JESUIT SOCIAL SERVICES

SUBMISSION

The Alcohol Mandatory Treatment Bill 2013 – Comments to the Northern Territory Department of Health

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Introduction

Jesuit Social Services welcomes the opportunity to comment on the proposed *Alcohol Mandatory Treatment Bill 2013*. This submission outlines our serious concerns about this proposed legislation and the scheme that it will create. We believe that the scheme will incur an enormous economic cost that is not justified given the lack of evidence for the effectiveness of mandatory treatment. Ultimately, we believe that it will shift the focus of treatment and response to alcohol in the Northern Territory from proven community and therapeutic solutions to an expensive, unproven and highly coercive approach. This coercive approach raises serious constitutional and human rights questions. At the heart of these is the extension of the power of the Northern Territory Government to hold citizens in a detained environment without a criminal conviction or the due process of a court. The *Alcohol Mandatory Treatment Bill 2013* will extend this power without providing appropriate safeguards. The scheme goes even further by creating offences for the breach of mandatory treatment orders; this has the potential to criminalise members of the community unnecessarily. Ultimately, we believe that it is the most vulnerable members of the Northern Territory community who are put at risk by this scheme, including Aboriginal and Torres Strait Islander communities as well as people living with intellectual disabilities or acquired brain injuries. Our recommendations call on the Northern Territory Government to postpone the introduction of this scheme and develop and alternative approach that is evidence based and not unnecessarily punitive.

List of Recommendations

Recommendation 1: Given the lack of evidence to support the effectiveness of mandatory alcohol treatment, the Northern Territory Government should postpone the introduction of this policy.

Recommendation 2: Northern Territory Government policy to reduce the harms of alcohol abuse should be based on evidence of what works. This should include the adoption of population wide measures that restrict supply and investment in community based treatment services.

Recommendation 3: A comprehensive range of evidence based alcohol and drug misuse treatment alternatives be implemented across the Northern Territory.

Recommendation 4: Any measures which restrict liberty in the absence of criminal convictions should be limited to the most extreme circumstances and comprehensive safeguards should be in place to protect the rights of people subject to these orders, including rights to appeal. The Mandatory Treatment Bill is too broad and contains too few safeguards.

Recommendation 5: We strongly oppose any mandatory treatment that criminalises non-compliance. Non-compliance with Mandatory Treatment Schemes should not be an offence.

Recommendation 6: Income Management should not be a compulsory aspect of this scheme, in section 34 the word “must” should be replaced with “may”.

Recommendation 7: The Northern Territory Government should commission and publish independent legal advice regarding the constitutionality of the Alcohol Mandatory Bill and also whether it breaches any human rights conventions to which Australia is a party.

Recommendation 8: People with intellectual disabilities and acquired brain injuries should be able to access services and treatment which meet their needs and provide effective outcomes. Safeguards should be in place to ensure that they are not subject to mandatory treatment regime for which there is no evidence base of effectiveness.

Recommendation 9: At a bare minimum there should be a requirement that people with intellectual disabilities or acquired brain injuries be provided with an Advocate at no cost.

About Jesuit Social Services

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families and communities. Our service has its origins in work with disadvantaged young people involved with the youth and adult justice systems in Victoria.

We do this by intervening directly to address disadvantage and by influencing hearts and minds for social change. We strengthen and build respectful, constructive relationships for:

- *Effective services* - by partnering with people most in need and those who support them to address disadvantage
- *Education* – by providing access to life-long learning and development
- *Capacity building* – by refining and evaluating our practice and sharing and partnering for greater impact
- *Advocacy* – by building awareness of injustice and advocating for social change based on grounded experience and research.
- *Leadership development* – by partnering across sectors to build expertise and commitment for justice

Jesuit Social Services values every person and seeks to engage with them in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential. Jesuit Social Services works where the need is greatest and where it has the capacity, experience and skills to make the most difference. Through our work with people in the justice system and people with mental illness and substance dependency, we have come to see the corrosive impact that alcohol abuse can have on the lives of people and communities. We believe that engagement that is relationship based and grounded in principles of human dignity and respect must form part of any response to these issues.

In the Northern Territory, we work in Central Australian communities to support Eastern and Central Arrernte people to improve their situation and to have more control over their

lives. This work started in 2008 after local community and church leaders approached us for support.

Comments on the Alcohol Mandatory Treatment Bill 2013

Lack of an evidence base

The *Alcohol Mandatory Treatment Bill* will provide the framework for a scheme that the Northern Territory Government will invest $100 million in over the next three years. Given the financial costs as well as impact of mandatory treatment on the rights of people who receive orders, it would be reasonable to assume that there was a strong evidence base that would demonstrate the impact that this scheme will have. As noted by Pritchard, Mugavin and Swan in their report on compulsory treatment in Australia (2007), *"If a person's liberty is to be compromised, if a treatment is to be imposed on them, particularly against their will, it is essential that that intervention be of benefit."*

From our experience in working with people with drug and alcohol dependence and mental illness, many of whom are in the criminal justice system, we have seen that personal or social responsibility programs, where engagement is relationship based and grounded in principles of human dignity and respect, are more likely to be effective than coercive and control focused measures. This has been demonstrated in the criminal justice system where "control" approaches and "coercive interventions" have been shown to be less effective than therapeutic interventions (Lipsey, Howell, Kelly, Chapman, & Carver, 2010).

Most importantly there is little supporting evidence base for the efficacy of coercive treatment in relation to drug and alcohol abuse. Pritchard, Mugavin and Swan (2007) noted that there is little empirical evidence or evaluations that have demonstrated the effectiveness of compulsory treatment in rehabilitating people or achieving long-term change. This corresponds with the findings of a New South Wales Parliamentary Inquiry which concluded that involuntary treatment provided no better outcomes than those achieved through voluntary treatment (Pritchard, Mugavin, & Swan, 2007). We accept that some anecdotal evidence exists regarding the effectiveness of mandatory treatment. Reviews of the previous Victorian and New South Wales mandatory treatment arrangements have outlined anecdotal stories of a small number of success stories of compulsory treatment reducing levels of harm (Pritchard, Mugavin, & Swan, 2007) (Standing Comittee on Social Issues, 2004). On the whole, however, it is clear that there is not a comprehensive evidence base to support the approach being taken in the Alcohol Mandatory Treatment Bill.

By contrast, we note the strong evidence base which has demonstrated the effectiveness of measures that restrict supply of alcohol through actions such as minimum floor pricing, volumetric taxation and restrictions on sale (Wagenaar, Salois, & Komro, 2009) (Babor, et al., 2010). We share the concern of other community organisations, including the People's Alcohol Action Coalition (PAAC), that the Banned Drinkers Register (BDR) was abolished before this initiative had been evaluated. There are also more direct interventions with problematic people and communities that have been demonstrated to be effective in reducing the harms caused by alcohol dependency. These include community based intensive educational interventions with young people, focusing on harm minimization (National Drug Research Institute, 2012) and community based alcohol and drug

treatment services. There is also concern that the scale of investment in mandatory treatment services will come at a cost to other forms of drug and alcohol treatment services. Underinvestment in alternatives is likely to lead to their lack of availability and to an increased demand on the mandatory treatment system. The consequence will be a shift in focus of treatment and response to alcohol in the Northern Territory to an expensive, unproven and highly coercive approach.

The absence of an evidence base and potential for this scheme to undermine treatment services is deeply problematic when the terms of the *Alcohol Mandatory Treatment Bill* are considered. Specifically, the criteria for a mandatory treatment order in section 10 of the Bill include that the person benefit from a mandatory treatment order and that there be no less restrictive interventions reasonably available.[1] Clarity is needed as to what standards will be used to assess whether a person will benefit from a mandatory treatment. If the existing evidence base of effectiveness is drawn on, then there should be very few situations where this standard would be met. Of particular concern is the relevance of this provision for highly vulnerable people with intellectual disabilities (IDs) or acquired brain injuries (ABIs). As explored in more detail below, we believe that a higher standard of protection from mandatory treatment should be applied to people living with IDs or ABIs. There are also implications for the issuing of mandatory treatment orders if the Northern Territory Government fails to ensure the provision of "reasonably available" less restrictive interventions. The Northern Territory Government must ensure that a range of evidence based, less restrictive interventions are available on an ongoing basis (irrespective of whether mandatory treatment orders are implemented) in order to provide reasonable treatment alternatives.

Recommendation 1: Given the lack of evidence to support the effectiveness of mandatory alcohol treatment, the Northern Territory Government should postpone the introduction of this policy and develop alternative evidence based approaches.

Recommendation 2: Northern Territory Government policy to reduce the harms of alcohol abuse should be based on evidence of what works. This should include the adoption of population wide measures that restrict supply and investment in community based treatment services.

Recommendation 3: A comprehensive range of evidence based alcohol and drug misuse treatment alternatives be implemented across the Northern Territory.

Deprivation of liberty and the criminalization of non-compliance

The *Alcohol Mandatory Treatment Bill* will create a broad ranging scheme that has the potential to impose coercive measures on significant numbers of people who do not have any form of criminal conviction. The breadth of the scheme and the relatively limited safeguards are unprecedented in Australia. They go well beyond the limits of existing schemes in other Australian jurisdictions (New South Wales, Victoria, and Tasmania). This section outlines our concerns with the scope of the scheme and the lack of safeguards.

[1] Alcohol Mandatory Treatment Bill 2013, s.10(e)-(f).

We accept that there may be circumstances where a person with severe and life-threatening drug and alcohol dependence ought to be detained for short periods of time during periods of acute health crisis. This need is evident in the Victorian mandatory drug and alcohol treatment scheme[2], which allows the Magistrates Court to make orders for detention and treatment that can last for up to 14 days. In Victoria, these orders can only be made for people with severe substance disorders who are incapable of making decisions about their substance use, welfare and safety. Furthermore, there must be a pressing need for immediate treatment in order to save the person's life or prevent serious damage to his/her health, and no less restrictive methods of treatment available (Department of Health (Victoria), 2011). The Victorian scheme contains a number of safeguards including a requirement that the Public Advocate be informed of the order and that the Advocate visit the person as soon as possible to provide advice and assistance. There is also a right to apply to the Magistrates Court at any time for the order to be revoked.

Jesuit Social Services is alarmed that the *Alcohol Mandatory Treatment Bill* will establish a scheme that is much broader than anything which has existed before in Australia. Instead of mandatory treatment being used as an option of last resort in order to protect the health of substance users, the Act will create a broad scheme in which people will be able to be held for up to 72 hours for assessment, 7 days for a tribunal hearing, and three months under the terms of an order made by the Tribunal. Furthermore, the Bill will create a scheme dealing only with alcohol misuse (as opposed to severe substance dependence in Victoria), and will impose a lower standard regarding an affected person's capacity to make decisions. It also extends the criteria for treatment beyond the immediate health needs of a person.

The *Alcohol Mandatory Treatment Bill* also has much weaker safeguards than other similar legislation. In the Northern Territory, the decision for mandatory treatment is able to be made by a tribunal with lower standards of evidence[3] and a wider discretionary power to refuse to consider further applications for revocation of an order. Furthermore, appeals to Local Courts are limited to questions of law and can only be decided on evidence that was before the Tribunal.[4] The lower evidentiary standards of the Tribunal mean there is a risk that errors of fact might occur. Under the terms of the Alcohol Mandatory Treatment Bill, these cannot be rectified at appeal. For these reasons, we believe that appeal rights need to be strengthened significantly.

The *Alcohol Mandatory Treatment Bill* will also criminalise breaches of mandatory treatment orders. Sections 72 and 73 of the Bill create offences for intentional absences from mandatory residential treatment and also for contravening treatment orders. Jesuit Social Services strongly opposes the imposition of criminal sanctions for non-compliance. There are significant risks that these provisions will criminalize the treatment process for people who are not directly involved in the criminal justice system. In doing so, these provisions effectively re-criminalise some forms of public drunkenness. This goes against the recommendations of the Royal Commission into Aboriginal Deaths in Custody which recommended these offences be abolished.[5] The evidence presented above regarding the ineffectiveness of mandatory treatment means there is a likelihood that breaches will occur. This is

[2] Governed by the Severe Substance Dependence Treatment Act 2010
[3] Alcohol Mandatory Treatment Bill, s.117
[4] Alcohol Mandatory Treatment Bill, s.51(2)&(5).
[5] Recommendation 79 of the Final Report of the Royal Commission into Aboriginal Deaths in Custody National Report (1991).

likely to lead to significant impacts on the Northern Territory's already strained justice system. A preferable approach would be to impose social sanctions on people who breach their orders, including alcohol bans and income management until they engage in treatment.

Recommendation 4: Any measures which restrict liberty in the absence of criminal convictions should be limited to the most extreme circumstances and comprehensive safeguards should be in place to protect the rights of people subject to these orders, including rights to appeal. The Mandatory Treatment Bill is too broad and contains too few safeguards.

Recommendation 5: We strongly oppose any mandatory treatment that criminalises non-compliance. Non-compliance with Mandatory Treatment Schemes should not be an offence.

The issue of income management is also problematic. We note that section 34 of the *Alcohol Mandatory Treatment Bill* requires the Tribunal to make an income management order for a person with a Mandatory Treatment Order if that person is an eligible welfare payment recipient. This section is highly prescriptive and gives little discretion to the Tribunal in deciding whether or not to exercise this power. We believe that discretion that takes into account individual circumstances must be allowed for, particularly when the length of the income management order may be for 12 months while the Mandatory Treatment Order can only last 3 months. A preferable approach would be to replace "must" in section 34 with "may".

Recommendation 6: Income Management should not be a compulsory aspect of this scheme, in section 34 the word "must" should be replaced with "may".

Finally, we endorse the serious concerns expressed by other organisations, including the Australian Council of Social Services and the Aboriginal and Torres Strait Islander Social Justice Commissioner about the potential for this scheme to breach human rights standards to which Australia is a party, including the International Covenant on Civil and Political Rights. Jesuit Social Services also has serious concerns regarding the constitutionality of the scheme and the fact that the powers being vested in the Tribunal may breach the separation of powers doctrine.

Recommendation 7: That Northern Territory government commission and publish independent legal advice regarding the constitutionality of the Alcohol Mandatory Bill and also whether it breaches any human rights conventions to which Australia is a party.

Meeting the needs of people with intellectual disability and acquired brain injuries

Although the Alcohol Mandatory Treatment Bill provides a number of protections for people with mental illness, the proposed legislation does not contain similar protections for people who are disabled or suffering from acquired brain injuries. In their report on mandatory treatment in Australia, Pritchard, Mugavin and Swan (2007) noted that mandatory residential treatment in Australia had been disproportionately used against prisoners and minority groups, including Aboriginal people and people of low socioeconomic status. People with IDs and ABIs are

overrepresented in these high risk populations with 7% of the Aboriginal population affected by an intellectual disability (Australian Bureau of Statistics, 2006) compared with a rate of 3% in the general population. Likewise, in the prison system there is evidence that up to 42% of male prisoners and 33% of female prisoners in Victoria are affected by an ABI compared with a rate of 2.2% in the general population (Australian Institute of Health and Welfare, 2007).

Jesuit Social Services is concerned that significant numbers of people with IDs and ABIs will be subjected to mandatory alcohol treatment that does not meet their needs. There is no evidence demonstrating the effectiveness of mandatory treatment, let alone for people with intellectual disability or ABI. The need for alternatives to mandatory treatment was noted by Pritchard, Mugavin and Swan (2007) who recommended that alternate models of care be developed to meet the needs of people with complex needs (Pritchard, Mugavin, and Swan, 2007). This is supported by the guiding principles of the *Code of Ethics for the Australian Alcohol and Other Drug Field* which state that services should be responsive to an individual's needs including intellectual disability and brain injury (Alcohol and Other Drugs Council of Australia, 2007).

Clear safeguards and alternatives for people with IDs and ABIs must be developed to ensure that when they present with alcohol related problems they are provided with support that meets their needs. The Alcohol Mandatory Treatment Bill does state that the Panel can assign an Advocate when an affected person is not represented. However this power is discretionary and there is no mention of criteria for when this power should be exercised. At a minimum, we recommend that section 113 of the draft Bill be amended so all people with a diagnosed intellectual disability of acquired brain injury are provided with an Advocate at no cost. Ultimately, we believe the absence of an evidence base regarding the effectiveness of mandatory treatment will undermine the effectiveness and purpose of this Bill. Additionally, the heightened vulnerability of people with intellectual disabilities and acquired brain injuries should exclude them from the operation of this legislation.

Recommendation 8: People with intellectual disabilities and acquired brain injuries should be able to access services and treatment which meet their needs and provide effective outcomes. Safeguards should be in place to ensure that they are not subject to mandatory treatment regime for which there is no evidence base of effectiveness.

Recommendation 9: At a bare minimum there should be a requirement that people with intellectual disabilities or acquired brain injuries be provided with an Advocate at no cost.

Bibliography

Alcohol and Other Drugs Council of Australia. (2007). *Making Values and Ethics Explicit: A New Code Of Ethics For The Australian Alcohol and Other Drug Field.*

Australian Bureau of Statistics. (2006). *Australian Social Trends.*

Australian Institute of Health and Welfare. (2007). *Disability in Australia: Acquired Brain Injury.*

Babor, T., Caetano, R., Casswell, S., Edwards, G., Giesbrecht, N., Graham, K., et al. (2010). *Alcohol – No ordinary commodity.* Oxford University Press.

Department of Health (Victoria). (2011). *Severe Substance Dependence Treatment Act 2010.*

Lipsey, M., Howell, J., Kelly, M., Chapman, G., & Carver, D. (2010). *Improving the Effectiveness of Juvenile Justice Programs, Centre for Juvenile Justice Reform.* Georgetown University.

National Drug Research Institute. (2012). *SHARP – School Health and Alcohol Harm Reduction Project*. Retrieved February 14, 2013, from National Drug Research Institute: http://ndri.curtin.edu.au/research/shahrp/

Pritchard, E., Mugavin, J., & Swan, A. (2007). *Compulsory Treatment in Australia: A Discussion Paper on the Compulsory Treatment of Individuals Dependent on Alcohol or Other Drugs.* Australian National Council on Drugs.

Standing Comittee on Social Issues. (2004). *Report on the Inebriates Act 1912.* Legislative Council of New South Wales.

Wagenaar, A., Salois, M., & Komro, K. (2009). Effects of beverage alcohol price and tax levels on drinking: a meta-analysis of 1003 estimates from 112 studies. *Addiction* , 179-190.