an opportunity to deliver treatment.

The residential treatment that was formerly provided in the Apsley Alcohol and Drug Treatment Unit ('Apsley') has been found to be the most effective treatment model in a prison setting, with studies finding "relatively consistent reductions in recidivism and alcohol and other drug use".¹⁷ Nevertheless, a recent response from the Department of Justice noted that between 2017/18 – 2019/20 less than one-third (29 per cent) of all referrals to residential treatment resulted in commencement.¹⁸

We welcome the Minister for Corrections announcement that Apsley is in the process of being transferred to the Ron Barwick Prison, "to facilitate a larger residential therapeutic program, specifically delivered to medium- and minimum-security rated prisoners. This expanded program will accommodate 34 participants (compared to the previous 10 places)".¹⁹ Whilst we strongly support the intention to increase the number of participants who will be accommodated within the new Alcohol and Drug Treatment Unit it is nevertheless half of those who were assessed as eligible for the program between 2017-18 and 2019-20.²⁰

¹⁵ Alexandra Voce and Tom Sullivan, *Drug use monitoring in Australia: Drug use among police detainees 2021* (Australian Institute of Criminology Statistical Report 40: 2021) Table D2.

¹⁶ Toni Makkai and Jason Payne, *Key findings from the drug use careers of offenders (DUCO) study* (Australian Institute of Criminology: Trends & Issues in Crime and Justice, No. 267. Canberra 2003). As found in Tasmanian Law Reform Institute, *The Establishment of a Drug Court Pilot in Tasmania* (Research Paper No. 2) at 13.

¹⁷ Jarryd Bartle, Steven Bothwell, Nicole Lee and Linda Jenner, *What Works. Alcohol and other drug interventions in prisons* (360Edge: 2021) at 25. Also see David Wilson, 'Correctional Programs' in David Weisburd, David Farrington and Charlotte Gill (eds), *What Works in Crime Prevention and Rehabilitation: Lessons from Systematic Reviews* (Cambridge: 2016) 193 at 205.

¹⁸ Community Legal Centres Tasmania, Submission to the *Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters* (April 2023) at 14. As found at <http://www.clctas.org.au/what/reform/> (accessed 31 July 2023).

¹⁹ Minister for Corrections, 'Drug and alcohol treatment services continue within the TPS', Media Release, 2 August 2021.

²⁰ Between 2017/18 and 2019-20 there were 209 persons who were assessed as eligible for residential treatment. As found at Community Legal Centres Tasmania, Submission to the *Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters* (April 2023) at 14. As found at <http://www.clctas.org.au/what/reform/> (accessed 31 July 2023).

We would also note that many persons in prison are still unable to access the treatment they need. For example, a review of decisions of the Parole Board of Tasmania during 2022 found that 20 per cent of successful applications had not received alcohol and other drug treatment whilst in prison.²¹

Recommendation: That the *Tasmanian Drug Strategy 2023-2028* commit to;
i) investigating the expansion of residential treatment within the prison; and
ii) the provision of treatment to people who are imprisoned but not yet sentenced; and
iii) throughcare services upon release.

- ***Health-focused, evidence-based response to drug use***

We strongly support the Consultation Strategy's commitment to "a health response to illicit drug use".²² However, with studies finding that nearly two-thirds (64 per cent) of all Commonwealth, State and Territory funding is directed to law enforcement²³ it is unclear how this reorientation will be achieved in Tasmania without law reform.

In the event that the *Tasmanian Drug Strategy* cannot commit to the law reform we need, to move the debate forward we expressly call for a review of those jurisdictions that have moved to a health-focused response to illicit drug use. Also, rather than committing to "investigate and report back on harm reduction or health-focused, evidence-based responses" we believe the Consultation Strategy should commit to reviewing both harm reduction and health-focused, evidence-based programs.

Finally, we recommend that the Strategy expressly commit to a review of drug-driving laws. Whilst our drink driving laws adopt a legal limit in which an offence is only committed if the limit is exceeded²⁴ our drug driving laws adopt a zero-tolerance approach, in which any detectable amount of an illicit drug is an offence.²⁵ A review of drug-driving laws is consistent with an evidence-based response to illicit drug use as well as the Government's health-focused response to illicit drug use. Importantly, a review is also necessary given the disproportionate number of drug drivers being sentenced in Tasmania's criminal justice system.²⁶ The review should consider drug-driving laws that have been adopted overseas as well as sentences imposed.

²¹ Community Legal Centres Tasmania, Submission to the *Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters* (April 2023). As found at <http://www.clctas.org.au/what/reform/> (accessed 31 July 2023).

²² Tasmanian Government, *Tasmanian Drug Strategy 2023-2028* (consultation draft) at 9.

²³ Alison Ritter, Ross McLeod and Marian Shanahan. *Monograph No. 24: Government drug policy expenditure in Australia – 2009/10* (National Drug and Alcohol Research Centre: Sydney June 2013).

²⁴ Section 6(1) of the *Road Safety (Alcohol and Drugs) Act 1970* (Tas).

²⁵ 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.

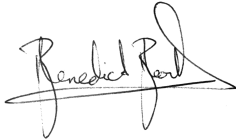
²⁶ According to the Sentencing Advisory Council's sentencing database, between 2015-2021 there were 4727 offenders (53 per cent) who were sentenced for drink driving and 4245 offenders (47 per cent) who were sentenced for drug driving. As found at Community Legal Centres Tasmania, Submission to the Legislative Council *Road Safety in Tasmania Inquiry* (September 2021). As found at <http://www.clctas.org.au/what/reform/> (accessed 31 July 2023).

Recommendation: That the *Tasmanian Drug Strategy 2023-2028* expressly commit to:

- i) reviewing those jurisdictions that have moved from a law enforcement to a health focused response to illicit drug use; and
- ii) reviewing both harm reduction and health-focused, evidence-based responses to illicit drug use; and
- iii) reviewing drug-driving laws.

If you have any queries, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Benedict Bartl', with a long horizontal stroke extending to the right.

Benedict Bartl
Policy Officer
Community Legal Centres Tasmania
