Central Australian Aboriginal Congress Aboriginal Corporation
PO Box 1604, Alice Springs N.T. 0871 ICN: 7823 ABN: 762 1059 1710

Congress submission to the Alcohol Mandatory Treatment Review

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Introduction and Scope of Review

Congress acknowledges that the government has made it clear that this review is only to consider the practical application of the legislation that has enabled the Alcohol Mandatory Treatment system to be established and our response is therefore confined to this purpose. While such a review may be useful it is imperative that the government commence an independent, longitudinal evaluation of the AMT initiative as it is vital that the key data needed to effectively evaluate the system is being collected now and an independent evaluation team needs to be able to consider the quality and scope of the current data being collected to ensure that the program is in fact "evaluable".

Congress also notes that the current Review is being undertaken by the Department of Health, the agency which administers the AMT *Act*. While this is acceptable given the narrow scope of the current review, this would not be acceptable for the formal evaluation of the AMT program which requires the appointment of an independent, expert evaluation team.

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

1. ***Criminal offence of third instance of absconding.***

   Section 72 of the Act 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*, it is still ultimately a criminal offence to leave treatment. This in effect introduces a criminal element into the treatment process for an alcohol addiction which is a chronic, relapsing disease of the brain. It is the view of

Congress that such a policy measure crossed an important legal and ethical line in government policy in allowing the treatment of a chronic condition to become subject to the criminal code. This is a major area of concern to the Central Australian Aboriginal Congress as had been expressed since the AMT system was first mooted. It is also the reasons why Congress has not been able to offer our GP, psychological and other services to clients who are within the residential AMT program although these services are available to clients in residential treatment facilities who are not subject to Alcohol Mandatory Treatment.

The continued existence of the criminal sanctions in the AMT Legislation is counter to the public commitment that has been given by the government to ensure that people with alcohol addictions are treated as patients in a health system approach rather than as criminals in Correctional systems approach.

In terms of the practical application of this aspect of the Act there seems now to be clear grounds for its removal. Although Congress is aware that a number of people have been charged with the offence of absconding a third time from treatment and have appeared before the courts, it is our understanding that none of these people have been given a custodial sentence.

Recommendation 1 The Act should be amended to remove all criminal sanctions for people who are undertaking Alcohol Mandatory Treatment as this aspect of the Legislation is achieving no practical benefit and is the primary cause of concern with AMT.

Recommendation 2 The Act should be amended so that people can only be detained against their will in the assessment phase for up to 2 weeks after which they need to make an active commitment to stay in treatment.

2. Client Advocacy under the AMT Act.

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 the appellant at the Tribunal hearing.

It seems improper 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 of these people 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 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.

Congress notes 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.' Congress is concerned that this may not be happening at least to the extent that is needed.

Finally, the Congress Social and Emotional Well Being Service has been contacted by family members if clients who had been previously under treatment for alcohol problems because they have "gone missing". In investigation it has been found on a number of occasions that these clients were detained in the assessment process of the AMT system and next of kin or family had not been notified.

Recommendation 3 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.

Recommendation 4 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.

Recommendation 5 The Act should be amended to ensure that next of kin are notified when someone has been detained for the purpose of assessment under the Act.

General issues in the practical application of the AMT system

Unfortunately, in spite of Congress formally writing to the Department and making it clear that we could not provide services into CAAAPU for AMT residential clients but we could provide services, including medical and psychological services to non AMT residential clients and to all clients on Community AMT orders this was misunderstood by the leading clinicians in the process. This meant that for a long time Congress did not receive any referrals through our Safe and Sober Support Service for clients on Community AMT orders and nor were we receiving referrals for continuing care of clients once they completed their residential treatment. This was addressed with the appointment of Dr Wright as the Director of the AMT program and Congress has now received a few Community AMT referrals and, more recently about 15 referrals from CAAAPU for continuing care of clients.

It is important that when referrals are made for continuing care following residential treatment that comprehensive written information is provided based on the extensive assessment that has already been done on clients. This will greatly assist the assessment process that any continuing service provider will then make following such a referral. For example, when it is clear that a client has cognitive impairment this information needs to be provided as it has a major implication on the type of treatment that is possible and in some cases will require more of a disability support response than a therapeutic response.

A process of joint assessment prior to discharge has commenced between the Congress Safe and Sober Support Service and CAAAPU which should significantly improve the communication issues.

There have been times where the assessment process has not included adequate knowledge of medical histories e.g. client with pre-existing schizophrenia not known about and this is a concern. It is important that clinicians in the assessment process ensure they seek access to clinical information using the My eHealth record and approaching providers such as Congress as needed.

The process for monitoring people on CAMT orders is still not clear although this is now being worked through with the new Case Managers and Service providers.

Finally, it is already clear that a significant number of clients have cognitive impairment and there needs to be funding for disability services including supported accommodation for some of these people when they get out of residential treatment.

Recommendation 6 That funds for AMT be set aside to provide additional support to people with cognitive impairment including additional long term supported accommodation services.