



The Northern Territory of Australia

Alcohol and Drugs Tribunal

Mr. Ian Holland,
Secretary,
Standing Committee on Community Affairs,
Legislation Committee
The Senate
Parliament of Australia

27 January 2012

Dear Sir,

***Social Security Legislation Amendment Bill, 2011
Stronger Futures in the Northern Territory Bill 2011, and
Stronger Futures in the Northern Territory (Consequential and Transitional)
Bill 2011***

I refer to your letter sent by email dated 9 December 2011 inviting a written submission concerning these Bills.

The Alcohol and Drugs Tribunal of the Northern Territory commenced operations on the 1 July 2011 in accordance with the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011* (PACSM Act).

The Tribunal is a specialist body consisting of persons with expertise and/or experience in the treatment of persons suffering from alcohol and other drugs misuse; psychology; counselling, mental health, law, criminal law, Aboriginal health services and youth programs.

The objects of the PACSM Act are to support families, the social welfare of the community and to improve the health and wellbeing of people in the Northern Territory by providing a legislative framework for:

- (a) the prevention of the commission of alcohol-related offences; and
- (b) the prevention of misuse of alcohol or drugs; and
- (c) the protection of people who are misusing alcohol or drugs from severe or serious harm because of the misuse; and
- (d) the protection of people, particularly children, from harm or nuisance resulting from the misuse of alcohol or drugs by others.

The Tribunal is focused on assisting people with substance misuse problems, both alcohol and drugs.¹ The Act does not deal with persons charged with criminal offences.² The Tribunal has no powers of civil commitment or to make apprehension orders.

A person may appear before the Tribunal voluntarily or after referral by other persons. The latter includes referrals by health practitioners, adult family members of the person, Department of Families and Children's Services (NT) and the police.

The Tribunal can make orders that both assist the person with an alcohol and drug problem – clinical assessment and treatment orders which can include a residence order (for example in alcohol protected areas) and that may limit the supply of alcohol and drugs to that person through a Banning Alcohol and Drug and Treatment (BADT) Order. The Tribunal can also refer a person for assessment for income management.³

The **purpose** of a BADT order for a person at risk is to achieve one or more of the following objectives:⁴

- a) a reduction of the person's access to, and consumption or use of, a substance;
- b) the person's increased access to counselling or intervention for misuse of a substance;
- c) a reduction of risks or harm to others, particularly children, associated with the person's misuse of a substance;
- d) enhanced public safety or wellbeing.

A BADT Order if made by the Tribunal must include a prohibition in relation to the purchasing, possessing, consumption or use of alcohol or a drug. There are no sanctions imposed for a failure to participate in the Tribunal process except that the Tribunal may commence or continue to impose a prohibition in relation to alcohol or a drug or refer a person for assessment for income management.

In relation to alcohol this is implemented in a practical sense through the new banned drinkers register (BDR) in the Northern Territory. It is now a requirement for all persons in the Northern Territory when purchasing alcohol at a takeaway outlet to show identification. If a person's name appears on the BDR then that person is not to be sold alcohol.

¹ It does not deal with petrol sniffing which is dealt with under the *Volatile Substance Abuse Prevention Act (NT)*.

² Separate legislation the *Alcohol Reform (Substance Misuse Assessment And Referral for Treatment Court) Act 2011* creates a specialist sentencing Court to deal with persons charged with certain criminal offences who have alcohol and drug misuse problems.

³ *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011* s 31(5)(b).

⁴ *Ibid* s 31(2).

No Humbug Order

A person whom is not misusing a substance may also voluntarily apply to the Tribunal for a banning order (that places their name on the BDR) to assist them in reducing social and/or family pressure to buy alcohol for other persons.

Social Security Legislation Amendment Bill

I only intend to comment upon the *Social Security Legislation Amendment Bill 2011* as some of its provisions potentially directly go to the current functions and powers of the Tribunal. In particular, those provisions dealing with income management.

This is not to say that certain provisions in the *Stronger Futures in the Northern Territory Bill 2011* are not relevant to the Tribunal's work. For example, the requirement for Commonwealth Ministerial approval of Alcohol Management Plans and the increasing of penalties for supplying and possessing alcohol in alcohol protected areas. An understanding of these measures is important when determining any prohibitions or requirements that may form part of a BADT Order.

In addition an independent review is to take place within 3 years of commencement of the relevant provisions of the Bill to "examine the effectiveness of the Stronger Futures and the Territory laws in addressing alcohol related harm to Aboriginal people." This is to include the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011* – the PACSM Act and consequently presumably the Alcohol and Drugs Tribunal of the Northern Territory.⁵ These are matters for government upon which it is not appropriate that I comment as the Chairperson of the Tribunal.

Income Management

At the moment the Tribunal can as part of a BADT Order concerning prohibitions as to alcohol or drugs and treatment orders refer a person for assessment for income management. In practice, this power has proved unworkable because of existing privacy constraints involved with the assessment and management of this process. This is so because the Tribunal is not able to access information as to whether the person is already subject to income management or is a suitable candidate.

The new provisions in the *Social Security Legislation Amendment Bill 2011* allow the Tribunal to make income management orders⁶ and to access the relevant information prior to any decision to do so.⁷ This is on the presumption that the Northern Territory and the Tribunal are approved by the Minister, as a recognised State or Territory and a recognised State/Territory authority

⁵ Section 28 (1) *Stronger Futures in the Northern Territory Bill 2011*.

⁶ This will also require amendment to the PACSM Act by the Legislative Assembly of the Northern Territory.

⁷ See the proposed new section 123ZEAA *Social Security Legislation Amendment Bill 2011*.

respectively.

If approved this will allow the Tribunal to make any proposed order concerning income management at the same time as any treatment and prohibition orders and therefore allow for a more holistic and case based approach in relation to the person before it.

I would envisage that it would be first appropriate to encourage a person appearing before the Tribunal for whom it was thought income management would be useful to do so voluntarily.

This is also consistent with the fact that a person at risk of misusing a substance under the PACSM Act can apply voluntarily for a BADT Order to apply to them including income management. It is also obviously preferable that a person takes responsibility for themselves and their actions wherever possible. This also reduces the risk of further undermining the person's independence and self-confidence.

I note that under the new provisions in the Bill it will not be possible for a person to enter voluntary income management once already subject to income management orders by a body such as this Tribunal.⁸

It might be useful and less complex if the Bill provided for recognition of the fact that voluntary applications for BADT Orders also come before the Tribunal and that in those circumstances an income management order may be voluntary and for the benefit of that person this fact should be recognised in the legislation.

In the Northern Territory some people who appear before the Tribunal will already be subject to 50% income management.

In the event that the Tribunal does think it appropriate to make mandatory orders (subject to Federal Ministerial determination) it would appear that the Tribunal will be able to make income management orders up to 70% (or 100% of any lump sum payment) of the welfare income of the person. This may be appropriate in some cases after the person has been assessed by a clinician and would appear that they are spending most if not all of their income on alcohol or drugs and have been doing so for some time causing themselves, the community and family serious harm.

Appeals

I note that the PACSM Act allows for an appeal by way of rehearing to be made by a person subject to a BADT Order.⁹ A BADT Order currently may include a "referral" for consideration of income management. There is nothing in the current Commonwealth Bills that I am aware of that will affect this right of appeal.

⁸ See proposed new ss 123UM(5)(a), UN (1)(a)(v) and UO (3)(b)(v).

⁹ Section 68, *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011*.

O'Donnell

Chairperson