



Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:
Consultation: Sentencing Amendment (Alcohol Treatment Order) Bill 2023
October 2023

Introduction

Thank you for seeking submissions in relation to the Sentencing Amendment (Alcohol Treatment Order) Bill 2023, which makes amendments to Part 3A of the *Sentencing Act 1997* to provide that an order for a Drug Treatment Order be available as a sentencing option for offenders with a history of alcohol dependence.

The Tasmanian Aboriginal Legal Service (TALS) is a member-based, independent, not-for-profit community legal centre that specialises in the provision of criminal, civil and family law legal information, advice and representation for Aboriginal and Torres Strait Islander peoples across Tasmania. We are an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations.

In this submission, any reference to Aboriginal people is understood to also encompass Torres Strait Islander people.

TALS provides culturally safe, holistic, and appropriate services that are inclusive and open to all Aboriginal Tasmanians. We understand that the most vulnerable people needing access to legal assistance are often also those who face the most difficulties asking for help, and we work hard to ensure everyone can access our services within and outside of traditional legal settings.

We also are an advocate for law reform and for justice, equality, and human rights for all Aboriginal and Torres Strait Islander people in Tasmania. Our goal is to halve Aboriginal Tasmanians' rate of negative contact with the justice system in a decade.

Amendments to 3A

TALS welcomes the extension of Drug Treatment Orders to include instances where alcohol dependence has contributed to the commission of the offence or offences.

We note that the same limitations would exist for orders addressing alcohol dependence as they do for illicit drug dependence, and that is not a discussion point for this submission.

Aboriginal and Torres Strait Islander people are less likely to drink alcohol than other Australians, however those that do drink are more likely to drink at dangerous levels.¹ Alcohol is a major cause

¹ See, [Alcohol and Aboriginal and Torres Strait Islander peoples | Australian Government Department of Health and Aged Care](#)

of mortality and disease worldwide and can be particularly damaging to Aboriginal people who have been colonised.²

TALS is supportive of reforms which provide for alternatives to prison that are therapeutic in nature or have a therapeutic aspect. Creating alternatives to prison is in line with the Government's commitment to *Closing the Gap*. Aboriginal people remain chronically over-represented in the criminal justice system both nationally and in this State. In September this year, around 21% of the prison population identified as Aboriginal and/or Torres Strait Islander. The National Agreement on Closing the Gap sets a target to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15% by 2031. This target will not be met if (among other things) there is not genuine commitment to reforms like this, and proper resourcing to ensure the program is available to all who are suitable and eligible.

There are several potential factors that can lead to dangerous alcohol use/dependence, including integrational trauma, disconnection with family or community, insecure housing, racism, unemployment, stress, mental and physical health concerns, and negative life experiences generally. The impact of imprisonment extends beyond the individual, it has a significant impact on families and Aboriginal communities, including the rates of children in the criminal justice system and out of home care as examples.

We regularly see clients who unfortunately struggle with alcohol dependence, that has led to offending. It is our view that there is no utility in sending people to prison and not addressing the cause of offending. Whilst there are some therapeutic services available in prison, what is being reported to us is there are significant delays in access, and they are limited in scope and depth. Simply because someone does not have capacity to drink in prison, does not mean they have rehabilitated from an alcohol dependency.

At TALS we also regularly see clients who have both an alcohol dependency and who use illicit drugs. It is for this reason that we would argue that s 27B (j)(4) cover alcohol and/or illicit drug use. It seems from the amendment to this section in its current form, that there is to be a choice as to whether it is drug use or alcohol dependence not both.

Whilst TALS agrees with the purpose of the amendments, we are apprehensive about the following:

² Gracey M, King M. Indigenous health part 1: determinants and disease patterns. *Lancet*. 2009; 374 (9683): 65-75.

1. How it will be determined whether someone has alcohol dependency (we assume this will likewise be based on self-reporting as currently occurs with illicit drugs).
2. The testing and management of the Order and how it will be monitored (testing for illicit drugs is easier given the time they generally remain in someone's body. If someone drinks alcohol one night, it is unlikely to show the following afternoon when testing may occur).
3. Who will undertake the testing, and how the testing will occur.
4. How will the therapeutic relationship work between the client and Alcohol and Drug Services who generally have a harm-minimisation approach as opposed to the Court Mandated Drug Diversion Officer whereby it is therapeutic as well as compliance based with a primary goal of abstinence.

Whilst we accept that the above is not going to be captured in legislation, it is important that in the implementation of the legislation these aspects are considered to ensure there is fairness for participants.

TALS sees the reforms as a positive step forward and we look forward to seeing the program support our clients in addressing the underlying causes of offending.

Thank you for the opportunity to comment on the amendments to 3A of the *Sentencing Act 1997* (Tas). Please do not hesitate to be in contact if any points require clarification or elaboration.

Yours faithfully,



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