



The Northern Territory of Australia

Alcohol Mandatory Treatment Tribunal

ANNUAL REPORT

2015-2016

In accordance with section 124 of the *Alcohol Mandatory Treatment Act*, I, Tom Berkley, President of the Alcohol Mandatory Treatment Tribunal of the Northern Territory, hereby submit my report on the exercise of the Tribunal's operations for the period from 1 July 2015 to 30 June 2016.



The Northern Territory of Australia

Alcohol Mandatory Treatment Tribunal

10 October 2016

The Honourable Natasha Fyles MLA
Attorney-General and Minister for Justice
Parliament House
State Square
DARWIN NT 0800

Dear Minister

ANNUAL REPORT ON THE OPERATIONS OF THE ALCOHOL MANDATORY TREATMENT TRIBUNAL

I have pleasure in making the third annual report of the Alcohol Mandatory Treatment Tribunal, pursuant to section 124 of the *Alcohol Mandatory Treatment Act* (the Act).

The Act came into effect in the Northern Territory on 1 July 2013. This report addresses the activities of the Tribunal during the reporting year.

I would be glad to discuss any aspect of this report with you, at your convenience.

Yours sincerely

Salwyn Green 11/10/2016
DEPUTY PRESIDENT for and on behalf of
Tom Berkley

PRESIDENT

| | |
|---|---|
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ANNUAL REPORT ON THE OPERATION OF THE ALCOHOL MANDATORY TREATMENT TRIBUNAL FOR THE PERIOD 1 JULY 2015 TO 30 JUNE 2016

In accordance with section 124 of the *Alcohol Mandatory Treatment Act*, I, Tom Berkley, President of the Alcohol Mandatory Treatment Tribunal, do hereby submit my report on the operations of the Alcohol Mandatory Treatment Tribunal for the financial year ended 30 June 2016.

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PART 1 - INTRODUCTION

The *Alcohol Mandatory Treatment Act* (the Act) came into effect in the Northern Territory on 1 July 2013, creating for the first time, an Alcohol Mandatory Treatment Tribunal (the "Tribunal"). On 13 August 2013 the Chief Minister signed an amendment to the Administrative Arrangement Orders requiring that the Tribunal report to government through you, as the Minister responsible for the operation of the Tribunal.

Section 124 of the Act requires the President of the Tribunal to report to "the Minister" by 30 September 2015, on the operations of the Tribunal in the preceding financial year (the reporting period). Sub-section 124(3) requires you to ensure that a copy of this report is tabled in the Legislative Assembly within 6 sitting days after receiving it. This report is forwarded to you 10 days after the statutory deadline.

The work of the Tribunal has not abated. In its first year of operation the Tribunal made 435 orders concerning 323 individuals Territory wide. The resources of the Tribunal were generally adequate to deal with this caseload. In the Tribunal's second year, the Tribunal made 479 orders concerning 338 individuals. In the third year, being the period covered by this report, the Tribunal held 465 hearings to deal with 454 applications made to the Tribunal.

For the first time, this year's report includes the number of presentations the 465 individuals have made to the Tribunal. The workload of the Tribunal has been consistent with previous years. As in previous years, the efforts of the Registrar, Ms Cynthia Thompson, and the Deputy Registrar, Mrs Wendy Baldwin, are to be congratulated. They have ensured the smooth and efficient conduct of the Tribunal's business.

The Tribunal welcomes a new Deputy President, Ms Sally Gearin. Ms Gearin formerly practiced at William Forster Chambers as a barrister, before becoming engaged in tribunal work. Her vast experience in administrative law as it is applied by tribunals is an asset to the Tribunal.

The 2015-2016 reporting year has seen greater access to remote AOD facilities being available to provide assistance to affected persons under Mandatory Community Treatment Orders in remote areas. The Tribunal notes the efforts of Ms Jenny Frendin from the Department of Health in providing this expanded access, which has greatly extended the functional capacity of the Tribunal to make effective rehabilitation orders for individuals who want to return to country to undertake their rehabilitation.

For the first time, Release Orders (118) have exceed Mandatory Community Treatment Orders (112). The most common order remains the Mandatory Residential Treatment Order (151).

The Tribunal is operating efficiently and within its resources. The Tribunal informs itself of any issues concerning the provision of alcohol rehabilitation services as part of the requirement that the Tribunal consider the least

restrictive option that is available to it to deal with the risks to the health and safety of the individual affected person, or others associated with that person.

PART 2 - OBJECTS AND PRINCIPLES OF THE ACT

The Act creates a therapeutic jurisdiction to be exercised by the Tribunal in accordance with the objects and principles of the Act. As a health based statutory response to the problems of chronic public consumption of alcohol, the Act remains a first of its kind.

The jurisdiction created by the Act is unique, and divorced from both the criminal justice system and the mental health system, as exemplified by the statutory objects.

The objects of the Act are set out in section 3:

“3 Objects

The objects of this Act are to assist and protect from harm misusers of alcohol, and other persons, by providing for the mandatory assessment, treatment and management of those misusers with the aim of:

- (a) stabilizing and improving their health; and
- (b) improving their social functioning through appropriate therapeutic and other life and work skills interventions; and
- (c) restoring their capacity to make decisions about their alcohol use and personal welfare; and
- (d) improving their access to ongoing treatment to reduce the risk of relapse.”

The principles for the exercise of any power or function under the Act are set out in section 6:

“6 Principles

The following general principles must be applied by a person when exercising a power or performing a function under this Act:

- (a) 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;
- (b) the least restrictive interventions are to be used when a person is being treated or dealt with under this Act;
- (c) any interference with the rights and dignity of a person are to be kept to the minimum necessary.”

PART 3 - OVERVIEW OF THE TRIBUNAL - HEARINGS AND ORDERS

3.1 - Hearings by the Tribunal

The Tribunal operates from premises at the Cascom Centre in Casuarina, from where the Registry also operates. The Tribunal sits *ad hoc*, and in all cases within 96 hours of an application having been made to the Tribunal for an order.

The functions of the Tribunal are set out in section 103 of the Act, which provides as follows:

“103 Functions and powers

- (1) The Tribunal has the following functions:
 - (a) to consider and decide applications made to it;
 - (b) to make mandatory treatment orders, income management orders and other orders in relation to its decisions;
 - (c) to make inquiries in relation to proceedings, as appropriate;
 - (d) to perform other functions conferred on it under this or any other Act.

- (2) The Tribunal has the powers necessary to perform its functions.”

The hearings must be conducted in accordance with section 115 of the Act, principally having regard to the confidentiality of the proceedings, and the need to conduct hearings with as little formality and technicality, and with such expedition, as the proceedings allow.

The proceedings of the Tribunal are not open to the public. Confidentiality in the proceedings is achieved because all of the proceedings of the Tribunal are conducted via audio-visual links to the various assessment centres, where the affected persons are located, and all proceedings are recorded. During the reporting period, assessment centres were located at Darwin, Alice Springs, Katherine and Tennant Creek.

At each hearing of an application conducted by the Tribunal, the Tribunal is constituted by 3 members. There is a legal member, who presides and decides all questions of law. There is a medical/health member experienced in the care, rehabilitation and treatment of persons who are misusing alcohol, and there is a community member who has a special interest or expertise in the issues facing affected persons who appear before the Tribunal. For convenience, the Tribunal sits with members according to a roster set by the Registrar.

At the hearing of an application by a Senior Assessment Clinician, an affected person may represent himself or herself, be represented by a legal practitioner, or, if unrepresented, the President may appoint an advocate, to assist and to represent the best interests of the affected person. During the

reporting period, the Northern Australia Aboriginal Legal Aid Agency, the Central Australian Legal Aid Service, HWL Ebsworth Lawyers, and Collier Lawyers, pursuant to contracts with the Department of Health, provided advocacy services to persons who are subject to applications for mandatory treatment orders under the Act.

The provision of contracted advocacy services has been a positive move for the achievement of transparency in the operations of the Tribunal, which are otherwise entirely confidential. It has also resulted in occasional appellant judicial oversight of the decisions and procedures of the Tribunal. As a result, the public could be confident in the lawful, efficient and effective performance of the work of the Tribunal. The Tribunal has thus far accepted the appellant rulings.

3.2 - Types of Orders that can be made by the Tribunal

Before any order, other than a release order can be made by the Tribunal, the Tribunal must be satisfied on cogent evidence that the criteria for a mandatory treatment order, as set out in section 10 of the Act, are made out. Basically, the affected person must be an adult who is misusing alcohol, with a resultant loss of the ability to make appropriate decisions about alcohol use or personal welfare, and a resultant risk to the health, safety or welfare of the affected person.

In addition, the Tribunal must be satisfied that the affected person would benefit from a mandatory treatment order, and that there are no less restrictive interventions reasonably available to deal with the risks to the health, safety or welfare of the affected person (or their children or others).

Of course, a mandatory treatment order cannot be made, even if an affected person meets all of the criteria for such an order, if the affected person has any of the qualities listed in section 9 of the Act. Briefly, if a person is charged with committing an offence punishable by a maximum punishment of imprisonment for more than 7 years, or is a reportable offender under either of the *Child Protection (Offender Reporting and Registration) Act*, or the *Serious Sex Offenders Act*, or is an involuntary patient under the *Mental Health Act*.

No order can exceed three months in duration (section 49), except for the income management order, which must not exceed 12 months (section 50). The operation of certain orders can be extended by an order of the Tribunal.

The Mandatory Residential Treatment Order (MRTO). This is the most restrictive form of intervention, and is made pursuant to section 12 of the Act. An MRTO requires the admission to and detention at a specified treatment centre, and requires the affected person to participate in treatment there, and bans the possession, purchase and consumption of alcohol.

The Mandatory Community Treatment Order (MCTO). This is a less restrictive form of intervention, and is made pursuant to section 11 of the Act. An MCTO requires the participation of the affected person in treatment from a specified community treatment provider, and requires the affected person to

participate in treatment there, and bans the possession, purchase and consumption of alcohol. This order has the greatest amount of flexibility because it does not have a residential component, although some treatment providers offer beds.

A further example of its flexibility is that an MCTO can also require the affected person to undergo alcohol testing, ban the person from associating with certain people or places, or require a person to reside with a specified person or in a specified place. The MCTO also allows the Tribunal to impose another form of management that is consistent with the objects of the Act.

The Income Management Order. If an affected person is an eligible welfare recipient, then the Tribunal must make an income management order, as required by section 13 of the Act, if either an MRTO or MCTO is made. The usual order is to restrict 70% of the affected person's income to the Basics Card, thus limiting the amount of money available for the purchase of alcohol, for a period of 12 months.

The Release Order. This is an order made if the affected person does not, or no longer, meets the criteria for the making of a mandatory order. This may be because, in the view of the Tribunal, the individual does not need any more than to return to family and cultural connections for effective rehabilitation. A release order can also be made when an application for an order concerning an affected person is not made within the statutory time frame. Release orders are also made where an affected person has left a specified treatment centre and is unlikely to return.

Revocation and Variation. Section 39 of the Act allows the Tribunal, in appropriate cases, and on the application of a Senior Assessment Clinician, to revoke or vary any order of the Tribunal. Revocation orders generally fall into 2 groups. The first is the revocation of a MCTO where it has been breached, and there is an application for a MRTO. The second is when the individual is subject to either a MRTO or a MCTO, and other more therapeutic options become available to deal with that individual's rehabilitation.

3.3 - Types of Orders Actually Made by the Tribunal

Table of Orders Made by Region

| Order Type | Darwin | Alice Springs | Katherine | Tennant Creek | Total |
|-----------------------|------------|---------------|-----------|---------------|------------|
| MRTO | 97 | 45 | 8 | 1 | 151 |
| MCTO | 56 | 45 | 11 | | 112 |
| Release | 69 | 42 | 7 | | 118 |
| Vary/revoke/replace | 39 | 31 | 1 | 1 | 72 |
| Dismissed | 1 | 9 | 2 | | 12 |
| Total hearings | 262 | 172 | 29 | 2 | 465 |

The distribution of orders by region is consistent with the distribution in past years. The assessment centre in Tennant Creek is no longer functional.

Table of Orders Made by Month

| Total: | 2015 | | | | | | 2016 | | | | | | |
|--|------|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|
| | Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | |
| Applications received | 45 | 33 | 38 | 30 | 50 | 24 | 26 | 30 | 47 | 45 | 55 | 31 | 454 |
| Hearings conducted | 55 | 31 | 34 | 40 | 46 | 29 | 30 | 32 | 40 | 46 | 52 | 30 | 465 |
| Residential Treatment Orders made | 16 | 8 | 11 | 16 | 7 | 10 | 10 | 10 | 10 | 21 | 24 | 8 | 151 |
| Community Treatment Orders made | 11 | 8 | 6 | 6 | 18 | 9 | 4 | 5 | 12 | 12 | 11 | 10 | 112 |
| Vary/Revoke/Replace MTO | 9 | 4 | 5 | 4 | 5 | 2 | 6 | 6 | 7 | 7 | 10 | 7 | 72 |
| Release orders made | 16 | 11 | 11 | 13 | 11 | 8 | 8 | 10 | 11 | 7 | 5 | 7 | 118 |
| Matters Dismissed | 2 | 0 | 1 | 1 | 5 | 0 | 2 | 1 | 0 | 0 | 0 | 0 | 12 |
| Exemption Orders made | 3 | 1 | 3 | 1 | 1 | 0 | 0 | 2 | 1 | 1 | 1 | 2 | 16 |
| Variation to MTO Applications received | 1 | 0 | 0 | 2 | 0 | 0 | 1 | 2 | 1 | 3 | 3 | 2 | 15 |
| Revocation to MTO Applications received | 4 | 0 | 3 | 2 | 1 | 1 | 5 | 1 | 1 | 2 | 5 | 1 | 26 |
| Replacement to MTO Applications received | 5 | 4 | 4 | 1 | 4 | 1 | 1 | 4 | 4 | 3 | 3 | 4 | 38 |

Client Number of Presentations

| New | 2nd | 3rd | 4th | 5th | 6th | 7th | TOTAL |
|-----|-----|-----|-----|-----|-----|-----|-------|
| 217 | 105 | 75 | 37 | 21 | 7 | 3 | 465 |

This table deals with the number of times that affected persons appearing before the Tribunal during the reporting year had previously appeared before the Tribunal.

PART 4 – SIGNIFICANT STATUTORY AMENDMENTS IN REPORTING PERIOD

There were no significant statutory amendments during the reporting period.

PART 5 – SIGNIFICANT ACTIVITIES OF THE TRIBUNAL DURING THE REPORTING PERIOD

This year was very much encapsulated by the phrase “steady as she goes”. The Tribunal remains engaged with the Department of Health, and in particular, the Alcohol and Other Drugs unit, and with Senior Assessment Clinicians and Senior Treatment Clinicians, in order to ensure that the operations of the Tribunal are conducted in the most efficient manner.

During the reporting period, the Tribunal visited Alice Springs and Katherine to inform itself of the facilities currently available to implement the orders of the Tribunal, and to discuss the operation of the Tribunal and the suitability of the statutory procedures with both Senior Assessment Clinicians and Senior Treatment Clinicians. The visits by the Tribunal were well received by both the assessment centres and treatment providers.

A significant event has been the continued improvements in options available to the Tribunal to make Mandatory Community Treatment Orders for affected persons who wish to return to remote living outside the urban areas in which they are coming under notice from Police. This expansion of the number of remote treatment providers was dealt with in last year’s report.

Another significant event has been the number of release orders made. The principal reason, amongst others, is that realistic alternatives to mandatory treatment have been put in place, in association with relocation of the individual affected person, by the Senior Assessment Clinician and advocates appearing for the affected person. The most common instance was the affected person organizing transport for the return to a dry community, to live there and to re-engage with family there. Of course, the threat of a mandatory order was generally enough to actively encourage the affected person to comply with the arrangements. Some of the arrangements failed, but on the whole, a majority of the affected persons released under those arrangements have not re-presented before the Tribunal. Those that did re-present were generally given a mandatory treatment order.

On 22 April 2016, the President and the Registrar met with the former Attorney-General, and the Deputy Commissioner for Police, amongst others, to discuss the operation of the Tribunal. The catalyst for the meeting was the supposed under-utilization of available Mandatory Residential Treatment Order beds in Darwin. The President made the point that the number of persons coming before the Tribunal was consistent with previous years, and notwithstanding the broadening of referral pathways, the only pathway into the mandatory treatment system was through being taken into protective custody by Police, 3 times in a two-month period.

The Police remain the only used pathway for entry into the mandatory treatment system. As such, the number of individuals coming into assessment centres is entirely dependent on the number of individuals taken into protective custody by the Police under the provisions of the *Police Administration Act*. If the details of persons placed into protective custody are not correctly entered into IJIS, then it is possible that the trigger of 3 apprehensions in a two-month period will be missed. The Deputy

Commissioner for Police was to review his internal working structures to see if performance could be improved.

The Tribunal retains the capacity to deal with an increase in the number of individuals being taken into protective custody and then becoming “affected persons”, who are subject to an application under the Act.

PART 6 – THE FUTURE OF THE TRIBUNAL

The future of the Tribunal is uncertain at this time, as its continued existence appears to be contrary to the current government’s policies. Notwithstanding that uncertainty, the morale of the Tribunal remains high, and the Attorney-General can be confident that the Tribunal will continue its good work until told otherwise.

PART 7 - STAFFING OF THE TRIBUNAL

The staffing of the Registry is currently the Registrar of the Tribunal, and the Deputy Registrar.

The Tribunal operates from a room adjacent to the Registry. Membership of the Tribunal appears below.

| | |
|--------------------------|---|
| President | Tom Berkley |
| Deputy President | Sally Gearin |
| Registrar | Cynthia Thompson |
| Deputy Registrar | Wendy Baldwin |
| Legal members | Gabrielle Martin Amanda Nobbs-Carcuro Suzi Kapetas John Toohey |
| Health members | Paul Rysavy Louise Samways Kate Crawley Sheena Neill |
| Community members | Garry Lambert John Boneham Heather King Robert Kendrick Beth Walker |

The Tribunal’s staff is properly qualified and suitable for their appointments. It is a pleasure to work with them for the good and betterment of those who appear before the Tribunal.

Sally Gearin 11/10/2006
DEPUTY PRESIDENT for and on behalf of

Tom Berkley
President
Alcohol Mandatory Treatment Tribunal

