Position Paper on Alcohol Mandatory Treatment in the NT
May 2013

Recommendations

I. Support Treatment Orders made by a Tribunal with non-criminalised sanctions such as income management and prohibition or banning orders on the purchase, possession and consumption of alcohol in conjunction with a Photo ID system (to be reinstated.) Treatment should provide access to three streams of care, incorporating medical, psychotherapy and social support. There also needs to be a commitment to ongoing after-care for two years with the option of the provision of supported alcohol-free accommodation provided to clients who choose to continue to try to remain sober after the initial Treatment Order period.

II. Oppose Alcohol Mandatory Treatment (AMT) that in any way effectively means that either being drunk or not complying with a Treatment Order becomes a criminal offence.

III. That electronic bracelets are not an acceptable alternative as a means of implementing individual banning or prohibition orders, as Photo ID at the point of sale is a cheap and readily available alternative which has already been successfully implemented and can simply be reinstated.

IV. That the opportunity cost of starting AMT on such a large scale at such a high cost when its effectiveness is unknown is too great.

V. That it would be a far better investment to put $30 million recurrent into early childhood programs rather than the Alcohol Mandatory Treatment scheme.

VI. That other measures be put in place that are known to be effective such as a floor price on alcohol set at the price of full-strength beer and a take-away alcohol free day linked to Centrelink payments.

VII. That a longitudinal data set to enable the ongoing evaluation of all of the major alcohol policy initiatives that are taking place in the NT so that Australia can continue to build the evidence base in alcohol policy. This needs to continue on from the data sets used in the NDRI longitudinal study 200-2010 (published 2012) so that the same data is available from the beginning of 2011. This would enable the additional floor price in Alice Springs at 80 cents per standard drink to be assessed, the impact of restrictions during major sporting events as well as the impact of the BDR. Most importantly, it would enable any treatment ordering system to be properly evaluated.
1. **Background**

The NT Government announced plans for Alcohol Mandatory Treatment (AMT) on 12th April, as an alternative to building prison farms for problem drinkers as per its election promise. Mandatory Treatment Services (MTS) are to start in four centres on 1st July 2013, with the relevant legislation yet to be introduced. The Government has recently conceded to community demand that the Bill be made available for public comment and it is expected to be released very soon.

Details as they are to date are outlined in documents from the NT Department of Health, which apparently has responsibility for the new arrangements:

1) Alcohol Mandatory Treatment FAQs: [here](#)
2) Mandatory Treatment Service: Arrangements and Pathways: [here](#)
3) Overview by the NT Department of Health: [here](#)

2. **Public drunkenness an offence by the back door?**

Being taken into protective custody (PC) under the *Police Administration Act* is not in itself a criminal offence. People who offend whilst drunk and who are dealt with the courts may be subject to prohibition orders or compulsory treatment and rehabilitation as part of their sentencing. This is quite distinct from the proposed AMT order from a Tribunal which is then not complied with, and where the offence that is likely to be created in the new legislation is the subsequent breach of the order, there being no initial offence. A significant issue for consideration therefore is whether any part of the proposed new system will lead to the creation of a new criminal offence or offences.

The CLP should remain true to its promise **not to re-criminalise public drunkenness** - even by the back door, but Rehabilitation Minister Lambley has recently indicated two ways in which the NT Government is likely to renege on its promise.

i) If someone who is on a community-based AMT order is taken into protective custody for being drunk in breach of their order, this could constitute a criminal offence under the AMT legislation. It is extremely likely that people in this category will continue to get drunk regularly as they are very unlikely to attend treatment and attempt to stop drinking even if mandated to do so. This is a major problem and could lead to imprisonment or other penalties through their having committed an offence of breaching the order, via the path of public drunkenness, but with no actual initial offending. Alternatives include (non-mandatory) Treatment Orders and or income management and alcohol orders (see also 6. ii below.)

A real problem for the Government is that without a point-of-sale regulatory system such as the NT-wide Photo ID system that was used in conjunction with the BDR - and in Alice Springs to monitor supply restriction well before the introduction of the BDR - there is no practical way in which to implement prohibition orders and therefore they know such orders cannot truly be a serious, social, but non-criminal consequence. Such options may be considered not tough enough by the Government.
We understand that the Department of Justice has ordered a number of electronic bracelets and it has been suggested that these could be used to identify people on prohibition orders. Minister Lambley seems to have ruled this out, however PAAC understands that more senior Ministers in the government think this is the way to go. This is a much less civilised option that population-wide photo-identification in terms of the stigma it creates, but the NT Government will see it as addressing its expressed objection to the photo ID system, in that the electronic bracelet only affects the problem drinker and does not interfere with the lives of the rest of the community who ‘do not have an alcohol problem.’

We believe the use of these electronic bracelets to identify prohibited individuals needs further thought but the initial view is that this is not acceptable as the photo ID system is a much better and less stigmatising alternative.

ii) The other concern is what will happen to people who ‘escape’ from mandated treatment at CAAAPU (the Central Australian Aboriginal Alcohol Programs Unit (which is to receive funding for twenty or more additional AMT beds.) Absconding could also be a criminal offence, at least on the second attempt. For this reason, the policy position should be to oppose AMT if it includes criminal sanctions where there is no initial offence, but one is later committed through non-compliance with treatment. Alcohol addiction needs to be treated as a health problem and not as a criminal justice issue.

3. **How it might work**

Minister Lambley says the AMT scheme will initially provide 140 rehabilitation beds throughout the NT: 100 in Darwin (converted Commonwealth-funded medi-hotel); 20 at the Central Australian Aboriginal Alcohol Programs Unit (CAAAPU) in Alice Springs; 10 at Venndale in Katherine; 10 at Nhulunbuy, and, eventually, a total of 200 beds to deal with a maximum of 800 people a year. As noted, the legislation is yet to be seen. Under the hastily concocted AMT scheme, it appears that a civil Tribunal of three will have the power to order a person’s detention – normally a matter for a court. The powers to detain may be modelled on New South Wales legislation that allows for the involuntary treatment of people dependent on drugs or alcohol as a last resort. See the *Drug and Alcohol Treatment Act 2007* which the NT Health Department has referred to in correspondence: [www.legislation.nsw.gov.au/sessionalview/sessional/act/2007-7.pdf](http://www.legislation.nsw.gov.au/sessionalview/sessional/act/2007-7.pdf) although the checks and balances, including appeals mechanism are as yet unclear.

The current NT *Mental Health and Related Services Act* does not recognise alcohol addiction as a mental illness and rather than attempt to amend that *Act* the Government has decided to draft new legislation.

The sole criterion for detention that has been announced to date (three police Protective Custodies (PCs) in two months) does not reflect the purported ‘health’ model of this scheme. There are no medical criteria, such as a diagnosis of alcohol dependence, or an assessment that the detainee is a serious imminent risk of harm to themself or others. The criterion reflects a completely different purpose: to remove obnoxious drunks from public places. It is a scheme targeted at cosmetic change. The underlying disease will continue to progress unabated.
4. **Issues and Questions**

The establishment of the Alcohol Mandatory Treatment scheme, with the power to order detention raises many issues and questions, including cost, benefit to the community or otherwise, adequate protection for those whom a Tribunal will order to undergo AMT, the need for proper evaluation and evidence-based alternatives. Some are listed as follows:

i. The Government says it will spend $100 million on operational costs over three years, plus capital expenditure – to date unspecified. How will this be funded? What is the NT Government’s evidence base? Will this be an expensive trial aimed at clearing a few problematic drinkers off the streets without any attempt to reduce supply and consumption as PAAC, the NT Police Association, health experts and health services argue (from an evidence base) must be done as well as rehabilitation?

ii. Will the Federal Government allow the NT Government to use for an assessment and treatment centre, as it has announced it intends to do, an $18 million hotel/hostel at the Royal Darwin Hospital that the Commonwealth has funded for use by visiting patients? Possibly not:

iii. The Government says after-care is essential, but Alcohol Rehabilitation Minster Lambley has told the media that the NT Government has not yet worked out how it will fund ancillary services: It is regionalised approach we are implementing. We haven’t yet nutted the additional funding we may be spending on these complementary services:

iv. Alcohol-related harm costs the NT almost $2,000,000 every day or $642m per annum, according to the NT Government. The Government is now committing $100 million plus unspecified capital costs to a scheme which is exclusively targeted at the group who, of all members of the community, is by far the least likely to respond well to rehabilitation.

5. **Some legal and procedural issues**

i. The civil detention of people who have not committed a criminal offence is extraordinary and rare. It raises a real risk that people will have their liberty removed for lengthy periods without the protections of the criminal justice system: the right to legal representation, the burden of proof beyond reasonable doubt, the right to a hearing etc. Involuntary admission to care under mental health legislation is complex and requires many checks and safeguards.

ii. This apparent de facto re-criminalisation of public drunkenness is contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody in 1991.

iii. The enforcement of Tribunal orders against recalcitrant, resistant or absconding detainees will arguably either be ineffectice, or will involve further criminalisation, by the establishment of a new offence of absconding from a mandatory treatment facility;
iv. The scheme targets Aboriginal people, because it is they who are most likely to be drunk in a public place. It may therefore be subject to challenge under the Racial Discrimination Act (Cth.) for being indirectly discriminatory.

v. The AMT scheme allows for the police to determine who will and who will not be subjected to Mandatory treatment in an arbitrary manner. This is because only people who are in Police Protective Custody are eligible to trigger the mandatory treatment provision. Those people apprehended under the Protective Custody provisions and taken to Sobering Up Shelters are not eligible as these are not counted as a trigger for mandatory treatment. Thus, police can determine what happens and who will or will not be mandated into treatment simply by taking people to the cells rather than the Sobering Up Shelters. This is a perverse incentive in the system that goes against the principle of keeping people out of the cells as much as possible.

vi. There appears to be no provision for the funding of representation of people appearing before the Tribunal. Legal aid agencies have not been consulted about this issue, asked to do this work, or been offered funding to do it to date.

vii. Some people who appear before the Tribunal will undoubtedly be candidates for Adult Guardianship orders. Will the Tribunal refer such people to the Adult Guardianship Board? Will Adult Guardianship resources be augmented to cope with additional demand?

viii. Some people who appear before the Tribunal will lack the capacity to instruct a legal representative, or to understand the Tribunal’s role or procedures. What process will be adopted to deal with these people?

ix. If the expert who conducts the assessment before the Tribunal hearing is of the professional opinion that the person is unlikely to benefit from mandatory rehabilitation, will the Tribunal nevertheless be able order them into secure mandatory rehabilitation?

x. NGOs that are engaged to deliver secure residential treatment services will face some complex challenges, including:

- the discharge of their duty of care to clients who may use force to abscond or resist treatment;
- the training and accreditation of staff who will be delegated authority to use force to enforce mandatory treatment orders;
- resolving the tension between providing therapeutic services and overseeing incarceration.

xi. It appears that AMT will only apply to those taken into Police PC (three times in two months.) This leaves few options for dealing with others with serious drinking problems, but who are taken into police PC at lesser rates, or taken to sobering-up shelters, hospital or home.

xii. The Arrangements and Pathways document (Step 1) states that once a person is in police PC for the third time in two months, Police will contact the Assessment and Treatment Service and if it is available, the person will be taken there; if not, they remain in PC. At present under the Police Administration Act (NT) a person can only be held in police PC until no
longer intoxicated, or, if picked up after midnight, until 7:30 a.m. even if they are sober before that time.

xvi. It must be queried whether a person would legally still be in custody once Police hand them over to an Assessment and Treatment Service and there is at that stage no Tribunal order for them to be detained in a rehabilitation service. Does the NTG intend to extend the police custody provisions to non-Police personnel? Minister Lambley says: ... once the person has been brought into protective custody for the third time in two months, by the police, he will not be able to leave protective custody. He will be handed over by the police to an assessment service: here

xvii. It is not entirely clear how people will be dealt with if they abscond from mandatory treatment. According to Minister Lambley: We haven’t absolutely defined yet how we will deal with people absconding... Regretfully, we’ll have to use the police to bring these people back. Whether we allow people back in when they abscond once, or twice, or whether we have zero tolerance, and absconding becomes an offence, all that we have yet to determine. We don’t want to bring punishment into any of this but in terms of absconding we may be forced into that position, to strengthen the system: here

xviii. The NTG also plans to have income management applied - as it may be by the present AoD Tribunal – which is about to be abolished along with the SMART Court. The Minister however has indicated that this is not yet settled with the Commonwealth: We will be negotiating with the Federal Government and Centrelink around putting most if not all of these people who come before the tribunal on income management: here

6. Likely outcomes and other options

i. The AMT scheme will simply sweep the most hardened, addicted and hopeless drinkers off the streets for a few weeks at a time. The Government itself predicts that 80% of these detainees will fail to be rehabilitated. Notwithstanding other objections, this plan is on such a small scale that it will not have an impact at a population level and the Government will not deliver on its election promise to lower crime by ten per cent per year.

ii. What is the plan to evaluate the AMT scheme? The NT Government abandoned the Banned Drinkers’ Register when it came to power and has since declined to conduct an evaluation. The AMT scheme, if introduced, must be subject to proper evaluation. This will require a proper longitudinal data set to be established and followed. If the Government is correct in its approach we will see the results in reduced consumption, hospital harms etc. If the Government refuses to conduct a proper evaluation it can only be assumed that it knows this approach is not going to work.

iii. Under the previous NT Government’s Enough is Enough scheme, a person taken into police PC three times in three months, or activating other ‘triggers’ such as alcohol-related assault or domestic violence order breach, would be banned from purchasing, possessing or consuming alcohol and then be referred to the AoD Tribunal in the event that they breached the ban. Non-criminal consequences which existed under the BDR and AoD
Tribunal such as (non-mandatory) treatment orders and or income management and alcohol prohibition banning orders are preferred alternatives.

iv. There were around 2500 people (problem drinkers) on the Banned Drinkers’ Register when in was abandoned in August 2012. They were not permitted to purchase take-away alcohol and nor could they enter specific hotel bars in Alice Springs. With the BDR gone, the current preventative aspect in Alice Springs is a police presence outside bottle shops - when resources permit. Police confiscate alcohol if the purchaser cannot show they have somewhere legally to consume it - not in a declared dry area (i.e. all public places in the Alice Springs town) or a prescribed area (all Aboriginal land, including excision leases, Community Living Areas, voluntarily ‘dry’ houses and town camps.)

v. The police presence acts as an effective deterrent and improves social amenity, but resources do not allow it to be maintained for all opening hours on all days and it would be far better to have other measures, including an agreed floor price and the BDR back in place to complement police activities.

vi. The Government should spend the $100 million on programs targeted at people who are likely to benefit, such as young children, and problem drinkers who are motivated to rehabilitate. In the meantime, supply restrictions which benefit the whole community (and cost virtually nothing to implement) would mean that the hardened drinkers would get less drunk, less often.

vii. Treatment is only one aspect of dealing with the large number of problem drinkers in the NT (or any) community. Such programs can deal only with the aftermath. We need population-wide preventative options – such as a Banned Drinkers’ Register, minimum or floor price on take-away alcohol, take-away free days, shorter take-away hours or limits on volume of sales. Minister Lambley herself has told the ABC that she does not believe supply measures have failed: http://www.abc.net.au/news/2013-04-12/nt-government-outlines-mandatory-rehabilitation/4626788