



Justice and Health.

Strengthening Tasmania's justice response to alcohol and other drug use.

**Position Paper
September 2021**

No Harm, No Discrimination

atdc
Alcohol, Tobacco and other
Drugs Council Tasmania



Summary Recommendations

- **Increased investment into alcohol and other drug treatment services within the Tasmanian Prison Service, including increased in-reach services provided by the community-managed ATOD sector**
- **Increased resources to provide effective and coordinated through-care for people exiting the prison system, integrated with community-managed AOD treatment and support services; this should include the provision of naloxone to individuals who wish to access it upon their release**
- **Increased investment to strengthen Tasmania's Court Mandated Diversion Program and expand the Program to include alcohol use**
- **The introduction of a Therapeutic Division of the Tasmanian Magistrates Court**



Introduction

The ATDC is the peak body representing and supporting community organisations, and the people they assist, to reduce alcohol, tobacco and other drug related harm for all Tasmanians. Our vision is for a Tasmania without alcohol, tobacco or other drug related discrimination or harm.

To achieve this, access to appropriate treatment services and programs is vital because Tasmanians drink alcohol, smoke cigarettes and take other drugs. For many, their use of alcohol and other drugs¹ will not cause them any health or social concerns. For others, their alcohol and drug use can negatively affect their health and may also be a contributing factor to criminal behaviour. For people who use illegal drugs, by virtue of the illegality of those drugs, their use can result in criminal charges.

This paper will focus on three key strategic challenges to effective justice outcomes as it relates to alcohol and other drug (AOD) use with a focus on the adult justice system (not youth justice). More needs to be done, in collaboration with the Tasmanian community-managed alcohol, tobacco and other drugs (ATOD) sector, to:

1. Ensure people in prison who want help with their AOD use have access to effective treatment and support through a mix of in-house prison services and in-reach services provided by the community-managed ATOD sector.
2. Provide people exiting prison access to a coordinated transition to community-managed AOD treatment and support services upon release.
3. Where appropriate, focus on keeping people who want help with their AOD use out of prison whilst accessing AOD treatment and support services within the community-managed ATOD sector.

Background

There were 153,377 drug arrests in Australia in 2018-2019, including 2,738 in Tasmania.² More than 80 per cent of drug arrests in 2017-2018 were made against Tasmanians who were charged with use, possession or administering a drug for their own personal use.³ These figures do not include the number of Tasmanians who were charged with a non-drug offence, but where drugs were a contributing factor in their offending.

Some of these Tasmanians will be offered suspended sentences, and others will be required to spend time in prison. It is these Tasmanians who would benefit greatly from access to specialised treatment and support to treat their AOD use. Yet, we know that it is only a very small proportion of these people who will be provided with treatment options to address their AOD use issues, including the very small cohort eligible to participate in a drug treatment program instead of going to jail.

Nationally only 13 per cent of people who were discharged from prison in Australia reported accessing AOD treatment while in custody,⁴ with many people being released from prison without their underlying AOD use issue being treated.

The ATDC believes the current approach to AOD issues in our community must shift towards a much stronger focus on utilising therapeutic jurisprudence, and fully resourced and intensive AOD treatment and support both during incarceration and prior to release, including continuity of AOD treatment and support upon reintegration into community.

This favours a health response to AOD use across the justice system.

¹ For the purposes of this paper, legal drugs, illicit drugs and tobacco are included within the term 'alcohol and other drugs'.

² Australian Criminal Intelligence Commission, Illicit Drug Data Report 2018-2019, (2020), accessed at <https://www.acic.gov.au/publications/illicit-drug-data-report/illicit-drug-data-report-2018-19>

³ Australian Criminal Intelligence Commission, Illicit Drug Data Report 2017-2018, (2019), accessed at https://www.acic.gov.au/sites/default/files/illicit_drug_data_report_2017-18.pdf?v=1564727746

⁴ Alcohol & Drug Foundation, Prison, Alcohol and Drug Use – A Volatile Combination (2019) accessed <https://adf.org.au/insights/prison-aod-use/>



Tasmania's current response to AOD use in the justice system – do the dollars make sense?

Tasmania's response to AOD use mirrors that of other Australian states and territories, with efforts across the three pillars of the National Drug Strategy 2017-2026 of addressing supply (through regulation and law enforcement), demand (through prevention and treatment) and harm (through harm reduction strategies) – this is known as the harm minimisation approach.

While it is acknowledged that over recent years Australian governments have invested increasing amounts into tackling AOD issues, the ATDC and its members are concerned the right balance across each of the aforementioned pillars has yet to be achieved.

That is, with increasing investment in law enforcement resources, particularly to tackle illicit drugs, there continues to be no comparative investment into addressing demand or harm reduction.

Information provided to the Australian Government's 2015 *Parliamentary Joint Committee on Law Enforcement Inquiry into Crystal Methamphetamine*⁵ outlined that the Australian Commonwealth, state and territory governments were spending approximately \$1.7 billion annually on illicit drug initiatives. With an estimated 64 per cent of this funding being allocated to law enforcement, this leaves just over 22 per cent for treatment, less than 10 per cent for prevention, and less than four per cent for harm reduction strategies.

This funding disparity exists despite the overwhelming evidence to show that law enforcement responses, notably those related to imprisonment, are far less cost-effective and successful in addressing AOD issues, compared to prevention, treatment or harm reduction initiatives.

In Tasmania, the prison population has grown 37 per cent in 10 years and costs the Tasmanian taxpayer \$93.9 million per annum to run. It is the second most expensive prison system in Australia, with a high recidivism rate that sees two out of three prisoners having been to prison before, and 47 per cent of prisoners returning to prison within two years of release.⁶

There is a strong relationship between AOD use and crime, with substance use higher amongst offenders than the general community. The relationship between AOD and offending behaviour must be considered and met with evidence based AOD treatment as part of any genuine approach to rehabilitation in the justice setting.⁷

The ATDC echoes the growing consensus that the existing approach of treating an individual's illicit drug use primarily as a criminal matter, rather than a health matter, is contrary to the principle that problems with substances are health problems.⁸

We maintain that we must address the imbalance in the investment into law enforcement and AOD demand and harm reduction strategies with an increased focus into initiatives that treat an individual's alcohol and other drug use as a health and social issue in Tasmania.

⁵ Parliamentary Joint Committee on Law Enforcement *Inquiry into Crystal Methamphetamine Final Report*, accessed at www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/Final%20Report/c05

⁶ Justice Reform Initiative *State of Incarceration – Tasmania's Broken Criminal Justice System* accessed at https://d3n8a8pro7vnm.cloudfront.net/justicereforminitiative/pages/249/attachments/original/1619164039/JRI_Tasmania_report_FINAL.pdf?1619164039

⁷ Sentencing Advisory Council *Research Paper No 2 – Mandatory Treatment for Alcohol & Drug Affected Offenders* accessed at https://www.sentencingcouncil.tas.gov.au/_data/assets/pdf_file/0016/400147/SAC-Research-Paper-No.-2-Mandatory-treatment-for-alcohol-and-drug-affected-offenders.pdf

⁸ Department of Health, *National Framework for Alcohol, Tobacco and other Drug Treatment 2019-2029* (2019)



Justice Challenge One: Ensuring people in prison who want help with their AOD use have access to effective AOD treatment and support through a mix of in-house prison services, and in-reach services provided by the community-managed ATOD sector.

Key Recommendation One: The ATDC supports increased investment into alcohol and other drug treatment services within the Tasmanian Prison Service, including increased in-reach services provided by the community-managed ATOD sector.

In 2020, there were 668 Tasmanians imprisoned⁹ and with estimates that in any Australian prison 80 per cent of inmates will have a substance use problem,¹⁰ this suggests that there are over 500 Tasmanians within our prison system who require AOD support.

While the *Breaking the Cycle: A Strategic Plan for Tasmanian Corrections 2011-2020* details goals and strategies which include increasing the provision of programs addressing key criminogenic issues such as substance misuse,¹¹ the *Custodial Inspector of Tasmania's Report into Care and Wellbeing* released in 2017, painted a grim picture of progress in this area. The Report found a range of concerning issues including only two AOD counsellors for over 670 prisoners, waiting lists, inconsistent care for prisoners (including male and female) and a large number of prisoners being released back into the community without ever receiving any AOD treatment or support.



There are only two alcohol and other drug counsellors for over 600 prisoners



⁹ <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0-2017-Main%20Features-Tasmania-23> accessed 8 Feb 2019

¹⁰ Australia21 Report above

¹¹ *Breaking the Cycle: Strategic Plan for Tasmanian Corrections 2011-2020*, Department of Justice Tasmania, April 2011, 5



In 2021, these issues remain and have been exacerbated by the suspension of the prison's in-house AOD rehabilitation service (the Apsley Unit) to accommodate an overflow of prisoners. While there are a small number of group programs and one-on-one counselling sessions being facilitated by existing prison staff, and external community service organisations, they are reportedly restricted by the number of inmates who can participate, the eligibility criteria and the availability of physical space (e.g. location of the programs within the prison and classification of inmates).

Unfortunately, imprisonment is inevitable, and in certain cases appropriate and necessary for some offenders due to the nature of the offence(s) committed. Adequate resourcing for programs and services must be made available, especially when that AOD use has been an underlying factor in someone's offending.

The ATDC acknowledges that work has occurred in recent years across the Tasmanian Prison Service to introduce improvements in AOD treatment. This includes the trial of long-lasting depot buprenorphine for prisoners receiving pharmacotherapy treatment, and dialectical behaviour therapy for female prisoners. The ATDC is also expecting an extra five therapeutic interventions workers committed by the Tasmanian Government in 2021 to prioritise the delivery of AOD treatment and support.

However, much more needs to be done, including an increase in collaboration with the community-managed ATOD sector to deliver in-reach services to prisoners.

Community-managed organisations across the Tasmanian ATOD sector are delivering contemporary evidence-based AOD programs and services across residential, group and individual settings. They are staffed by a professional and qualified workforce, that through the ATDC is supported via the provision of world-class training and development in contemporary AOD treatment and support. Despite this, the level of engagement and collaboration between the Tasmanian Prison Service and the community-managed ATOD sector is limited.

The ATDC is calling upon increased engagement between the Tasmanian Prison Service, and the community-managed ATOD sector to increase collaboration on the delivery of AOD programs and services within the prison setting.

The ATDC also acknowledges that the imprisonment rate of Tasmanian Aboriginals is five times more than non-Aboriginals, and that this prison population has grown by more than 90% since 2010¹². Given this, culturally appropriate AOD treatment and support is essential.

Apsley Drug & Alcohol Unit

The opening of the 10 bed Apsley Drug and Alcohol Unit in 2015 within the maximum-security facility at Risdon Prison was a welcome addition to the treatment options available to inmates, with a (minimum) 12-week full-time program aimed at offenders who are highly motivated to give up AODs and who have struggled with drug dependence for a long time. However, concerns have been raised about the strictness of eligibility criteria to participate (including classification, length of sentence, past behaviour, and commitment to stay for a minimum of 12 weeks). These concerns have resulted in the program being heavily criticised by both staff and prisoners as not being successful, with a major issue being that graduating participants are re-housed back into the medium-security precinct, which is where staff and prisoners report most of the drug use occurs.

In 2020, the Apsley Unit was repurposed to house prisoners rather than deliver AOD treatment services. Consequentially, prisoners are not currently receiving a well-resourced in house high-intensity therapeutic treatment approach for their AOD use.

Whilst the ATDC recognises the need for the Tasmanian Prison Service to respond to the immediate capacity issues to house prisoners, and the intention to shift and expand this service within the Ron Barwick Prison site, the ATDC expects this service to be re-established as a matter of urgent priority.

¹² Justice Reform Initiative *State of Incarceration – Tasmania's Broken Criminal Justice System* accessed at https://d3n8a8pro7vhmx.cloudfront.net/justicereforminitiative/pages/249/attachments/original/1619164039/JRI_Tasmania_report_FINAL.pdf?1619164039



Justice Challenge Two: providing people exiting prison access to a coordinated transition to community-managed AOD treatment and support services upon release.

Key Recommendation Two: Increased resources to provide effective and coordinated through-care for people exiting the prison system, integrated with community-managed AOD treatment and support services; this should include the provision of naloxone to individuals who wish to access it upon their release

"Transition from prison to the community is a difficult time for people who have diverse and complex needs and many need support until they become established in the community."¹³

Successfully reintegrating prisoners back into the Tasmanian community should be a priority for the Tasmanian Prison Service. This is reflected in Goal Five of the *Breaking the Cycle: A Strategic Plan for Tasmanian Corrections 2011-2020*, which aims to ensure that individuals have their reintegration needs met through post-release support services arranged pre-release and by supervision in the community where appropriate.¹⁴

Currently, many Tasmanian prisoners leave prison with significant mental health and substance use issues, without adequate social support or housing, challenges to achieving employment, and often with significant financial debts. It is imperative that prisoners exiting the corrections environment are provided the best opportunity to reduce the harms associated with AOD dependency, often a key driver to offending behaviour in the first place, and to reduce the likelihood of reoffending in the future. Best practice examples include investing in dedicated pre-release centres¹⁵ run in conjunction with community-managed AOD treatment organisations, housing and homelessness services, mental health, family, legal and financial support services.

The stress and challenge of transitioning to community life after time in prison can lead to increased risk of overdose or AOD harms as individuals seek to manage emotions, and relapse upon release is not uncommon.

The ATDC recommends the Tasmanian Government:

- Invests in evidence-based exit programs that have been shown to reduce future offending, with an emphasis on ensuring transition to community-managed AOD treatment and support services upon release.
- Promotes an integrated approach to prisoner release that considers wider factors that support community reintegration, including natural support networks, housing and homelessness services, supported access to mental, physical and social health services, employment, disability, financial and legal services.
- Imbeds in policy the provision of naloxone for those prisoners who wish to access it, to help reduce the potential harms of accidental overdose at this critical point in transition.

In making these recommendations, the ATDC is cognisant of the introduction of consultation and liaison positions within the Tasmanian Health Service that may assist with the transition of prisoners, including those requiring ongoing pharmacotherapy. However, the success of this service will be reliant upon a balanced and collaborative approach with the community-managed ATOD sector, to ensure that adequate services are available for prisoners upon exit within the community, and not just within the public system.

¹³ Final Throughcare Strategic Plan, Justice Tasmania, accessed 20 May, 2021:

https://www.justice.tas.gov.au/_data/assets/pdf_file/0006/353526/FINAL_Throughcare_Strategic_Plan_2016-2020_WEB.pdf

¹⁴ *ibid*

¹⁵ What Works. Alcohol and other drug treatment in prisons. 360edge. 2018.



Justice Challenge Three: where appropriate, focus on keeping people who want help with their AOD use out of prison, whilst accessing AOD treatment and support services within the community-managed ATOD sector.

Key Recommendation Three: Increased investment to strengthen Tasmania’s Court Mandated Diversion Program and expand the Program to include alcohol

In recent years, Tasmania, like many other Australian states and territories, has initiated diversion programs aligned to a drug decriminalisation approach.¹⁶ These initiatives fall into the approach known as *de facto reform*, in which illicit drug possession, or use, remains illegal but the penalty can be reduced in practice through non-enforcement (police discretion) or by referring offenders to education/treatment. The two diversion programs in Tasmania are the Illicit Drug Diversion Initiative (IDDI) and the Court Mandated Diversion (CMD) Program.

The ATDC considers these initiatives important to the justice response to AOD use. However, due to resourcing issues, places are limited, particularly in the CMD Program, which is working to capacity (despite a boost to funding in 2017-2018 that increased placement numbers from 80 to 120).

“ Increasing the number of places available in the CMD Program will divert additional Tasmanians away from the prison system ”



ILLICIT DRUG DIVERSION INITIATIVE (IDDI): The IDDI is an alcohol and other drug counselling and referral service for low level offences/first time drug offenders in Tasmania. Tasmania Police diverts these offenders for appropriate counselling and/or education as an alternative to facing court with the aim to educate offenders to consider both the legal and health consequences of illicit drug use. Counselling and education are provided by Tasmanian community alcohol and other drug service providers.

COURT MANDATED DIVERSION (CMD) PROGRAM: Aimed at addressing the underlying cycle of illicit drug use and crime for offenders with a lengthy history of illicit drug related offending, the CMD Program was introduced in Tasmania in 2007 and allows magistrates and judges to impose a Drug Treatment Order (for up to two years) on adult offenders under part 3A of the *Sentencing Act 1997*. In these instances eligible offenders are diverted into treatment for their illicit drug use rather than serving a prison sentence. (Note that the CMD Program does not apply to alcohol related offences).

A Drug Treatment Order is by no means ‘the easy option’. Participants are required to abstain from all illicit drug use, have regular and random urinalysis, attend regular face to face meetings with a diversion officer, attend regular court reviews and participate in individual counselling and group treatment programs. Not complying with the conditions of the Order results in sanctions which may ultimately result in the Order being cancelled and the participant being required to serve their sentence of imprisonment.

¹⁶ Decriminalising drugs is not the same as legalising drugs. Decriminalisation means that there is still no legal means to obtain drugs for personal use, it simply means that drug use or possession does not carry a criminal penalty for an individual.



The ATDC is calling for increased investment for more places in the CMD Program. Increasing the number of places available in the CMD Program will divert additional Tasmanians away from the prison system, a strategy that has been proven to increase success in addressing illicit drug use.

Once in the criminal (justice) system, institutionalisation, cumulative trauma, exposure to hardened criminals and the availability of harder drugs within prisons impact dramatically on an individual's ability to gain control over their drug use and to rebuild their lives on release....The prison environment harms rather than helps the mental health of inmates, undermines their capacity to function in the community afterwards and reinforces their disconnection from society."

The argument for increasing places is simple - treatment is a more cost-effective response contributing to a reduction in recidivism. An enormous amount of national and international literature supports the work of drug courts and their success in reducing crime and improving the lives of participants.¹⁸

From an economic standpoint, it costs approximately \$122,143.60 to imprison one person for a year. With our prison populations expanding, and almost half of released prisoners returning to corrections within two years,¹⁹ there needs to be strategies implemented to divert people away from the prison system. In 2015-2016, the cost of maintaining a prisoner in Tasmania was \$334.64 per day,²⁰ compared to a Tasmanian offender on community supervision (this includes the CMD Program) of \$13.19 per day.²¹

These figures are compelling and hard to ignore, with enormous potential savings per year per person who is diverted from prison to a community-based treatment program. This is particularly hard to ignore when we know that the recidivism rate for offenders who are incarcerated is more than twice that for offenders subject to community-based supervision (44 per cent of people incarcerated re-offend, compared to 18 percent who are in community supervision).²²

The ATDC believes there is immense value in expanding the CMD Program to include Drug Treatment Orders for alcohol use, where that use has contributed to the offending behaviour. Alcohol is the most common principal drug of concern for Australians and this is also the case in Tasmania.²³

Concerns about the lack of availability of sentencing options that provide for community-based treatment for alcohol use has also been highlighted in the Tasmanian Law Reform Institute's report examining the adequacy of current sentencing options for repeat drink drivers.²⁴ This approach is also supported by the Tasmanian Sentencing Advisory Council (TSAC), that in 2017 reiterated "TSAC has identified an area of need in relation to the sentencing orders that provide for community-based treatment in respect of problematic alcohol use. TSAC has previously recommended that the DTO should be expanded to accommodate offenders with a history of alcohol abuse, where that substance abuse has contributed to the offender's criminal behaviour."²⁵

It is our understanding that this change (to include alcohol) could occur by amending Part 3A of the *Sentencing Act 1997* to include the words 'alcohol' where it currently refers to illicit drugs, or simply remove the word 'illicit'.

Whilst the initial financial resources required to implement such a change would be significant, the ATDC believes this cost to be well justified in terms of reduced harms to the individual and community and overall substantially reduced costs over time when compared to the costs of incarceration.

¹⁸ Australia21 Report, 'We all pay the Price', Report from a high level national Roundtable of 36 experts in drug treatment, drug law and community welfare, conducted in Parliament House, Melbourne in March 2018, report accessed at www.australia21.org.au on 2 November 2018

¹⁹ L Moore, *Measures of Success: Capturing the Impact of Drug Courts*, Master's Thesis, University of Tasmania, (2012) 42, accessed at <http://ssrn.com/abstract=2236482> This thesis summarises national and international literature on the success of drug courts.

²⁰ Ibid. 6

²¹ Ibid. 6

²² Department of Justice, Tasmania, 2015-2016 Annual Report, 38.

²³ Report on Government Services 2018, [above](#).

²⁴ Australian Institute of Health and Welfare, Alcohol and other drug treatment services in Australia 2016-2017, (2018), accessed at www.aihw.gov.au on 16 October 2018

²⁵ Tasmanian Law Reform Institute, *Responding to the Problem of Recidivist Drink Drivers, Issues Paper No23* (2017). It is noted however that this Report recommends a Driving While Intoxicated list for this specific cohort of offenders rather than a general expansion for all alcohol related offending

²⁶ Tasmanian Sentencing Advisory Council, *Mandatory Treatment For Alcohol and Drug Affected Offenders: Research Paper No.2* (2017)



The ATDC also recommends a review of the legislation around sentence eligibility. Currently, to be eligible for a Drug Treatment Order, participants must be facing a maximum two-year custodial sentence. Informal research suggests increasing eligibility to a maximum three-year sentence would see a much higher number of offenders referred from the Supreme Court.

Since February 2017, when the Supreme Court was first empowered to sentence offenders to Drug Treatment Orders, almost 30 per cent of people who were assessed as otherwise suitable for the CMD Program were ineligible to participate as their sentence was more than two years (but less than three years).

Key Recommendation Four: The ATDC strongly supports the introduction of a Therapeutic Division into the Tasmanian Magistrates Court

While Tasmania has made significant progress down the therapeutic jurisprudence path in the last decade, we still have a way to go. Tasmania’s court system currently operates several court lists dealing with specific issues including youth justice, mental health, family violence and the CMD Drug Court. The ATDC strongly supports the investigation of how these lists, alongside a drink driving/driving while intoxicated list, could be bundled together into a designated Therapeutic Division of the Magistrates Court.

A Court of this nature would encourage and support the development of a therapeutic culture within the justice setting, with a courtroom itself designed specifically and appropriately for a problem-solving approach. With dedicated judicial officers ensuring consistency in practice, this Court would assist Tasmania’s most marginalised clients where significant resources are required, and justified, to be invested to break the cycle of crime and disadvantage. The ATDC believes the long-term cost savings to the Tasmanian community in terms of health, justice, child protection and policing, in addition to the well-being of this cohort, would be significant.

This suggestion is not new, and one previously recommended by retired Chief Magistrate Michael Hill:

*Problem-solving or solution-orientated courts have been developed over the past 30 years in response to a recognition that the adversarial nature of the traditional criminal justice model cannot effectively handle the complexity of certain human and social problems, where failing to deal with fundamental causes almost guarantees re-offending.*²⁶

This sentiment is also reflected in the Magistrates’ Court of Tasmania 2015-2016 Annual Report, which said ‘this approach to justice requires courts to acknowledge that rather than simply processing cases, the court system should be concerned with taking approaches in an attempt to address the problems that lead to a person’s appearance in court, and work to change offender behaviour and improve public safety where appropriate.’²⁷

“ **The adversarial nature of the traditional criminal justice model cannot effectively handle the complexity of certain human and social problems** ”



²⁶ M Hill, ‘Driving While Intoxicated (DWI) Courts: A Vital Part in the Battle to End Recidivist Drink Driving’ Paper presented at the Alcohol, Tobacco and other Drugs Council of Tasmania (ATDC) Conference, Hobart 7-8 May 2014.

²⁷ Magistrates Court of Tasmania, Annual Report 2015-2016, 12 accessed at www.magistratescourt.tas.gov.au on 9 November 2018.