people's alcohol action coalition

www.paac.org.au

Submission to Review of *Alcohol Mandatory Treatment Act*

1. PAAC

The People's Alcohol Action Coalition - PAAC - is an unincorporated community association and a local Action Group as defined in s47F (3) (f) of the *Liquor Act* (the *Act.*), based in Alice Springs. Membership is open both to individuals and organisations that support its aims. PAAC's current supporters include medical and welfare organisations, churches, community groups and concerned individuals.

PAAC's aim is to work towards reducing alcohol-related harm, including through the following strategies:

- developing constructive reforms to the sale of alcohol;
- advocating controls on public consumption;
- advocating responsible service of alcohol; and
- promoting healthy lifestyles.

PAAC strives through its advocacy work to raise public awareness of and influence policy on the alarming levels of alcohol consumption and related harm in Alice Springs, the Northern Territory generally and also on a national level. More information is available on the website: www.paac.org.au

2. Scope of Review

We note that in our response to the Alcohol Mandatory Treatment (AMT) Bill in May 2013, PAAC submitted as follows:

A longitudinal data set should be established to enable the ongoing evaluation of all of 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 2000-2010: http://ndri.curtin.edu.au/local/docs/pdf/publications/T220.pdf 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; and:

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 NTG is correct in its approach we will see the results in reduced consumption, hospital harms etc. If the NTG refuses to conduct a proper evaluation it can only be assumed that it knows this approach is not going to work.

We maintain this position and note that this Review is narrow in its scope, as it will deal only with the degree to which the *Act* meets, in a practical sense, its functions of providing mandatory assessment and treatment, but not the actual AMT program; also that such an evaluation is planned for 2014, with no date as yet specified. PAAC has doubts about the usefulness of a review that examines the legislation in isolation from the AMT Program. We also note that the Review is being undertaken by the Department of Health, the agency which administers the AMT *Act*. In our submission it would be preferable for any review or evaluation to be carried out by a third party, better to provide independence and transparency and to be seen to do so.

It is also of great concern to us that the Minister, on the evening before submissions were due to this Review, engaged in what we consider to be a very unfair attack on the Central Australian Aboriginal Legal Aid Service (CAALAS), which acted for a client in a matter involving a charge of absconding from mandatory treatment, with the eventual outcome that the original treatment order was set aside. The case is mentioned at 3.2 below. There was no interpreter available at the Tribunal hearing. There was a finding of a denial of natural justice. This matter is most likely not the first instance of this kind, but only the first that has come to CAALAS' and public attention. Note that there is no lay advocate provided in Alice Springs to date, and nor is there funding for legal representation for those who appear before the Tribunal. These are matters which have been raised previously, including by PAAC and by legal aid services, and will no doubt continue to be raised because they are in fact serious shortcomings of the AMT scheme. The Hansard record (attached*) meanwhile, reveals an ill-informed and un-called for attack on a legal aid service that is in fact obliged to represent those charged with criminal offences - as it rightly did in this matter – but has no resources with which to assist those appearing before the Tribunal.

The RP matter did not of course begin as a challenge to the Tribunal or the AMT scheme. Hearings are in camera and there is no obligation under the *Act* to provide advocacy or legal advice. Neither CAALAS nor anyone else would therefore not normally know if there had been a denial of natural justice or any other error.

For the Minister to attack a legal service in this manner for the reasons she purports to give is quite shocking, and does not inspire confidence in either the operation of the *Act* or indeed in its review. Attacks on legal service should not be used to obscure the fact that people in dire circumstances are being left to face mandatory detention without representation.

We nevertheless wish to put on the record a brief summary of some of our concerns about particular elements of the *Act*.

3. Address to specific sections or aspects of the *Alcohol Mandatory Treatment Act*

3.1 *Criminal office of third instance of absconding.*

Section 72 sets out an offence of absconding from a treatment centre for a third time. Whilst this provision is less harsh than the earlier version in the Bill, which criminalised a first instance of leaving a treatment centre, it remains the case that under the *Act*, drunkenness is criminalised in what can fairly be described as a ‘back door’ manner, contrary to the recommendation of the Royal Commission into Aboriginal Deaths in Custody, and good public policy. A person who has committed no offence, has been assessed and then compulsorily detained for treatment, may then face a charge where none existed in the first instance. It is our understanding that there have to date been few if any convictions of people charged under this provision. That is however not to the point. Whilst the offence of absconding remains an option, it is not only unjust, but stands in contradiction to the NT Government’s stated commitment to address the misuse of alcohol as a matter of health, not of criminal justice and reflects poorly on the NT’s administration.

Recommendation: *The Act should be amended to remove this unjust and regressive offence.*

3.2 *Advocacy under the AMT Act.*

In our submission on the Bill, we made the following point:

Clause 51: Appeals to Local Court
When read with clause 113: Right of appearance and representation, the provision for appeals is concerning. It is likely that most people who appear before the Tribunal will not be represented by a lawyer, although they may have a Departmental advocate. Given that appeals are restricted to questions of law, the opportunity for persons subject to AMT orders to get legal advice about their position, or to appeal against a decision, is restricted. An advocate without legal training cannot give legal advice, and cannot advise even as to whether there is a point of law.

Some legal services have already stated that they will not have capacity to assist with matters arising from AMT Act.

We note the general principles set out in s6.

Under s113 of the *Act,* an affected person, as defined, *may* appoint a legal representative, or the President of the Tribunal *may* do so. In *RP v Alcohol Mandatory Treatment Tribunal of the Northern Territory* [2013] NTMC 32032 Bamber SM set aside the Tribunal's order after finding that the (disadvantaged) appellant had been denied natural justice. His Honour noted, among other things, the lack of an interpreter to assist her at the Tribunal hearing.

It seems to us grossly unjust that a person who has ended up in front of the Tribunal whose members must consider, and may well find, that the person 'has lost the capacity to make decisions about his or her alcohol abuse or person welfare,' should be denied the right, rather than just the option, to independent legal advice when the outcome may be compulsory detention with a risk of a charge should they abscond a third time.

The great majority of those who have appeared before the Tribunal are Aboriginal people. It is reasonable to assume, given the nature of NT society, that many them do not understand English well and do not understand the complexity of the AMT system. RP may very well not have been the only person unlawfully detained to date. If advocates are not available there may be many, many more. The right of appeal to a Local Court is unlikely to be taken up often if those subject to AMT orders have in no real comprehension of whether they were fairly dealt with in the first instance.

Since the decision in *RP vs Alcohol Mandatory Treatment Tribunal of the Northern Territory* Alcohol Rehabilitation Minister Lambley has commented publicly on the AMT – its costs, successes and the Review[1]. To our knowledge she has made no mention of advocates or representation (except in her recent attack on CAALAS on 13.2.14, noted above) and the October-December 2013 AMT Quarterly Report does not mention this matter. It is extremely concerning that the NT Government did not accept the suggestion on representation made in submissions to the Bill, and has not acknowledged the need to rectify this poor situation since the decision in RP.

[1]For example: http://www.abc.net.au/news/2014-01-16/lambley-on-mandatory-grog-rehab-scheme-costs-and-effects/5203090?section=nt

We note that under s15 (3) the *Act* 'assessable persons' must have their rights explained in their own language 'if practicable.' Section 19(3) states that the senior assessment clinician who conducts an examination must explain its purpose 'to the extent reasonably practicable.'

Tribunal hearings are of course conducted in camera, so we are entirely reliant for information on the somewhat basic Health Department reports. This is a very unsatisfactory situation and not one that provides any assurance or appearance of natural justice; indeed, quite the opposite.

Recommendations: *The Act should be amended to ensure that those appearing before the Tribunal have access to legal advice and representation and that financial provision is made to allow for this assistance.*

The Act should be amended to ensure that those in the assessment phase have the procedure, examination by the senior assessment clinician and their rights explained to them in their own language.

3.3 *Detention under the AMT Act.*

The Act currently allows for persons to be detained for nine days in total in the assessment phase:

- under s17: 96 hours for assessment following admission to assessment facility;
- under s20: 24 hours for the clinician to make an application to the Tribunal under s22; and
- under s31: a maximum of 96 hours for the Tribunal to hear and decide an application.

We note that under the Principles set out in s6, s6 (a) states that:

involuntary detention and involuntary treatment of a person are to be used only as a last resort when less restrictive interventions are not likely to be effective or sufficient to remediate the risks presented by the person.

PAAC also submitted in relation to the Bill:

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 that exist in the criminal justice system…

This applies to the assessment period as well as to any order made under the *Act*. The time for detention for the purpose of assessment was reduced from the thirteen originally proposed in the Bill.

The *Act* does not contain the same checks and balances as those to be found in the NT's *Mental Health and Related Services Act*. We would not wish to see any extension of the time permitted for assessment, which we believe would amount to a further and serious incursion on the rights of those detained. If any such extension is to be contemplated, it should only permitted be in exceptional circumstances and only through an application to a Magistrate in the Court of Summary Jurisdiction.

Recommendation: *No extension should be permitted to the time for assessment under the Ac and no change made to how the number of days is calculated. If any extension were to occur, it should only be permitted through a successful application to a Magistrate.*

3.4 *Police discretion in determining where to take intoxicated persons.*

Section 8 of the *Act*, in conjunction with s128A of the *Police Administration Act* allows Police to determine whether a person taken into custody is an 'assessable person.'

We also understand, as set out for example in the Briscoe inquest [2], that, as per the police Custody Manual, the watch house is the least preferred option for intoxicated persons; that a person is not to be taken into watch house custody unless all reasonable effort have been made to find an alternative; and that Standard Operating Procedures require watch house staff to *determine and record* the reason why a person held under s128 of the *Police Administration Act* was not taken to a sobering-up shelter, with the reason being recorded in the IJIS (Integrated Justice Information System.)

We are concerned that there is, to our knowledge, no system for ensuring that the watch house is in fact used as the last resort, as is clearly required in the instructions supplied for officers' use. It is important that data is available on how many people are taken where, and the reasoning that is recorded when decisions are made. This will assist in assessing the operation of the *Act* and also allow for increased transparency in police operations.

Recommendation: *That an evaluation be carried out to determine how police have exercised their discretion in determining where to place a person taken into protective custody under s128 of the Police Administration Act with a view to ensuring that the watch house is used as a last resort and that directions as to recording decisions are properly followed.*

[2] http://www.nt.gov.au/justice/courtsupp/coroner/documents/2012_findings/A00052012_Briscoe.pdf

3.4 *Reporting on AMT and tracking success of AMT 'graduates.'*

The *Act* requires only that the principal community visitor and Tribunal President each provide the Minister with an annual report, which must be tabled in the Legislative Assembly. We also note that the Minster has been releasing quarterly reports on the operation of the AMT scheme. Whilst this is commendable, there is no obligation for her to do so, and such an obligation should be included in the *Act.*

Quarterly reports should also include the following information:

- Type of orders in place: number of residential orders and number of community orders;

- Number of persons who have absconded from residential treatment and on how many occasions;
- Reasons for release during treatment of any persons so released (as distinct from those who abscond);

- Number of persons who have been in the AMT program more than once.

- Number of persons picked up by police for intoxication under the Police Administration Act compared to the number:
  - referred for AMT assessment
  - not eligible for AMT assessment as not taken into police protective custody but to shelter, home, elsewhere.

We also submit that systems need to be put in place that will assist in accurately evaluating the AMT scheme.

Service providers should supply aftercare reports to the Minister at three and six months after the end of treatment and six months by service providers in order to track the success or otherwise of AMT 'graduates'.

Police should be required to track all those whom they refer into assessment for AMT so that if those persons come into contact with police within two years after the referral, that event is flagged, and reported to the Minister.

We also propose that AMT ‘graduates’ be put on Alcohol Protection Orders, but only if:

(a) the breach of an APO is decriminalised; and

(b) the BDR and Photo ID system are reinstated, so that there is a practical way of enforcing an APO.

Recommendations: *That the Act be amended to include requirements for reporting as set out in 3.4 above.*

That APOs be de-criminalised in relation to their being breached, and the BDR and Photo ID systems be reinstated so as to enable ease of enforcement of APOs and any other valid alcohol banning orders.

Conclusion

We remain concerned about the narrow scope of the Review, and the Minister’s recent comments have not, to be frank, inspired confidence in relation to the Government’s approach to dealing with those who have serious alcohol problems.

We nevertheless hope that PAAC’s submission may help to improve the administration of the AMT *Act* and we look forward to an evaluation of the AMT program, hopefully in the near future.

PAAC
14th February 2014

NTLA Hansard
13.2.14

Not proofed.

Mrs LAMBLEY (Araluen): Madam Speaker, it is with regret that I speak tonight to raise what consider to be a significant matter of public importance. In my role as Minister for Alcohol Rehabilitation, I so often marvel at the wonderful work undertaken by our non-government sector. Tonight it is my regret that I wish or need to highlight what appears to be the rank duplicity of some of the professional staff within the Central Australian Aboriginal Legal Aid Service. In particular, I fear they are letting down the community and the disadvantaged people they profess to represent.

CAALAS professes to look after the disadvantaged in Central Australia, as do I. I know we have different approaches, but the CAALAS approach towards this government's alcohol mandatory treatment policy suggests they, or at least parts of the organisation, have political campaigning as a greater priority than their clients' wellbeing. This is very concerning and very disappointing.

Late last year, CAALAS, on behalf of their client, successfully challenged the government's alcohol mandatory treatment laws. I respect their right to do so, and the rights of the courts enshrined in our AMT legislation to review decision made by the alcohol mandatory treatment tribunal on questions of law. In raising this issue tonight, I am not seeking to denigrate or in any way comment on that particular decision of the courts or any participants in that case.

I fully acknowledge that as a member of the executive branch of government, it would be inappropriate for me to do so. What I would like to put on the record, however, is the way in which CAALAS has chosen to react to the alcohol mandatory treatment system. I question whether, at all times, they have acted in the best interests of the community they are there to assist.

When the government first announced we would introduce alcohol mandatory treatment, there were organisations that expressed their preference that we did not. I accept and respect this is their right, just as it was ours to implement our election commitment.

It seems often forgotten we made a commitment to the Northern Territory people to introduce mandatory rehabilitation for the worst alcohol abusers in our community. We did this in response to the community's call for action. We promised to do it and I am extremely proud of the fact we delivered on that commitment to the people.
In fact, Labor's Delia Lawrie and Paul Henderson promised to introduce mandatory rehabilitation in 2010, yet failed to deliver on their commitment, but I digress.

When we introduced our alcohol mandatory treatment system on 1 July 2013 we invited both CAALAS and the North Australian Aboriginal Justice Agency to attend the tribunal hearings to witness the system in action.

Our aim then, as it is now, was to make sure we have an honest, just and practical approach that helped those people who needed help. To their credit in the Top End, NAAJA did accept the invitation to attend tribunals. I understand they attended for about the first three weeks of the tribunal's operation. They did not see anything too troubling and they left the system to do its good work. I will be pleased to receive their input into the six month review of the alcohol mandatory treatment system.

CAALAS received the same invitation accepted by NAAJA; however they did not bother to show up, not once. What further shocked me was that CAALAS received numerous requests from the tribunal to attend hearings and to participate in them as an applicant's advocate. They refused to attend, citing a lack of resources. Here we have a legal aid agency not wanting to witness the tribunal in action, not wanting to assist members of the Central Australian Indigenous community, all because of what they called 'resourcing'. What do they do next? Despite their self-declared lack of resources they challenged an outcome of the tribunal and the grounds for this challenge were: '
An applicant was denied natural justice by not having an advocate.

The utter hypocrisy astounds me. At the time of the successful challenge, CAALAS representatives eagerly hit the airwaves, condemning the system and making a legally invalid claim that all tribunal decisions were now in question. CAALAS said they had more.

They had a second challenge raring to go. It seemed to me that far from helping their clients, their aim was to damage the credibility of the scheme, regardless of any good it may have been doing. Has anyone heard what happened to that second challenge? I am advised that when CAALAS looked into it, they found that in the case in question, they had been invited to represent the client as her advocate and they had declined. Why is it they cannot find it within themselves to provide effective legal aid services at the initial hearing, but are more than happy to expend resources after the fact, decrying the lack of legal representation in the system?

CAALAS and I have the same aim. We both want to lessen the harm caused by alcohol in Central Australia. I know they have reservations about our approach, but working against the government and against their own clients is counterproductive.
If CAALAS has a better approach, if it has constructive suggestions as to how we can solve the massive problem that is alcohol abuse, I am all ears. Negativity and carping does not help anyone. Harking back to a mythical, golden age of the Banned Drinker Register involves more pairs of rose

coloured glasses, a denial of the facts and a level of naivety not usually found in lawyers.

A review of the Alcohol Mandatory Treatment Act is currently underway. I look forward to receiving submissions to the review from CAALAS and can assure this place and the community the government will give them due regard. I look forward to strengthening our alcohol mandatory treatment system, as part of the comprehensive package the County Liberal government is putting in place to reduce alcohol harm across the Territory. I would like to end by saying it is my hope that in six months, I will be able to give a statement saying how many people have helped by working together. I live in hope.