



Position Paper

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

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No Harm, No Discrimination

atdc
Alcohol, Tobacco and other
Drugs Council Tasmania



- **The ATDC calls for increased investment to strengthen Tasmania's Court Mandated Diversion Program and expand the Program to include problematic alcohol use**
- **The ATDC calls for increased investment into alcohol and other drug treatment services within Tasmania's correctional facilities**
- **The ATDC supports the introduction of a Therapeutic Division of the Tasmanian Magistrates Court**

Introduction

It is the vision of the ATDC 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 Tasmanians, their relationship with alcohol and other drugs¹ will not cause them any health or social concerns. For others, their drug use may involve substances that are not only considered dangerous to their health, but are also illegal, and can be a contributing factor to criminal behaviour.

There were 148,363 drug arrests in Australia in 2017-2018, including 2695 in Tasmania. More than 80 per cent of these arrests (2196) were made against Tasmanians who were charged with use, possession or administering a drug for their own personal use.² 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, others will be required to spend time in prison, and it is these Tasmanians who would benefit greatly from access to alcohol and other drug treatment and support. Yet we know that it is only a very small proportion of these people who will be provided with treatment options to address their alcohol or other drug use issues, including the very small cohort eligible to participate in a drug treatment program instead of going to jail.

Those Tasmanians who do find themselves sentenced to a period in prison (directly or indirectly because of alcohol and other drugs) are unlikely to access adequate treatment or support due to significant under-resourcing within the custodial environment. Consequently, when they are released, their underlying alcohol or other drug issue typically remains unresolved.

This outcome is unsurprising, given the current approach to problematic alcohol and other drug issues in our community involves a heavy-handed justice response, rather than a treatment focussed health response.

It is the position of the ATDC that this needs to change.

To effectively respond to the needs of our community, there must be a better balance between Tasmania's existing justice response and a health response that works to address the underlying causes of an individual's problematic alcohol or other drug use and co-occurring offending behaviour.

To do otherwise means that we will continue to see the same problematic issues with alcohol and other drugs occurring across our community because our justice system is currently only responding to the end result, not the factors contributing to problematic behaviour.

This balance can be achieved and this paper presents the ATDC's recommended strategies for action to strengthen the availability and integration of alcohol and other drug treatment options within the Tasmanian 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 2017-2018, (2019), accessed at https://www.acic.gov.au/sites/default/files/illicit_drug_data_report_2017-18.pdf?v=1564727746



How does Tasmania respond to problematic alcohol and other drug use?

Tasmania's response to problematic alcohol and other drug 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).

While it is acknowledged that over recent years Australian governments have invested increasing amounts into tackling alcohol and other drug issues, it is widely lamented that we are not investing equally in each of the aforementioned pillars. That is, with increasing amounts being invested 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 Methamphetamine³ 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 less successful in addressing alcohol and other drug issues, than prevention, treatment or harm reduction initiatives. This long-standing issue continues to be raised and has led to the frequent use of catch-phrases like 'the war on drugs is failing' and 'we cannot keep trying to arrest our way out of the illicit drug problem'.

Tasmania is not immune to these criticisms, with increasing concerns being raised by Tasmanian alcohol and other drug treatment service providers, and the broader community.⁴

These concerns range from the fact that problematic alcohol and other drug use is increasing, the prison population is growing and the harms from alcohol and other drug use are infiltrating our communities, resulting in government and community sector organisations becoming stretched with inadequate and limited resourcing.

The ATDC believes this can, and must, change.

The ATDC does not suggest that the Tasmanian government legalise illicit drugs. There will always be a role for a strong criminal justice response to the manufacturing, supplying and trafficking of large quantities of illicit drugs.

Rather, we echo the growing consensus that the existing approach of treating an individual's illicit drug use as a criminal matter is inappropriate and ineffective. We maintain that we must address the imbalance in the investment into law enforcement and alcohol and other drug strategies with an increased focus into initiatives that treat an individual's illicit drug use as a health issue in Tasmania.

³Parliamentary 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

⁴For example, Community Legal Centres Tasmania 'The Case for a Health Focused Response to Drug Use in Tasmania's Legal System' Report, 2017.



How can Tasmania’s response be strengthened?

1. Increased investment to strengthen Tasmania’s Court Mandated Diversion Program and expand the Program to include problematic alcohol use

In recent years, Tasmania, like many other Australian states and territories, has initiated diversion programs aligned to a drug decriminalisation approach.⁵ 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.

Both these initiatives are very effective but due to resourcing issues, places are limited, particularly in the CMD Program, which is working to capacity (despite a boost to funding in 2017-18 that increased placement numbers from 80 to 120).

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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 is 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.

⁵ 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 problematic 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 which also contributes 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.⁷

From merely an economic standpoint, it costs approximately \$110,000 to imprison one person for a year. With our prison populations expanding, and more than half of released prisoners returning to corrections within two years,⁸ there needs to be strategies implemented to divert people away from the prison system.

Diverting Tasmanians into community-based treatment whenever possible is cost-effective compared to placing them within the prison system. In 2015-2016, the cost of maintaining a prisoner in Tasmania was \$311.87 per day,⁹ compared to a Tasmanian offender on community supervision (this includes the CMD Program) of \$13.19 per day.¹⁰

These figures are compelling and hard to ignore, with potential savings of approximately \$109,000 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).¹¹

The ATDC believes that the high cost and relative ineffectiveness of imprisonment to address recidivism, combined with the lack of alcohol and other drug treatments available within Tasmanian correctional facilities, means that we need to change our approach.

It is the ATDC's view that the CMD Program has a key role to play in this change, but in doing so, **the existing model of the CMD Program needs to be reviewed.**

Currently, the CMD Drug Treatment Order requires that the individual use no illicit drugs during the time they are subject to the Order. (Note that participants of the CMD Program are able to be prescribed opiate replacements from their GPs **if** their primary drug of concern is opiates). The CMD Program takes an abstinence-based approach focusing on reducing recidivism and looking at alcohol and other drug use as a criminogenic factor. This same approach is not shared across the Tasmanian alcohol and other drug sector. Viewing treatment quite differently, the alcohol and other drug sector views problematic substance use as a chronic and relapsing condition, Recovery is a long term process and treatment 'success' looks different for each person along a spectrum (ranging from abstinence through to harm reduction strategies if the individual continues to use alcohol or other drugs).

To ensure that the benefits and success of the CMD Program are fully recognised, **the ATDC recommends that the CMD Program's criteria for success broadens.**

⁷ 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

⁸ 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.

⁹ Report on Government Services 2018, Part C, Chapter 8, Productivity Commission, accessed at www.pc.gov.au on 14 November 2018.

¹⁰ Ibid.

¹¹ Department of Justice, Tasmania, 2015-2016 Annual Report, 38.

¹² Report on Government Services 2018, [above](#).



Currently, the success of Tasmania's CMD Program is only measured by how many participants have successfully completed the entirety of their Drug Treatment Order. That is, the number of people recorded as having graduated from the Program and are, therefore, 'drug-free'.

The ATDC believes that this method of assessment does not reflect the positive impact the CMD Program has for all its participants. Data currently collected does not count the number of participants who may not have graduated from the Program but who have had significant improvements in their health and wellbeing, restored their family relationships, improved employment prospects, made gains in literacy, had increased periods of abstinence, improved financial stability or secured adequate housing.

While there is an abundance of anecdotal evidence on the success of the CMD Program,¹² it is important that the measures of success are realistic within the context of the client group. This perspective was shared in the 2012 report that reviewed the impact of Tasmania's CMD Program:

*Given that many diversion programs deal with the most complex and recalcitrant offenders who are assessed as both high risk and high needs, it would be unrealistic to limit the definition of success to program completion, abstinence from drug use and cessation of offending. Rather, progress could be more realistically measured by the extent of engagement in the program, degree of compliance with conditions, reductions in drug use and reductions in the frequency and severity of crime committed.*¹³

The ATDC recommends that global functioning/whole of person well-being type factors are considered as potential amended measures, as they provide a more holistic assessment of the success of the CMD Program for individuals. Organisations such as the University of Tasmania would be qualified to undertake an evaluation of the current model and look at what other measures and criteria could, and should, be included.

The ATDC believes there is immense value in expanding the CMD Program to include Drug Treatment Orders for problematic alcohol use, where that use has contributed to the offending behaviour.

Alcohol is the most common principle drug of concern for Australians and this is also certainly the case in Tasmania.¹⁴

Concerns about the lack of availability of sentencing options that provide for community-based treatment for problematic alcohol use has also been highlighted in the Tasmanian Law Reform Institute's recent report examining the adequacy of current sentencing options for repeat drink drivers.¹⁵

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'.

Anecdotal evidence would suggest that if alcohol was to be included in Drug Treatment Orders, the number of places needed in the CMD Program could at least triple. This would create the need for an enormous resourcing increase but one which the ATDC believes is warranted and justified.

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).

¹² Magistrates Court of Tasmania, Annual Report 2017-2018, 20 accessed at www.magistratescourt.tas.gov.au on 4 April 2019

¹³ 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>

¹⁴ 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

¹⁵ 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



2. Increased resourcing for alcohol and other drug treatment in Tasmania's correctional facilities

In 2017, there were nearly 600 adult Tasmanians imprisoned¹⁶ and with estimates that in any Australian prison 80 per cent of inmates will have a substance use problem,¹⁷ this suggests that there are almost 500 Tasmanians within our prison system who require alcohol and other drug 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,¹⁸ the recently released *Custodial Inspector of Tasmania's Report into Care and Wellbeing* paints a grim picture of progress in this area. The Report found:

- there are only two (2) alcohol and other drug counsellors for over 670 prisoners
- there is a waiting list of over 100 prisoners for alcohol and other drug support, which has remained steady since 2015
- there is very limited supervision and professional support for the two (2) alcohol and other drug counsellors
- there is poor communication between the counsellors and prison health staff resulting in medication needs not being met
- there is possible inconsistent clinical assistance for prisoners experiencing withdrawal from alcohol or other drugs
- there is inadequate physical resourcing with not enough rooms available for treatment and programs
- there are large numbers of prisoners being released back into the community without ever receiving any alcohol and other drug treatment or support
- there are only 26 places available for the pharmacotherapy program. This is equivalent to five (5) per cent of the prison population when prison data indicates that at least 20 per cent of prisoners requires access to pharmacotherapy
- there is no alcohol and other drug 'residential' treatment unit for women prisoners and no plans to establish one.¹⁹

While there are a small number of group programs and 1:1 counselling sessions being facilitated by external community service organisations within the prison setting, they are often restricted by the number of inmates who can participate and the eligibility criteria (e.g. location of the programs within the prison and classification of inmates).

¹⁶ <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0-2017-Main%20Features-Tasmania-23> accessed 8 Feb 2019

¹⁷ Australia21 Report above

¹⁸ *Breaking the Cycle: Strategic Plan for Tasmanian Corrections 2011-2020*, Department of Justice Tasmania, April 2011, 5

¹⁹ *Custodial Inspector of Tasmania. Inspection of Adult Corrective Services in Tasmania, 2017 Care and Wellbeing Inspection Report*, October 2018, 99. Accessed online on 3 December 2018 at https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018-PDF.PDF?fbclid=IwAR2qyx_p6mCqind1_teao2Ul8gCXgrz4sQPBSLYYxSWVhmA89gDxT4YMbE



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





The opening of the 10 bed Aspley 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. This is a (minimum) 12 week full-time program aimed at offenders who are highly motivated to give up alcohol and other drugs and who have struggled with drug addiction 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 the main concern being that graduating participants are re-housed back into the medium-security precinct which is where staff and prisoners report the majority of drug use occurs.²⁰

Unfortunately, imprisonment is inevitable, and in certain cases appropriate, for some offenders due to the nature of the offence(s) committed. However, the ATDC considers it unacceptable that Tasmanians within the prison system are joining a waiting list of over 100 to see an alcohol or other drug counsellor, or being denied a place on pharmacotherapy or another treatment program because of lack of staffing and resources. It is worth noting too that any alcohol and other drug treatment Tasmanians are receiving in the community will not continue, and will cease on incarceration. Adequate resourcing for programs and services must be made available to address problematic alcohol and other drug use issues, especially when that use has been an underlying factor in someone's offending.

The ATDC supports all seven (7) recommendations of the Custodial Inspector's Report relating to '*Management and Treatment of Substance Abuse*'.²¹ In particular the need to undertake an independent appraisal of the prison's alcohol and other drug model of care; and to review the staffing environment for the alcohol and other drug counsellors.

The ATDC also supports the concept of an 'Alcohol and other Drug Throughcare Program' in the prison which is currently being considered and investigated by the Tasmanian Health Service. Any additional programs which support offenders with their alcohol and other drug use and recovery is welcomed by the ATDC.

The ATDC is aware that the Tasmanian Prison Service is currently undertaking a review of its strategies relating to the management of alcohol and other drugs (amongst other things). This review is expected to be completed by the end of 2019 and the ATDC has offered its guidance, input and support in that process.

²⁰ Custodial Inspector of Tasmania, above at 101
²¹ Ibid at 20.

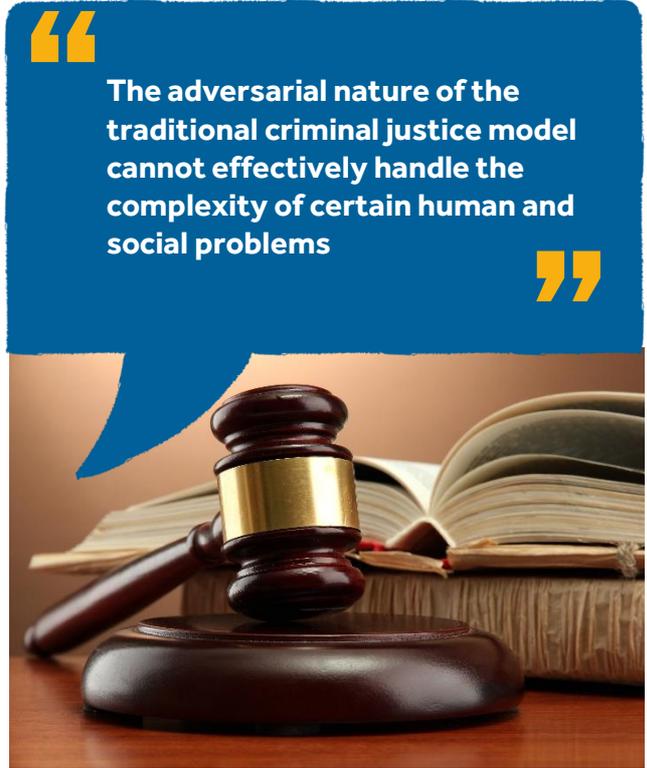


3. Introduction of a Therapeutic Division into the Tasmanian Magistrates Court

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 and 'pointy end' 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 public health, justice, child protection and policing, as well as the well-being of this cohort, would be significant.



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

The suggestion of Therapeutic Court in Tasmania is not new, and one that has been 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.²²

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.²³*

²² 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.

²³ Magistrates Court of Tasmania, Annual Report 2015-2016, 12 accessed at www.magistratescourt.tas.gov.au on 9 November 2018.