

COMMUNITY LEGAL CENTRES TASMANIA

8 October 2023

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001

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

To the Department of Justice,

Re: *Sentencing Amendment (Alcohol Treatment Order) Bill 2023*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Sentencing Amendment (Alcohol Treatment Order) Bill 2023* ('the Bill').¹ We are strongly supportive of the Bill which will provide courts with the ability to make a treatment order pursuant to Part 3A of the *Sentencing Act 1997* (Tas) where the offender has a demonstrable history of alcohol dependence and the alcohol dependence is linked to their offending.

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.

It is well known that many offenders sentenced to imprisonment have a history of substance use 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 half of all Tasmanian offenders (50 per cent) return to prison within two years.² Alarmingly, the same research found that over the last decade Tasmania has seen the largest increase of any Australian State or Territory of persons returning to prison within two years of being released.³

Tasmania's recidivism rates highlight the importance of providing judicial officers with the power to assist persons wanting to address the underlying cause of their offending.

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

² Productivity Commissioner, *Report on Government Services 2022 - Justice*, Table CA.4.

³ Productivity Commissioner, *Report on Government Services 2022 - Justice*, Table CA.4.

- **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”.⁴ 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”.⁵ 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.⁶

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.

We strongly support the Bill and note that the Sentencing Advisory Council,⁷ the Tasmania Law Reform Institute⁸ and the Alcohol Tobacco and Other Drugs Council of Tasmania⁹ have all recommended expanding drug treatment orders to include alcohol dependence. Expanding drug treatment orders to include alcohol dependence would also be consistent with other jurisdictions including Victoria, Queensland and the Australian Capital Territory.¹⁰

Clause 9 of the Bill proposes an amendment to section 27B of the *Sentencing Act 1997* (Tas) with a court required to “specify whether the order is being made in respect of the illicit drug use or alcohol dependence of the offender”. We strongly believe that another option should be available for persons who are assessed as both alcohol and illicit drug dependent. An illustrative example was a 2017 Tasmanian study in which the authors reviewed all recidivist drink drive offenders sentenced to custodial sentences between 2008-09 and 2013-14. The study found that nearly 85 per cent of offenders had a history of alcohol abuse and almost 75 per cent had a history of illicit drug use.¹¹

We are also concerned that there does not appear to be any commitment to increasing capacity in the Court Mandated Diversion program. In 2017, the Government increased

⁴ 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).

⁵ Section 27B(1)(b) of the *Sentencing Act 1997* (Tas).

⁶ Section 27B(1)(c) of the *Sentencing Act 1997* (Tas).

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 Part 3C(1C) of the *Sentencing Act 1991* (Vic); Part 8A of the *Penalties and Sentences Act 1992* (Qld); section 12A of the *Crimes (Sentencing) Act 2005* (ACT).

¹¹ As found in Tasmania Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers* (Issues Paper No 23) at 12-13.

capacity from 80 to 120 places in recognition that Drug Treatment Orders had expanded to become a sentencing option available in the Supreme Court.¹² With 156 Drug Treatment Orders having been imposed in Tasmania over the last two years¹³ it is likely that the program is already at capacity.

The high prevalence of alcohol dependence in persons entering prison is demonstrated in research carried out by the Australian Institute of Health and Welfare which reported in 2018 that 34 per cent of persons entering prison were at high risk of alcohol-related harm during the previous 12 months.¹⁴ As a result, we strongly recommend that capacity in Court Mandated Diversion is doubled.

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', written over a horizontal line.

Benedict Bartl
Policy Officer
Community Legal Centres Tasmania

¹² Guy Barnett, 'Increased cap for Court Mandated Diversion program', *Media Release*, 7 June 2017. As found at https://www.premier.tas.gov.au/releases/increased_cap_for_court_mandated_diversion_program (accessed 4 October 2023).

¹³ According to the Department of Justice's *Annual Report 2020-21* and *Annual Report 2021-22* there were 89 Drug Treatment Orders imposed in 2020-21 and 67 Drug Treatment Orders imposed in 2021-22.

¹⁴ Australian Institute of Health and Welfare. *The health of Australia's prisoners 2018* (Canberra: 2019) at 101.