



By Jared Sharp

Mandatory alcohol treatment in the NT

Is it really about health and wellbeing?

The Northern Territory Government appears to have reached a point where it is content to deride and ignore the health-based concerns of experts in the field of alcohol policy. This is a situation which must urgently be remedied.

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The scale of alcohol misuse in the NT has been well documented over many years.¹ The NT has per capita alcohol consumption rates that are the second highest in the world. In the NT, 35 per cent of the adult population drink either at a risky or high-risk rate.²

Grog issues in the Territory are not an exclusively Aboriginal problem. In 2004–05, adults in the NT on average consumed 15.07 litres of pure alcohol, 53 per cent above the national average. Aboriginal consumption is estimated to have been 16.9 litres and non-Aboriginal consumption 14.5 litres.³

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The devastating effects of the NT's alcohol consumption levels include that alcohol-related deaths in the NT are three times the national average, that alcohol-related hospital admissions are more than double the Australian average and that alcohol-related criminal offending accounts for a massive proportion of total offending, including 60 per cent of assaults in the NT.⁴

The question of how to address the Northern Territory's alcohol issues has led to a mish-mash of alcohol policies. We have seen a variety of strategies trialled over the past decades, but seldom have they been properly evaluated. We also continue to see inconsistent approaches in different parts of the NT. In Darwin, take-away alcohol can be purchased and consumed in selected public places. In Katherine, the whole town is a public restricted area and it is an offence to drink alcohol in a public place. In Nhulunbuy, you need to obtain a liquor permit just to buy take-away alcohol to drink in a private home. And in most remote communities, alcohol cannot be purchased or consumed. The NT not only has no coherent approach to alcohol policy, but its public discourse has increasingly moved to punitive responses to those misusing alcohol rather than tackling alcohol as a community-wide issue.

THE MOVE TO MANDATORY ALCOHOL REHABILITATION

Before the August 2012 Northern Territory election, the Country Liberal Party (CLP) Opposition campaigned strongly on alcohol issues. It promised to 'remove drunks from the streets', scrap the recently introduced Banned Drinkers Register and introduce prison farm for chronic alcoholics. The Alcohol Policy spokesperson at the time, Peter Styles, told ABC's *Lateline* that chronic alcoholics would go before a tribunal and 'If you choose not to do the voluntary program, you will be taken to a mandatory rehabilitation facility – there are two proposed in the Territory – where you will complete a three-month rehab program.'⁵

The CLP won the election and, nine months later, with next to no consultation, introduced the *Alcohol Mandatory Treatment Bill*. The Bill passed the NT's unicameral Legislative Assembly on 28 June 2013, a little more than four weeks after its introduction. It came into force just three days later, on 1 July 2013.

THE MANDATORY ALCOHOL TREATMENT REGIME

The *Alcohol Mandatory Treatment Act 2013* provides for the involuntary treatment of persons who have been taken into police custody due to their level of intoxication three times in two months.⁶ The Act targets those who have 'misused alcohol' and lost the capacity to make appropriate decisions about their alcohol use or personal welfare, putting either their own, or another's safety, at risk.⁷

Individuals are initially taken to 'assessment facilities,' where they may be detained for up to 96 hours pending assessment by a senior clinician.⁸ Once a person has been assessed, the Alcohol Mandatory Treatment Tribunal (the 'Tribunal') will be required to make an order either to subject the person to mandatory treatment or community management, or alternatively to release them.⁹ The Tribunal has 96 hours to make the order.

A person may therefore be detained for up to four days before even being assessed and for a total of eight days before the Tribunal makes a decision about their case. It is important to note that these are people who are not charged with any offence. Indeed, if they have been charged with an offence punishable by imprisonment, they are not eligible for the regime.¹⁰

When appearing before the Tribunal, a person is entitled to legal representation.¹¹ However, the government has made no provision for resourcing legal representation. This is very concerning given the significant liberty issues at stake and the fact that the overwhelming majority of those appearing before the Tribunal will not have the means or wherewithal to instruct a lawyer. For those who appear unrepresented, the Tribunal may appoint an Advocate, who might or might not be a lawyer.

What makes the issue of representation nothing short of ridiculous is that the only way a person can challenge a decision of the Tribunal is on a point of law.¹² Those sentenced to mandatory rehabilitation are said to have lost the capacity to make appropriate decisions for themselves. In an appeal they would need to identify (and then argue) error of law but the only person in their corner – their Advocate – is not likely to be legally trained.

If the Tribunal decides that a person requires mandatory treatment, it can order that person to undertake a mandatory community order or a mandatory residential treatment order. A mandatory community order requires the person to participate in treatment from a specified community treatment facility.¹³ It also bans the person from possessing, consuming or purchasing alcohol. Depending on individual circumstances, it may also require the person to undergo alcohol testing, ban the person from being in company with one or more 'specified persons', ban the person from being in a specified place or require the person to reside with a specified person or at a specified place.¹⁴

A mandatory residential treatment order requires a person to attend and participate in treatment at the treatment centre. It also bans the person from possessing, consuming or purchasing alcohol. In addition, it imposes criminal sanctions on those ordered to undertake mandatory residential treatment who, for a third time, 'intentionally

absent' themselves from a treatment centre.¹⁵ The maximum penalty is three months' imprisonment.

The inclusion of criminal penalties including imprisonment comes at a time when the NT's prisons are already at bursting point and when Aboriginal Territorians are grossly over-represented in custody.¹⁶ With Aboriginal people almost certain to comprise the overwhelming majority of those sent to mandatory rehabilitation, and given that report after report has made clear that Aboriginal people are consistently over-represented in nuisance-type offending, new drivers of Aboriginal criminalisation and incarceration are hardly desirable.

The Royal Commission into Aboriginal Deaths in Custody and countless reports since have highlighted the risks that occur each time an Aboriginal person comes into contact with police. This includes allegations by Aboriginal people of rough treatment, which sadly are made from time to time to our service.

The other implication in terms of criminalisation is the potential for additional public order charges to be brought because of increased Aboriginal contact with the police. The Aboriginal and Torres Strait Islander Social Justice Commissioner highlighted this issue in his report, *Indigenous Deaths in Custody 1989–1996*:

'Many Indigenous people are being placed in custody for trivial offences. Police-initiated interventions result in the laying of charges – typically using offensive language, resisting arrest and assaulting police (or similar offences).

The relatively high proportion of Indigenous prisoners incarcerated for assault occasioning no actual bodily harm is indicative of the "trifecta" phenomenon – 12 per cent against 4 per cent for the general prison population.¹⁷ Since one inmate's multiple escapes from a mandatory treatment facility, the government has signposted a tightening of security. A private security company has been hired, and additional measures will be taken to prevent people leaving (such as locking people more securely in rooms and more secure fencing).

All of these add to concerns about the prison-like conditions of mandatory treatment, particularly for chronic alcoholics who, in withdrawal and highly likely to be suffering a co-morbidity of mental disorders and substance use, may be overwhelmed and in a life-endangering situation.

THE COST OF 'SUCCESS'

In June 2013 – before the Act even passed – the government trumpeted the fact that it had allocated \$35 million a year to run alcohol mandatory treatment. This would 'see 800 of the Territory's worst problem drinkers undertake rehabilitation and work-based programs'.¹⁸ However, the government's 2013–14 budget papers show that it has now allocated a whopping \$45 million to treat just 480 people this financial year.

The implications of this cannot be overstated. In a financial context in which the new government has significantly increased power and water bills and public transport fares and cut funding to a range of services

including Night Patrol and the NT's new drug and alcohol (SMART) Court, it is investing almost \$90,000 per person treated under the Alcohol Mandatory Treatment regime.

While the government has set a target of a 20 per cent success rate for those entering mandatory treatment, it has publicly acknowledged that the success rate is more likely to be between 5 per cent and 10 per cent. This means that the Northern Territory will be paying almost a million dollars a year for each person it successfully treats under the mandatory treatment regime.

THE EVIDENCE FOR SUCCESS

The NT Government clearly believes the price tag is worth it. But a key concern is the lack of evidence which demonstrates the efficacy of involuntary detention as a means of addressing alcohol addiction and alcohol-related problems. There is simply no evidence base to support this scheme.

Several experts have raised serious questions as to whether the *Alcohol Mandatory Treatment Act* will provide an effective means to reduce the Territory's alcohol-related problems. Dr Peter Beaumont, Territory Branch President of the Australian Medical Association, noted that 'the cost of this is huge, and the outcomes are unproven'.¹⁹

This is supported by the fact that, within the criminal justice system, coercive approaches have been proven to be less effective than therapeutic interventions.²⁰ While there is a small amount of anecdotal evidence from past Victorian and NSW mandatory treatment systems concerning successes, there is no comprehensive evidence base to support the approach adopted by the *Mandatory Alcohol Treatment Act*.²¹

And there are concerns that mandatory alcohol rehabilitation leads to more disadvantages than benefits for alcoholics. A recent review concluded,

'At present, there is inadequate evidence of effectiveness to support deferral of autonomy in such a scenario.

At present, on ethical, moral and potentially legal standpoints, involuntary treatment is likely to be controversial, ineffective and deleterious.'²²

A HEALTH-BASED INITIATIVE?

The NT Government claims that the *Alcohol Mandatory Treatment Act*:

'is not a punitive response; this is an attempt to bring people into an environment where they can attend to their alcohol and drug problems.'²³

But what is significant here is that, when designing the mandatory alcohol regime, the NT Government chose not to include several measures that could have entrenched the regime as health-based. For example, the government could have adapted several of the protections that exist under the NT's *Volatile Substance Abuse Prevention Act* ('VSAP Act'), which was introduced to provide mandatory treatment for volatile substance abusers, such as those sniffing petrol.

The VSAP Act provides a useful framework to consider features that could have been employed to promote health and wellbeing. There are five features of the VSAP Act



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that stand in stark contrast to the new *Alcohol Mandatory Treatment Act*.

First, treatment orders can be ordered only by a court. This provides legislative safeguards and due process for those subject to the scheme. Although the new Tribunal established under the *Alcohol Mandatory Treatment Act* is bound by the rules of natural justice,²⁴ it remains to be seen whether this will be provided in practice, particularly where there is no guaranteed provision of legal representation, and whether fundamentals of due process before Northern Territory courts, such as ready access to qualified and properly trained interpreters, will be available in the new Tribunal. It is important to point out that this will be extremely difficult to monitor given that hearings of the Tribunal must not be open to the public.²⁵

Second, there are no criminal penalties for failing to participate or absconding from a volatile substance treatment facility. Rather, a treatment warrant may be issued for a person absconding which means they can be apprehended and returned to the treatment facility. This stands in stark contrast to the *Alcohol Mandatory Treatment Act* where a person who absconds three times from a treatment facility faces the prospect of criminal charges.

Third, initial treatment interventions under the VSAP Act are not only initiated by the police, but also by health professionals and community members. Under the *Alcohol Mandatory Treatment Act*, however, the trigger for involuntary treatment is solely when a person is taken into police custody three times in two months. The Royal Commission into Aboriginal Deaths in Custody emphasised the need to minimise contact between intoxicated Aboriginal people and police and that where safe to do so, police should take intoxicated Aboriginal people home or to sobering-up shelters instead of police stations. The *Alcohol Mandatory Treatment Act* actually takes the Northern Territory in the opposite direction. It removes incentives for police to take intoxicated Aboriginal people home or to sobering-up shelters.

Fourth, treatment programs under the VSAP Act have a more holistic focus, including aftercare, other appropriate therapies and health, diversionary and educational interventions.²⁶ The emphasis is on providing treatment as appropriate to the particular individual. While it is not

yet clear what aftercare will be provided as part of the mandatory alcohol treatment regime, the legislative focus of the *Alcohol Mandatory Treatment Act* is clearly on the three months of mandated treatment, with little emphasis on exploring treatment alternatives outside treatment facilities, and it provides scant detail of what aftercare will be provided, other than that an aftercare plan is to be prepared and lodged with the Tribunal.²⁷

Fifth, the VSAP Act involves actions at both an individual and a community level. It criminalises the supply of volatile substances,²⁸ which acts as a disincentive to suppliers, and places the onus on the suppliers as well as those with a substance dependence. In contrast, Chief Minister Adam Giles recently told an Australian Hotels Association dinner in Darwin that the government would do its best to support the liquor industry. He defended the Northern Territory's drinking culture as a 'core social value'. Deputy Chief Minister Tollner said the previous Labor government's alcohol policies had treated Territorians like 'criminal suspects' and publicans like 'heroin traffickers'.²⁹

As well as these significant departures from the VSAP Act, of particular concern is the safety of mandatory alcohol facilities and the potential for deaths in custody. Many of those admitted to mandatory facilities will be chronically unwell and some will undoubtedly be dealing with serious mental health issues. Since the Royal Commission into Aboriginal Deaths in Custody, there has been steady progress in ensuring that places of detention, such as prison cells, have become increasingly cognisant of deaths occurring in custody. Facilities are now designed and run to ensure adequate monitoring and to avoid hanging points. It is not clear, however, that mandatory rehabilitation facilities that have been made operational just three days after the *Alcohol Mandatory Treatment Act* came into effect have these safeguards in place.

It is hardly surprising that the government's claim that the mandatory alcohol regime is health-based has been roundly condemned by experts in the field. Dr Peter Beaumont of the NT AMA noted that contrary to the government's claim that '(t)he whole thing is meant to be a health pathway... it's funny that the path leads to criminality if people don't abide by it'.³⁰

The government's own ministers haven't helped its efforts to paint mandatory alcohol treatment as a health-based initiative. In October 2012, for example, then Minister for Alcohol Policy (and now Treasurer and Deputy Chief Minister) Dave Tollner explained:

'The problem we have in NT is that we have these people in such obvious locations. Businesses, the tourism industry are just screaming blue murder that this is going on in our faces every day. The first thing we want to do is to clear the drunks off the streets.'³¹

In May 2013, Chief Minister Adam Giles took this to a new level. He referred to those who question the mandatory alcohol regime as 'leftie welfare orientated people, who rely on the misery and the poverty to sustain their own personal economy'. He went on to tell these groups to 'get out of the way, piss off'.³²

CONCLUSION

The NT government ought to commit to three things as a matter of urgency.

First, it must reconsider its punitive model of mandatory alcohol treatment. The government needs to:

- change provisions that could see people locked up for eight days before the Alcohol Mandatory Treatment Tribunal even makes a decision about them;
- change the treatment model that will see people compulsorily detained for three months who have not committed any offence; and
- remove offence provisions that could see people go to jail for 'intentionally absenting' themselves from a mandatory treatment facility for a third time.

Second, the government must commit to having an independent review of mandatory alcohol treatment after 12 months of operation. With a \$45 million price tag, the government should commit to cancelling the program after 12 months unless it is (a) leading to significant health and wellbeing outcomes; (b) operating in a non-punitive way; and (c) proving to be a sensible use of taxpayer money.

Third, the government must commit to an evidence-based approach to tackling the crisis of alcohol misuse in the NT. The mix-and-match approach to alcohol policy in the NT has reached the stage where a Board of Inquiry has become critical. The Board of Inquiry must systematically consider the data and evidence on what has worked and what has not.

A Board of Inquiry would enable the development of a comprehensive, evidence-based blueprint for tackling alcohol harm. At a minimum, this blueprint must include effective alcohol supply controls, look at ways to reduce demand for alcohol, and strong preventative and early intervention measures. ■

Notes: **1** See, for example, Australian Alcohol Indicators, 1990-2001: Patterns of alcohol use and related harms for Australian states and territories' by the National Drug Research Institute. <www.ndri.curtin.edu.au/pdfs/naip/naipaaifullreport.pdf>. **2** Menzies School of Health Research, *Harms from and Costs of Alcohol Consumption in the Northern Territory* (September 2009). <www.territorystories.nt.gov.au/handle/10070/222498>. **3** *Ibid.* **4** See <http://thatsenough.com.au/get-in-the-know/>. **5** See <www.abc.net.au/news/2012-08-21/prison-farm-plans-for-chronic-alcohol-offenders/4214000>. **6** Being taken into policy custody for public intoxication is known as being taken into protective custody in the Northern Territory. In 2011-12, a total of 19,988 people were taken into protective custody by the NT Police. Of these, 17,305 people or 87 per cent were Aboriginal: NTPFES, *NT Police, Fire and Emergency Services Annual Report* (2011-12) 137. <www.pfes.nt.gov.au/~media/Files/Forms_Licences_Permits_Publications/Triservice/Annual_reports/121023-pfes-annual-report-2011-12-01.ashx>. **7** *Alcohol Mandatory Treatment Act* 2013, s10. **8** *Ibid.*, s14 and s17. **9** *Ibid.*, s31. **10** *Ibid.*, s9(2)(a) **11** *Ibid.*, s113. **12** *Ibid.*, s51. **13** *Ibid.*, s11(1). **14** *Ibid.*, s11(2). **15** *Ibid.*, s72. **16** The Northern Territory's incarceration rate is five times the national average and is increasing faster than that of any other state or territory. In the 10 years from 2002 to 2012, the NT imprisonment rate rose 72 per cent. Despite a new 1,000-bed prison to be opened in 2014, it is expected to be more than 100 beds short when it opens its doors for the first time. Current estimates set the need for another prison by 2016. **17** Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Deaths in Custody 1989-1996*. See ch 6 <www.humanrights.gov.au/publications/indigenous-deaths-custody

chapter-6-police-practices>. **18** See <http://newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=10961&d=5>. **19** See www.abc.net.au/news/2013-06-12/ama-attacks-nt-mandatory-alcohol-rehab-laws/4748382. **20** M Lipsey, J Howell, M Kelly, G Chapman & D Carver, *Improving the Effectiveness of Juvenile Justice Programs*, Centre for Justice Reform, Georgetown University, 2010. **21** Jesuit Social Services, *The Alcohol Mandatory Treatment Bill 2013 - Comments to the Northern Territory Department of Health*, May 2013. **22** W Tan & M Johnson, *A Report into the effectiveness of civil commitment in the treatment of alcoholism, and its suitability for implementation in the Northern Territory*, Aurora Project, 2013 at 6. **23** www.abc.net.au/news/2013-05-29/mick-gooda-on-nt-mandatory-alcohol-rehab-law/4719976?section=nt. **24** Section 114. **25** Section 115. **26** See s31A of the VSAP Act. **27** See ss65 and 66. **28** Section 52 VSAP Act. **29** www.abc.net.au/news/2013-05-23/giles-defends-nt-drinking-culture-as-core-social-value/4708310. **30** See www.abc.net.au/news/2013-06-12/ama-attacks-nt-mandatory-alcohol-rehab-laws/4748382. **31** www.theaustralian.com.au/national-affairs/state-politics/law-to-push-drunks-off-streets-into-the-bush/story-e6frgczx-1226498885505. **32** www.abc.net.au/am/content/2013/s3787811.htm. He later acknowledged that his language may have been too strong.

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