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Sentencing Advisory Council  
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### **Phasing out of Suspended Sentences Consultation Paper August 2015**

The Alcohol, Tobacco and other Drugs Council of Tasmania (ATDC) welcomes the opportunity to provide a written response to the Sentencing Advisory Council's Consultation Paper titled, Phasing out of Suspended Sentences.

The ATDC is the peak body representing the interests of community sector organisations (CSOs) that provide services to people with substance misuse issues in Tasmania. The ATDC is a membership based, independent, not-for-profit and incorporated organisation.

Imprisonment as a deterrent may be effective for certain people however, this deterrent affect is severely compromised in relation to people who are substance dependent or intoxicated. Substance dependence can impair the decision making and consequential thinking capacity of an individual, reducing the threat of judicial sanctions. For this reason, the basic premise upon which the ATDC understands sentencing, is that it is most effective in having a positive influence on the behaviour of individuals when it is applied within a framework of therapeutic jurisprudence.

Tasmanian Alcohol and other Drug (AOD) sector organisations have significant experience in the delivery of assessment, brief intervention and treatment in both the police and court diversion models that operate in our jurisdiction. The Illicit Drug Diversion Initiative and the Court Mandated Diversion (CMD) program have been significant and welcome approaches to supporting people whose use of substances is associated with offending. The Tasmanian Early Intervention Program (TEIP) has provides timely opportunities for young offenders to be diverted from the court system.

The report, *Alcohol and other drug treatment and diversion from the Australian criminal justice system 2012-13* from the Australian Institute of Health and Welfare (AIHW)<sup>1</sup> notes that in the 10 years to 2012-13 the number of treatment episodes provided to people diverted from the criminal justice system doubled. Diversion can be used successfully for all substance types and utilising varying treatment models. With a capacity to provide interventions along the continuum of intensity from education and brief intervention to long term residential and clinical treatment, the community AOD sector is supportive of any sentencing reform that leads to increased resources for assessment, treatment and relapse prevention of substance use problems.

The Consultation Paper recommendations to expand CMD to accommodate circumstances where alcohol contributed to offending is sound. 41% of episodes of treatment in Tasmania in 2013-14<sup>2</sup>, albeit voluntary, were for instances where alcohol was the principle drug of concern. Alcohol is also well evidenced as a major contributor to accidents and injury which can at times be associated with offending. Extending CMD to include alcohol has the potential to assist people with severe relapsing alcohol dependence to access treatment who might otherwise be sentenced to a term of imprisonment without rehabilitation.

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<sup>1</sup> AIHW 2014. Alcohol and other drug treatment and diversion from the Australian criminal justice system: 2012-13. AIHW bulletin no. 125. Cat. no. AUS 186. Canberra: AIHW.

<sup>2</sup> AIHW 2015. Alcohol and other drug treatment services in Australia 2013-14. Drug treatment series no. 25. Cat. no. HSE 158. Canberra: AIHW

Furthermore the Council's recommendation to allow a CMD order to be made by the Supreme Court is supported. The high incidence of suspended sentences for drug offences currently being handed down in the Supreme Court, where diversion is not an option plainly indicates the need to enable Supreme Court Judges a sentencing option equivalent to that available to Magistrates.

The Sentencing Advisory Council present very clear evidence of the link between alcohol and drug related offending and the need for appropriate sentencing options. The determination of what level of sanction is acceptable to the community, the judiciary and the government is difficult. Such deliberation can be peppered with contesting values, judgements, attitudes and beliefs which frequently manifest in highly stigmatising and discriminatory perceptions of people with substance use problems.

It is essential that in understanding substance dependence, all decision makers are informed by contemporary evidence. The ATDC considers that substance dependence is, in the first instance, a health condition that requires a health and therapeutic response.

When substance dependence is combined with offending it is essential that the balance between criminogenic risk assessment and the role of AOD use recognises the positive impact engagement in AOD treatment will have. Addressing the underlying causes of substance use can be fundamental to changing offending behaviour.

It is with caution that the ATDC support the investment in drug testing as a prime order intervention. It is without doubt effective to use random testing to monitor substance free status and compliance. It is however well known within the AOD sector, that testing without a wrap-around framework of therapeutic intervention, is less effective. In particular, the ATDC recommend consideration be given to the evidence that compliance monitoring has been shown to be more likely to be successful if it is not only random but also the sanction for breaching an order is immediate, certain and proportional.<sup>3</sup>

A higher order proposition supported by the ATDC is to ensure that any sentencing reform in Tasmania also considers the evidence viewed by the Victorian Sentencing Advisory Council which suggested that treatment provided in the community provides the most positive outcomes in reducing re-offending for drug offenders. A focus on the provision of aftercare and relapse prevention provided by community sector AOD service providers is therefore likely to assist in breaking the cycle of recidivism. AOD service providers are experienced in the provision of relapse prevention interventions and if adequately resourced could support such reform.

The introduction of a new sanction, the Community Correction Order (CCO) has potential to provide appropriate therapeutic responses to people with AOD problems whilst meeting the community expectation that a sanction is imposed. The consultation paper does provide proportionality and suitability as the overarching principles of the imposition of a CCO. This is particularly important as the ATDC would argue that consideration of proportionality should result in many more individuals who are assessed as substance dependent being offered treatment. As a consequence treatment demand is likely to increase significantly.

The capacity of the AOD and Community Corrections workforce to respond to increased demand must be considered in two parts. Firstly, an increase in the number of people referred for treatment will require an increase in treatment places and staff to provide that treatment. Secondly, the ongoing development of the skills and capacity of workers to be effective in roles based upon therapeutic jurisprudence must be resourced. Workforce development within the AOD sector is a continuous process of improving the quality of care provided and the responsiveness of the service systems.

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<sup>3</sup> Beau Kilmer, Nancy Nicosia, Paul Heaton, and Greg Midgette. Efficacy of Frequent Monitoring With Swift, Certain, and Modest Sanctions for Violations: Insights From South Dakota's 24/7 Sobriety Project. American Journal of Public Health: January 2013, Vol. 103, No. 1, pp. e37-e43

This means capacity building and training activity, across the AOD and Corrections workforce, must be factored into the transitional stage of phasing out suspended sentences. The ATDC supports the Councils recommendation that this reform is gradual.

Whilst it may be the final comment of this response, it is without doubt the most important. The ATDC concurs fully with the Sentencing Advisory Councils statement that any reform will only succeed if properly funded. It is reiterated on several occasions throughout the Consultation Paper that the introduction of a new sanction such as the CCO is resource intensive. The extension of CMD to the Supreme Court and to include alcohol will require additional resources and specifically funding for community based programs. Introducing reform requires investment in the change process and in particular in the workforce and services tasked with implementing the new approach.

The ATDC member organisations, in particular those who deliver AOD interventions, will be critical partners with the Government if suspended sentences are to be successfully phased out.

Yours sincerely,

Jann Smith  
Chief Executive Officer.

## **ABOUT THE ATDC**

The ATDC is the key body supporting the sector to secure adequate systemic support and funding for the delivery of evidence based alcohol, tobacco and other drug (ATOD) initiatives. We support the sector through training and sector capacity building, as well as undertaking policy and development projects with, and on behalf of, the sector.

We represent a broad range of service providers and individuals working in prevention, promotion, early intervention, treatment, case management, research and harm reduction, and play a vital role in assisting the Tasmanian Government to achieve its aims of preventing and reducing harms associated with the use of alcohol, tobacco and other drugs in the Tasmanian community.

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By working with all levels of government and the community the ATDC seeks to promote health and wellbeing of all Tasmanians through a reduction of the harms caused by substance use. Our priorities are set by the membership and Board and focus on the prevention of the uptake of harmful alcohol or drug use, the provision of effective treatment for alcohol or drug misuse and the long term promotion of health and relapse prevention.

A broad and regionally dispersed membership base ensures the ATDC maintains a strategically relevant position within the overall understanding of what services are provided, what services are needed and how best to achieve the goal of reducing the negative impacts on the Tasmanian community from alcohol and drug use.

### **Our Vision**

A Tasmania without drug or alcohol related harm or discrimination.

### **Our Mission**

To provide independent leadership and advocacy; strengthen partnerships through inclusion, and support consumer participation in the promotion of holistic alcohol, tobacco and other drug (ATOD) services for all Tasmanians.

### **Our Organisational Members**

Advocacy Tasmania Inc.	OZHELP Foundation
Alcohol & Drug Service (North)	Pathways Tasmania Inc.
Alcohol & Drug Service (South)	Quit Services Tasmania
Anglicare Tasmania Inc.	Red Cross Tasmania
Bethlehem House Tasmania Inc.	Relationships Australia Tasmania Inc.
Brain Injury Association of Tasmania	Rural Alive and Well Inc.
Circular Head Aboriginal Corporation	Tasmanian Aboriginal Centre Inc.
Colony 47	Tasmanian Council on AIDS, Hepatitis and Related Diseases
Drug Education Network Inc.	The Hobart Clinic
Family Drug Support	The Link Youth Health Service
Glenorchy City Council	The Salvation Army
Headspace/Cornerstone Youth Services	TUHSL
Hobart City Council	WISE Employment
Holyoake Tasmania	Wyndarra Centre
Launceston City Mission (Missiondale)	Youth, Family and Community Connections
Mental Health Carers Tasmania	
Mission Australia	