The Northern Territory of Australia

# Alcohol and Drugs Tribunal

# ANNUAL REPORT 2011 - 2012

In accordance with section 71 of the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act, 2011* I, Michael O'Donnell, Chairperson of the Alcohol and Drugs Tribunal of the Northern Territory hereby submit my report on the exercise of the Tribunal's operations for the period from the from the 1 July 2011 to 30 June 2012.

28 September 2012

The Honourable David Tollner MLA,
Minister for Health and Alcohol Policy
Parliament House
Darwin, Northern Territory 0800

Dear Minister,

**The Alcohol and Drugs Tribunal of the Northern Territory**

It is with great pleasure that I present the inaugural Annual Report of the Tribunal in accordance with section 71 of the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act, 2011* for the period from the 1 July 2011 to 30 June 2012.

The Tribunal's functions are unique within Australia and internationally as far as I have been able to ascertain to date.

During the reporting period there were some 15 voluntary applications to the Tribunal, that is people who referred themselves for assistance through Tribunal orders; 18 people referred by authorised applicants including health professionals and family members and some 679 people mandatorily referred by the police since the 1 January 2012.

The ability of citizens to make their own applications and of authorised applicants to refer other people are particularly empowering provisions enabling the community to take responsibility in relation to the abuse of alcohol and other drugs and the harm that causes our community. Approximately one third of all applications to the Tribunal came from the Katherine region in the reporting period.

In my opinion the Tribunal has commenced to have a significant impact on the lives of Territorians' by reducing the supply of alcohol to individuals who misuse it in the community, enhancing access to effective treatment and by empowering people to control their own access to alcohol.

It is obviously still early days in terms of the Tribunal given that most referrals have only started since the 1 January this year.

Yours Sincerely,

Michael O'Donnell

CHAIRPERSON

# Alcohol and Drugs Tribunal Annual Report

# 2011-2112

## Contents

## Introduction

The Alcohol and Drugs Tribunal was established pursuant to section 46 of the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act, 2011* and commenced operations be it on a limited basis on the 1 July 2011.

The Tribunal's functions and powers were implemented in stages commencing on the 1 July 2011 until full implementation occurred on the 1 January 2012.

The Tribunal has jurisdiction to hear and determine applications before it and perform the following tasks.

The applications in broad terms are:

- The hearing of voluntary applications by a person who is *not misusing* alcohol or other drugs for a Banning Alcohol and Drug and Treatment Order (BADT order) prohibiting them from purchasing, possessing, consuming or using alcohol or other drugs.
- The hearing of voluntary applications by a person who *is misusing* alcohol or other drugs for assessment and possible BADT order which must include a banning order prohibiting them from purchasing, possessing, consuming and using alcohol or other drugs. The order may also include a treatment order and income management referral;
- The hearing of applications where another or third person (an authorised applicant) has referred a person (involuntary or non-consensual applications) for assessment and possible BADT order which must include a banning order prohibiting the referred person from purchasing, possessing, consuming alcohol and using alcohol or other drugs. The order may also include a treatment order and income management referral.
- The review of the issue of Banning Alcohol and Treatment (BAT) Notices by police officers.

In addition the Tribunal has powers to make a General Alcohol Prohibition Order (GAP order) when a person has been referred to the Tribunal and has then been referred for assessment by a clinician but does not effectively participate in the assessment or the clinician is not able to undertake an assessment within a reasonable time.

The power of the Tribunal to review the issue of a BAT Notice commenced on the 1 July 2011.The ability to hear voluntary applications and make BADT orders commenced on the 1 November 2011. Applications by authorised applicants, that is applications concerning a person made without their consent commenced on the 1 January 2012.

The Act was amended pursuant to the *Liquor and Other Legislation Amendment Act 2012.*

The substantive effect of these amendments was to:

- alter the meaning of a BADT order;

- provide for the Tribunal to make income management orders directly; and
- allow the Tribunal to make a BADT order if a 3 month GAP order has not resulted in the person participating in a clinical assessment.

The latter amendments commenced on the 27 July 2012 and are therefore strictly outside the requirement for reporting in this Annual Report.

**Number of Applications, Hearings and Orders**

During the reporting period there were some 15 voluntary applications to the Tribunal, that is people who referred themselves for assistance through Tribunal orders; 18 people referred by authorised applicants including health professionals and family members and some 679 people referred by the police since the 1 January 2012. There were 49 hearings and 18 BADT and 8 GAP orders made during this period.

The Act has no equivalent in the other States or Territories of Australia and seeks to address the serious misuse of alcohol and other drugs in our community by encouraging people to take responsibility for their own substance misuse and providing options for other people in the community to refer a person who is causing harm to themselves or others. It does so in a way that does not criminalise the behavior but has legal consequences for the person involved because of the nature of the orders that the Tribunal is able to determine.

This can be done by a person, voluntarily applying to the Tribunal to be banned and thus have their name entered on the banned drinkers register. Also health professionals, family members, police and others can refer a person to the Tribunal if they reasonably believe the person is misusing a substance. If a person is found to be misusing a substance by a Tribunal clinician after assessment then treatment options are explained and arranged.

If that is not effective the Tribunal is empowered to use a mixture of sanctions primarily through banning the person from having access to alcohol and other drugs. The banned drinkers register plays a vital role in the effective implementation of that sanction. The Tribunal is also empowered to make treatment and income management orders without the persons consent.

## 2. Voluntary Applications

There were 15 voluntary applications made in the reporting period. The Tribunal has received and heard this type of application from the 1 November 2011. The original intention of Government was to also commence this function of the Tribunal on the 1 January 2012. The Government decided to commence this part of the Act earlier with the support of the Tribunal because of representations from individuals who wanted the benefit of BADT orders prohibiting them from purchasing, possessing or consuming alcohol.

A number of persons have used these prohibition orders of the Tribunal and its enforcement through entry of their name on the Banned Drinkers Register as

part of their treatment for alcohol misuse either by assisting them to maintain abstinence from alcohol or reducing their access to alcohol.

There are two types of voluntary applications to the Tribunal.

- The hearing of voluntary applications by a person whom is ***not misusing*** alcohol or other drugs for a Banning Alcohol and Drug and Treatment Order (BADT order) prohibiting them from purchasing, possessing, consuming and using alcohol or other drugs.
- The hearing of voluntary applications by a person whom ***is misusing*** alcohol or other drugs for a BADT order which in these circumstances may include a treatment order, income management order and/or banning order prohibiting them from purchasing, possessing, consuming and using alcohol or other drugs;

Strictly speaking in terms of the legislation a voluntary application is only the first type of application.

## 2. (a) Voluntary "No Humbug" Applications

A "voluntary applicant" is not "a person at risk" as defined under the Act for the purposes of making a BADT Order.[1] The significance of the lack of this characterisation is that it is not asserted in the application that the person is misusing a substance and therefore other "prohibitions, requirements or conditions" including treatment orders and income management are not available as part of a BADT order.[2] Consequently there is no need for referral to a Tribunal clinician for assessment as there is no issue of substance misuse to be determined by a clinician or the Tribunal.

The main purpose of this type of application is to allow persons who want assistance to resist pressure be it from family or friends from buying alcohol to have their name placed on the BDR and are therefore not able to buy alcohol from take away outlets.

The Minister's Second Reading speech gave a useful example of the purpose of this type of application. To quote:

> A person who is constantly asked to purchase alcohol by family members or others may wish to apply to the Tribunal for an order so that they can say, 'Sorry, I cannot buy alcohol for you. I am banned.'

There were 4 applications and BADT orders made in relation to this type of application during the reporting period. This type of application has been colloquially called a "no humbug" application or order. In a sense it is similar to voluntary income management where a person wants legally binding restrictions to apply to the use of their income so that they can say that can't buy alcohol for persons that seek to pressure them to buy it.

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[1] See the definition of "person at risk" (section 4), which differentiates between Part 3 (including a BADT Order) and Part 4 for the purposes of applying the definition.
[2] See ss 31(1) and (5).

The relevant provisions are:

> 32(1) A person may apply to the Tribunal for a BADT order for himself or herself (a voluntary applicant).
>
> 31(3) The purpose of a BADT order for a voluntary applicant is to achieve one or more of the following objectives:
>
> (a) a reduction of the person's access to, and consumption or use of, a substance;
>
> (b) a reduction of risks or harm to others, particularly children, associated with the person's ability to access or consume a substance;
>
> (c) enhanced public safety or wellbeing.

The experience of the Tribunal obviously from an early in time and limited basis in numbers is that the purpose behind the type of application was highly regarded by the individuals involved. The first application and orders were heard and made in Katherine. To quote from the published reasons in that matter - *In the Application of AC* (Tribunal File No: 2011 0006):

> The applicant in her application dated 21 December 2011 stated:
>
> "Every day I am being asked to buy grog for other people and family."
>
> During the course of the hearing the applicant gave evidence that she did not drink alcohol and confirmed the statement in her application that she was regularly asked by family to buy alcohol. These requests, which she refused, caused constant tension with extended family members. It was clear from her evidence that she was seen as a person who regularly had money, had access to transport and was seen at the major shopping centre in her local town as a person who could buy and transport alcohol. The pressure of these regular requests was unremitting and had led the applicant to find a way with the assistance of her employer to see if she could be banned from buying alcohol.
>
> The applicant further informed the Tribunal that after making this application she had started to inform family members of this fact and that she had noticed a diminishment in the number of requests for her to buy alcohol and lessening of late night calls at her residence requesting alcohol.
>
> The applicant requested of the Tribunal that she be banned for life but was informed that there was a statutory limit of 2 years for a BADT order of this nature.

I am of the view that as information concerning this type of application and order spreads throughout the Northern Territory community there will be a significant increase in the number of such applications. The utility of such applications of course is dependent upon the maintenance of the BDR or some other form of system that requires identification before the purchase of alcohol.

It may be that in a smaller town a banning order will work by direct notification to the limited number of licensees in that town.

**2(b) Self-Referred persons misusing a substance**

The second category of voluntary applicants is from persons who state they are misusing a substance - alcohol or other drugs. This type of application requires a person to be assessed by a Tribunal clinician before the Tribunal can consider making any BADT orders.

I have addressed the nature of BADT orders and some of the issues that have arisen in this type of application in the section on Significant Issues and the interpretation of s31 (4) of the Act.

The objectives for a BADT order are in section 31(2) of the Act:

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

In the reporting period there were 11 applications of this nature all of which led to BADT orders being made. These orders all consisted of prohibitions in relation to alcohol varying from a prohibition only in relation to purchase to the full array of prohibitions provided for in section 31(4) of the Act being the purchase, possession, consumption and use of alcohol for the term of the banning period. A number of reviews of these orders have been ordered ranging from 3 months to 12 months depending upon the facts of the individual case.

A number of these applicants had been voluntary participants in the Voluntary Prohibition to Purchase (VPP) alcohol scheme that had been in place in Alice Springs prior to the commencement of the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act, 2011*. That scheme had been in place, I am advised since the 23 June 2008 when it became a requirement to show photo identification when seeking to purchase takeaway alcohol in Alice Springs.

The reviews of the orders in these applications conducted to date have confirmed the highly beneficial nature of these orders as an aid to the person's treatment in either abstaining or reducing their alcohol consumption and the associated harms.

The various health professions are increasingly viewing this process as an important aid to those with serious alcohol dependency. The pattern of drinking

in relation to most of these applicants is that they consume alcohol at home either alone or socially but not at licensed premises. This means that the banning order of the Tribunal implemented in practical terms through the BDR is particularly effective in this type of case.

## 3. Involuntary Applications

### (a) Authorised Applicants

The Act provides for a range of different classes of people called "authorised applicants." An authorised applicant may refer a person to the Tribunal for assessment and potentially BADT orders where it is believed the person may be misusing a substance (alcohol or other drug).

A referral by an authorised applicant to the Tribunal does not require the consent of the relevant person who may be misusing a substance. This type of application is to be distinguished from voluntary applications or self-referred applications by a person seeking to be subject to Tribunal orders, pursuant to section 32 and sub section 22(1) of the Act respectively.

There were 18 referrals by authorised applicants in the reporting period. The relevant provisions with respect to authorised applicants (s22 (2)) are:

> An authorised applicant who ***reasonably believes*** a person may be ***misusing a substance*** may apply to the Tribunal for a referral of the person for an assessment.
>
> Without limiting subsection (2), an authorised applicant may form a reasonable belief that a person may be misusing a substance if, because of the person's consumption or use of a substance, the person:
>
> (a) is affecting the safety, health or welfare of the person or any other person; or
>
> (b) is, or may be, a risk to public safety or wellbeing; or
>
> (c) is regularly causing a public nuisance.

As with the other types of referral the characterisation of harm to the person concerned and the community is broad.

The Tribunal must then decide whether it is going to refer the person for assessment by a clinician and can only proceed to a hearing for consideration of a BADT order if it receives a clinical assessment establishing substance misuse in accordance with section 25 of the Act.

The classes of authorised applicants include:

- Health professionals including Aboriginal health workers;
- Family members;
- Police officers;
- Persons authorised under the *Care and Protection of Children Act;*

- A responsible adult for a child if it is believed a person is adversely affecting a child because of substance misuse.

There have been referrals by all classes of authorised applicants except the last one in the reporting period.

I shall give an example of the first family member referral, which exemplifies some of the difficulties and benefits of the process under the Act.

**Case Example – Family Member - authorised applicant**

An adult family member – the person's partner referred a person – his wife to the Tribunal. The application indicated that the referred person was misusing alcohol and cannabis in a "binge" manner. A concern was also expressed with respect to the effect of alcohol and cannabis misuse on a current pregnancy – the couple's unborn child.

The application as required under the Act was referred to a clinician for assessment of the person concerned. The person voluntarily participated in the assessment. The assessment disclosed confirmation of the pregnancy, a concern by the mother to have a healthy baby and an intention to cease taking alcohol and cannabis for this reason.

It was also disclosed in the assessment report that the person had been drinking alcohol since 14 years, binge drinking on average once per month including the consumption of 12 cans of full strength beer and 2 glasses of port, apparently per day. Daily use of cannabis at times was self reported being in the order of 6-8 "cones" per day. This level of cannabis use was reported for the last 2 years with much "heavier" use previously. In the past, drug use also included ecstasy, amphetamines and inhalants (volatile substances).

The referred person indicated to the clinician that she "needs to cease using alcohol and cannabis for her own health and that of her baby as she does not want to have any miscarriages or problems with the baby after birth."

The substantive risks of Fetal Alcohol Syndrome Disorder (FASD) are well known and all too common in the Northern Territory community.

It was recommended to the Tribunal by the clinician who undertook the assessment that she undertake outpatient Alcohol and Other Drugs (AODT) counselling. It was noted that the person did not want to undertake inpatient/residential rehabilitation. One of the reasons being, because of family responsibilities including the care of her children.

Unfortunately, the referred person did not attend any counselling sessions despite the ready availability of same. The person chose not to attend the Tribunal hearing. Immediately prior to the hearing the Tribunal was advised that she had not taken alcohol or drugs since the referral to the Tribunal and had decided to reside at an outstation where it was said alcohol and other drugs weren't available. This advice was conveyed by a medical practitioner who was

of the view that the person appeared to be self-motivated and achieving abstinence in relation to alcohol and other drugs at that time.

The Tribunal concluded in its published reasons *In the Application of An Authorised Applicant BA* (Tribunal File No: 2012/207) with respect to this case that:

> Even if on face value the Tribunal accepts that the person is currently not using alcohol and cannabis it is clearly the case on the evidence before it that the person is currently at significant risk of relapse in terms of misusing both substances. She apparently does not wish to undertake any AOD intervention at this time so there is no utility in the circumstances of this case in making a treatment order.
>
> The Tribunal regards it as appropriate to make a BADT order to achieve the objective in section 31(2) (a) of the Act, as clearly she wishes to reduce her consumption and use of alcohol. A order prohibiting her from being able to purchase, possess and consume alcohol will assist her in maintaining her resolve not to consume alcohol in the interests of her own health and safety and that of her unborn child.
>
> It is appropriate in the circumstances of this case to make an order for 12 months, which is to be reviewed after six month to re-assess the situation following the birth of the referred person's child.

It is a fair to conclude in my opinion that the process under the Act had a positive outcome in making this person face the fact of her misuse of alcohol and other substances and the adverse effects this is having on herself and her unborn child. This is despite the fact that she did not attend for treatment/counselling or the Tribunal hearing, which was conducted in her absence after she refused to attend. This case is also indicative of the fact that the raw statistics in many cases clearly don't convey the full story in the sense that a positive outcome was achieved.

The review of the Tribunal orders will of course disclose whether the ultimate result was achieved.

This case also raised the complex question as to whether the Tribunal could take into account the effect of the referred person's alcohol and other drug misuse upon her unborn child in deciding whether to make orders. The Tribunal in its published reasons decided that in the circumstances of this case that it could do so. To quote further from the judgment:

> It is clear also on the evidence that the person's unborn child is also significantly at risk. Whilst an unborn child does not have legal personality and is not a child as defined under the Act it is appropriate that the Tribunal have regard to these risks.
>
> The objectives of a BADT Order in section 32(2) of the Act include a "reduction of the person's access to, and consumption or use of, a substance" and the person at risk in this case wishes to achieve this objective to ensure the wellbeing of her unborn child and consequently the wellbeing of her child

from birth.

**Conclusion – authorised applicants**

This type of referral empowers people in the community including health professionals and family members to be able to actively do something concerning a person who is hurting themself and the community through the abuse of substances. It is unique in that sense in that it is obviously done without the consent of the person and subjects the person to legal proceedings with potentially adverse consequences to them where no crime has been committed nor an emergency situation that necessarily applies.

In my opinion the authorised applicant provisions have been used as intended, that is where a person is not taking responsibility for their own behaviour and voluntary approaches have already been attempted by family members and/or health professionals.

It is the view of many health professionals that a person who does not voluntarily address their addiction and misuse problems will not be successful in overcoming these medical conditions. Whilst that is undoubtedly true at a high level of generality the example given in this section indicates in my view that the referral process without consent can have a positive outcome for all concerned. The incidence of FASD in the Northern Territory community is high and this is one means by which it can be addressed.

**3(b) Mandatory Police Referrals**

This type of referral is the most challenging and numerical of the applications that come before the Tribunal. There were some 673 mandatory police referrals in the reporting period from the 1 January 2012. A number of these individuals have been referred on more than one occasion. A small number of individuals had protective custody incidents in the range of 50-70 detentions since the commencement of the legislation.

The Act provides (s16) that if a police officer reasonably believes that a banned person has contravened a third BAT notice or within 12 months after a person receives a third BAT notice the person is given an alcohol related infringement notice or is held in alcohol related protective custody then the police officer must refer the person to the Tribunal for assessment. This effectively means that the majority of the persons referred have had in excess of 6 alcohol related protective custody detentions in police custody since the commencement of the Act as most of these referrals arise out of repeated protective custody incidents.

Protective Custody is a reference to the powers of a Police officer in the *Police Administration Act* to detain a person when they are unable to adequately care for themselves because of intoxication and for other reasons. The relevant provisions are in the following terms (s128):

> A member may, without warrant, apprehend a person and take the person into custody if the member has reasonable grounds for believing:
>
> (a) the person is intoxicated; and

(b) the person is in a public place or trespassing on private property; and

(c) because of the person's intoxication, the person:

(i) is unable to adequately care for himself or herself and it is not practicable at that time for the person to be cared for by someone else; or

(ii) may cause harm to himself or herself or someone else; or

(iii) may intimidate, alarm or cause substantial annoyance to people; or

(iv) is likely to commit an offence.

A small but growing number of these referrals have ended in a clinical assessment and BADT orders. There are no figures available to me for the reporting period concerning this aspect. But all of these people are subject to banning for 12 months because they are subject to a third BAT notice or have been subject to a GAP order. I have dealt to some extent with the issue of clinical assessment and what constitutes a reasonable attempt to undertake the assessment of these persons in the Tribunal Clinicians section of this report.

It is important to understand some of the context in which these figures should be seen. For example if a person is detained and taken to a sobering up shelter or taken home the person is not issued with a BAT notice or subject to breach of a third notice which would require referral to the Tribunal. Many communities and towns in the Northern Territory have active night patrols, which take a person home or to a shelter and not into police custody.

At a meeting in Tennant Creek on the 21 December 2012 I was advised by local police that there had been a significant decline in the number of people being taken into protective custody over the previous 6 months. They believed that was because the local Night Patrol had been very active. The Manager of the local sobering up shelter reported that they were not full every night (capacity of 12 beds) and had seen a decline in numbers relative to the same period 12 months prior.

At a meeting in Nhulunbuy on the February 2012 the local police advised that they rarely used protective custody as they did not have the staff to supervise persons in the police cells and also respond to normal call outs for their services.

These local situations are reflected in the Tribunal statistics concerning the regional location of referrals. These are:

| | |
|---|---|
| Darwin | 237 |
| Alice Springs | 195 |
| Katherine | 233 |
| Barkly | 31 |
| East Arnhem | 18 |

**Locating Mandatory Police referrals - Contacting People**

The major challenge, in relation to mandatory police referrals are in locating the person referred and in having them engage in the process especially clinical assessment under the Act. The difficulty of initial engagement is exacerbated by the fact that many of this class of people are homeless, live largely subject to permanent alcohol and drug abuse including regular binge drinking and /or suffer from mental illness and brain damage.

There has been slow but steady progress made in engaging with this group of referred persons by new strategies adopted by the clinicians and the Tribunal. This has included engagement of a clinician based in Katherine, liaising with police concerning those regularly going through protective custody and seeing people and conducting hearings in Berrimah Jail. This has increased the number of assessments being undertaken by clinicians and consequently the number of BADT orders being made.

A number of strategies have been attempted to address the issue of personally contacting persons referred in this category. A range of attempts have been made by the Tribunal to engage with outside agencies in an attempt to make contact with this group of people and therefore facilitate the undertaking of clinical assessments.

Most of these attempts foundered on perceived conflicts of interest, privacy concerns and perceived risks of jeopardising relationships with clients. The agencies contacted included: Affordable Housing (entity that manages town camps in Alice Springs); Tangentyere Council; Department of Housing; CAALAS, Danila Dilba, NAAJA, Larrakia Nations, Centrelink and the NT Motor Vehicle Registry.

A trial of searches was also done by the Tribunal Registrar with Births, Deaths and Marriages to see if the residential and postal address information provided by the police in the original referral could be improved upon in an attempt to locate people but the information obtained was of a similar calibre.

It is the case that Health Clinics in communities are often able to assist with informing the Tribunal whether people are in the community and contact being made in that manner.

**Conclusion**

There are ongoing discussions with various groups to improve the Tribunal's and clinician's ability to engage with persons referred under this part of the legislation. There are an increasing number of assessments and BADT hearings taking place as part of this referral process.

I recommend that the Government consider the employment of Indigenous Field staff to be able to work with the Tribunal and clinicians to optimise engagement with people referred under this part of the Act. It would be appropriate if this were trialed in Katherine if resources are limited.

In a therapeutic sense the first engagement with a person is often the most critical in terms of maximising the likelihood that a person will engage positively with the process and then willingly be involved in treatment. It is obviously also the case that when a person takes responsibility for their own health then again it is likely to lead to a more successful outcome.

## 4. Significant Issues

### (a) Statutory Interpretation of section 31(4) in relation to a Banning Alcohol and Drug and Treatment Order - BADT orders.

In some of the early hearings of the Tribunal concerning persons misusing a substance important questions arose for consideration concerning the nature of the prohibition orders the Tribunal could make.

This was in particular in relation to persons making an application under section 22(1) of the Act who were misusing alcohol. A person "who reasonably believes he or she is misusing a substance and may benefit from a BADT order may apply to the Tribunal for a referral for an assessment."

These are voluntary applications where the person is seeking a banning order in relation to alcohol or another drug for their own benefit. This then has the direct consequence (when the substance being misused is alcohol) of that person's name being placed on the Banned Drinkers Register (BDR) and therefore that person not being allowed to buy alcohol from take away outlets throughout the Northern Territory. As mentioned elsewhere a number of people have sought this type of Order from the Tribunal specifically to assist them in restricting their access to alcohol as part of or as an adjunct to the existing medical or other treatment they are receiving for their misuse of alcohol.

A Banning Alcohol and Drug and Treatment Order (BADT order) is the primary order made by the Tribunal in relation to a person whom has been found to be misusing a substance being alcohol or other drugs. The Act mandates that if the Tribunal decides to make a BADT order it "*must*" order a prohibition in relation to the substance in question. In relation to any treatment order or income management referral the making of such an order is discretionary.

The original version of section 31(4) was as follows.

> A BADT order must state that the banned person is prohibited from purchasing, possessing, consuming or using the substance stated in the order.

The original version of section 31(5) in relation to treatment and income management orders was as follows:

> A BADT order for a person at risk may also state other prohibitions, requirements or conditions the Tribunal considers appropriate for the person, including (for example) the following:
>
> (a) the person must undergo treatment, counselling or other intervention as stated in the order;

(b) the person is referred to a stated entity for assessment for income management.

The Tribunal when deciding to make a BADT Order must have regard to the following:[3]

(a) the assessment report about the person; and

(b) the current circumstances of the person; and

(c) whether a BADT order will achieve one or more of the objectives mentioned in section 31(2).

The objectives in section 31(2) of the Act are as follows:

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

(a) a reduction of the person's access to, and consumption or use of, a substance;

(b) the person's increased access to counseling 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.

As mentioned one of the consequences of the drafting of section 31(4) is that if the Tribunal decides to make a BADT Order it must make a prohibition order in relation to the substance.

The specific question that arose for consideration by the Tribunal in relation to such a prohibition order was whether it could make an order prohibiting the person from purchasing alcohol only. The Tribunal decided that it could and published its reasons in the decision entitled *In the Application of AA*.[4] It should be noted that the Act prohibits the publication of the applicant's name "or any other material that may disclose the person's identity".[5]

The evidence of the applicant in the hearing of that application was that a prohibition as to purchase only was being sought and the person's treating medical practitioner was firmly of the view that this should be supported and that any prohibition broader than the purchase of alcohol (effectively from take way outlets) was contrary to the applicant's best interests in medical and treatment terms at this time.

This meant that the Tribunal had to decide if it chose to make a BADT order

[3] Section 35 (1).
[4] Tribunal File No: 2011 0001.
[5] Section 67(2).

whether it must make a prohibition order as to the purchase, possession, consumption and use of alcohol conjunctively or whether it could make an order that included one, some or all of these elements of the provision, or a disjunctive interpretation. To quote from the judgment in relation to the interpretation of section 31(4) of the Act:

> In the normal course of statutory interpretation the use of the word "or" means that the use of the verbs "*purchasing, possessing, consuming or using"* is disjunctive, that is the placement of the word "or" before the last verb means that each verb is to be read separately and are to be used separately in an order.
>
> In the context of the facts of this case a construction of the subsection that is conjunctive only would mean that a BADT order banning the applicant should not be made. This is so because the medical advice that a banning order that includes also possession, consumption and use of alcohol is contraindicated. Given the objects of the Act and the purpose of a BADT Order this outcome would deny to an applicant who has volunteered for a banning order as an important adjunct to her treatment for alcohol misuse the benefits of the Act. This would defeat the objects of the Act and the purpose of the relevant subsection.

Without referring to all the details of the judgment the Tribunal came to the conclusion that neither a conjunctive nor disjunctive interpretation was appropriate when considering the inclusion of the verbs in the sub-section and that a BADT Order necessarily must state one, all or some (a combination of) the prohibitions in subsection 31(4) of the Act.

The Act was subsequently amended pursuant to the *Liquor and Other Legislation Amendment Act 2012* to the effect that subsections 31(4) and (5) are now in the following terms respectively:

> 31(4) A BADT order must state one or both of the following:
>
> (a) the banned person is prohibited from purchasing, possessing or consuming alcohol;
>
> (b) the banned person is prohibited from purchasing, possessing, consuming or using another substance, as specified in the order.
>
> 31(5) A BADT order for a person at risk may also state other prohibitions, requirements or conditions the Tribunal considers appropriate for the person, including (for example) the following:
>
> (a) the person must undergo treatment, counseling or other intervention as stated in the order;
>
> (b) if the person is an eligible welfare payment recipient – the person is required to be subject to income management.

## 4 (b) Legal Representation and Advocates

The Act makes some reference to legal representation and the appointment and use of advocates. The latter are to have rehabilitation and alcohol and other drugs treatment qualifications and experience.

The reference to legal representation is with respect to the review of a BAT notice in section 18 of the Act. As mentioned in the section on the Review of BAT Notices I have taken the view that a person is entitled to be legally represented in all aspects of those hearings.

The Act is silent as to legal representation in other hearings and I have taken the view that in those circumstances a person is entitled to legal representation in all proceedings before the Tribunal. There have been very few instances of persons being legally legal represented to date.

### Appointment of Advocates

The Act contemplates that persons appearing before the Tribunal in a BADT hearing may be assisted by a specialist advocate. This is a discretionary decision by the Chairperson or Presiding member and the appointment may be made before a hearing in relation to a BADT Order.

The appointment of an advocate is separate to the use of interpreters or if a person is legally represented.

The Advocate is to have special skills or qualifications for the reason that a BADT hearing involves potentially complex questions around alcohol and other drug misuse and dependency, appropriate treatment and the prohibition of the purchase and consumption of alcohol and other drugs. The immediate cessation of alcohol or other drug use in a dependency situation can have serious health consequences for the person. Some people also have mental health issues and various disabilities for example brain damage from petrol sniffing and Foetal Alcohol Spectrum Disorder (FASD). An advocate that has relevant specialist knowledge and experience of these conditions can therefore play an important role in assisting a person appearing before the Tribunal. An advocate may also have access to a person's medical records to assist that person in the hearing before the Tribunal.[6]

The provisions in the Act with respect to advocates are in the following terms:[7]

> Appointment and functions of advocate
>
> The Chairperson may, for a proceeding relating to a BADT order, appoint an advocate before a hearing is to be held in relation to:
>
> (a) a decision about whether to make the order; or
>
> (b) a review of the order.

[6] Section 66.
[7] Section 61.

> An advocate is a person, approved by the CEO, who has expertise in general care, health care rehabilitation or treatment of persons misusing a substance.
>
> The functions of an advocate are:
>
> > (a) to represent the best interests of, and assist, the person at risk in a proceeding; and
> >
> > (b) any other functions conferred on the advocate by the Tribunal or under this or another Act.

At this point in time, unfortunately no advocates have been approved to enable this provision to be utilised. The Department committed to attempting to arrange an outsourced provider of advocates on a trial basis. It was intended, I was advised to have a duty type system where a Tribunal advocate attended hearing days of the Tribunal in the various centres around the Northern Territory. Once this provider had provided the service for a trial period it was then intended to make an assessment on continuing this type of arrangement and then by release of a tender for a more permanent arrangement. This has not eventuated to date.

It is important that a process of selection and appointment be finalised by the Department in relation to Advocates to enable this important part of the Act to be utilised by the Tribunal.

To date a range of persons have assisted people appearing before the Tribunal including Aboriginal liaison officers, legal practitioners, family members, health professionals and alcohol and other drugs treatment providers. This has occurred with the consent of the person appearing before the Tribunal and has been welcomed by the Tribunal.

### 4(c) Treatment Orders

The making of treatment orders by the Tribunal as part of a BADT order is discretionary.[8] The Act provides that the order *may* include other prohibitions, requirements or conditions including that the person undergo treatment, counselling or other intervention.

The statistics kept with respect to treatment orders record that some 6 persons commenced treatment that is in the sense that a treatment order was made as part of a BADT order in the reporting year.

This number is quite misleading in the sense that in most cases where a person had voluntarily commenced treatment as part of the Tribunal process or a clinician had facilitated the persons contact with a treatment provider an order obliging them to attend and participate in treatment was not made by the Tribunal.

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[8] Section 31(5)(a).

This was done on most occasions for the very important therapeutic and practical reason that the undertaking of treatment was more likely to be effective if done voluntarily. This is so because if a person was prepared to voluntarily take responsibility for undertaking treatment then the evidence suggests this was more likely to be successful. An order of the Tribunal imposing a decision upon a person already prepared to take that course of action could clearly be potentially counterproductive. That is not to say that in some circumstances it would be appropriate as some individuals see the making of the order as a support to their own decision, as is the case with those voluntarily seeking a BADT order prohibiting them for purchasing, possessing or consuming alcohol.

It should also be noted that on some occasions the Tribunal refrained from making a BADT order prohibiting the person from purchasing and consuming alcohol because of the threat to their health from sudden alcohol withdrawal. For example, on one occasion the Tribunal refused to make a BADT order for a voluntary applicant until the person undertook a medically supervised withdrawal, which included the use of medication. Once this was completed and the Tribunal had satisfactory evidence of this and that it was safe to proceed then the banning order was made in relation to that person.

**4(d) Provision and Availability of Treatment Services**

It was the experience of the Tribunal in the reporting period that in most instances there was no substantive problems in arranging for persons subject to BADT orders to be admitted to or attend residential rehabilitation services or non- residential counselling and medical services. In a very small number of cases there was a delay in admission or with criminal history checks. This was not expected. This is because concerns had been expressed at the stakeholder meetings by the treatment provider sector especially residential rehabilitation providers of the impact of the Tribunal process upon their services.

This experience obviously is in most cases over a short period being 6 months since the first of January 2012 when all the Tribunal's functions became fully operational and the bulk of applications and referrals commenced. It may well change as the number of people referred and assessed continues to increase.

There are two qualifications I would make though concerning this statement and the provision of treatment services as far as the Tribunal's work was concerned.

Firstly co-ordination between service providers was not what it should be at times. Secondly the availability of treatment services in remote communities.

In relation to the first point at times this necessitated the Tribunal to play more of a management role in terms of the arrangement of the provision of services to a referred person then I would have originally anticipated. In some cases it has been necessary to order fortnightly or monthly reviews to try and ensure assessments and arrangements are made in a timely manner.

In the hearing of one application as an example no arrangements had been made for a person whom had completed a residential program but was still clearly at

significant risk of relapse upon completion of the program. All concerned including the person at risk agreed this was the case. The Tribunal asked for links to be made with other service providers so that upon release the person had some supports and ongoing counselling available. The Tribunal reviewed this on a number of occasions to try and ensure arrangements were put in place. This has been a beneficial if time consuming role that the Tribunal has performed in some cases.

The availability of alcohol and other drug treatment services in remote Indigenous communities is of concern to the Tribunal. This is for no other reason then in many instances the nature of the abuse of alcohol with many residents of remote communities described as binge drinking often occurs when people come into the larger towns. The Tribunal is very concerned that it not be forcing people into towns for hearings or treatment when temporary residence in such towns is part of the person's pattern of alcohol abuse. This is obviously somewhat of a dilemma if the only treatment available is within the same town where the person comes to drink. A hearing can be conducted within a community or by phone or video link.

In one particular case a Tribunal clinician reported in an assessment concerning a young man that no services were available at his home community either locally or by external delivery. The man had been referred to the Tribunal by police, because of multiple protective custody incidents whilst in town and he appeared to be prepared to undertake counselling for his alcohol misuse.

The local community medical clinic was contacted but was not able to offer any services and the clinic manager expressed a general concern about a number of young men in the same circumstances in the community.

I contacted the relevant Manager of Territory Alcohol and Other Drugs rehabilitation services. Eventually a visit was arranged to the community concerned by Alcohol and Other drug Treatment workers. This is indicative of some of the difficulties that can arise in trying to implement the Tribunal's functions.

Other relevant issues that arose were in a small number of cases delays arose around criminal history checks for admission to some residential rehabilitation programs. Some persons also expressed concern that if they undertook residential rehabilitation they would lose their home as they wouldn't be able to pay rent in two places or would be absent from their home for a longer period then Territory Housing would accept.

These appear to be legitimate concerns and are indicative of some of the structural barriers in place when treatment orders are being sought to be made or Tribunal clinicians are seeking to facilitate a person's entry into treatment.

## 5. Tribunal Clinicians

The Act provides for the appointment of clinicians by the Chief Executive Officer of the Department of Justice. A clinician must be a medical practitioner or a

person who "holds a qualification and has experience appropriate for the assessment of persons for misuse of a substance."[9] A substance under the Act is alcohol or other drug but does not include volatile substances such as petrol.

A clinician appointed under the Act has the functions outlined in section 25. This section provides that:

> Assessment
>
> (1) If the Tribunal requests a clinician to make an assessment of a person:
>
> (a) a clinician must take all reasonable steps to do so; and
>
> (b) if the clinician makes the assessment – give the Tribunal a written report that states whether or not the person is assessed to be misusing a substance; and
>
> (c) if the clinician is unable to make an assessment of the person within a reasonable time after receiving the request – give the Tribunal a written notice of that fact and the reasons why the assessment could not be made.
>
> (2) If the person is assessed to be misusing a substance, the clinician must include in the assessment report:
>
> (a) the level or nature of the misuse and whether the person has a substance dependency; and
>
> (b) the diagnostic criteria on which the assessment is made; and
>
> (c) the details of the treatment or other intervention recommended as appropriate for the person.
>
> (3) The clinician may also include in the assessment report the types of prohibitions, requirements or conditions the Tribunal may consider for inclusion in a BADT order for the person.

A clinician for the purposes of the Act is therefore not a provider of clinical services but a person who makes an assessment of substance abuse in relation to a person the subject of an application before the Tribunal. This does not include a voluntary applicant where substance abuse is not at issue. Clinicians under the Act also play an important role in facilitating treatment for those found to be misusing a substance.

To summarise, the statutory steps involved once the Tribunal requests a clinician to make an assessment of a person are that the clinician must:

- Take all reasonable steps to make the assessment;
- If the assessment is completed provide the Tribunal with a written report that states whether or not the person is assessed to be misusing a substance; and

[9] Section 75.

- If the assessment does not take place within a reasonable time give the Tribunal a written notice of that fact and the reasons why the assessment could not be made.

This process has two important consequences for the work of the Tribunal. Firstly it is only when a person is found to be misusing a substance that the Tribunal can then proceed to conduct a hearing for a person at risk (again with the exception of a voluntary applicant) and therefore whether a BADT order should be made or not.

Secondly if a written notice pursuant to section 25(1)(c) of the Act is provided to the Tribunal then it may consider whether it should make a General Alcohol Prohibition (GAP) order in relation to that person.

If a person is assessed as misusing a substance then the report must include in summary:

- The level or nature of the misuse and any substance dependency;
- The diagnostic criteria used in making the assessment;
- The details of any treatment or other intervention recommended.

It has been the practice of the clinicians to date to use the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM IV criteria) published by the American Psychiatric Association[10] in making the assessment.

As mentioned elsewhere the number of mandatory police referrals to the Tribunal in accordance with section 16 of the Act has been not unexpectedly a particularly challenging part of the Tribunal's jurisdiction. This type of referral commenced on the 1 January 2012. There were 673 referrals during the reporting period of this nature.

A number of difficulties from my point of view arose during January and February 2012 in relation to a clinician's statutory responsibility in section 25(1)(a) wherein a clinician must take all reasonable steps to undertake an assessment. It was evident during that early period of this type of referral that a letter only was being sent to the referred person informing them of the date, time and location of an appointment for the purposes of conducting an assessment invariably in the office location of the clinicians in Darwin and Alice Springs. In a number of cases the postal address for the person referred was only a General Post Office -PO Box Katherine for example.

In many cases the person did not attend and then a notice in accordance with s25 (1) was being sent to the Tribunal that an assessment was unable to be done. This was problematic in my opinion for the following reasons.

- The class of person subject to this type of referral was likely often to be homeless and a chronic alcoholic or itinerant binge drinker. It was

[10] American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders,* Fourth Edition, Text Revision. Washington, DC, American Psychiatric Association, 2000.

probably the case, that in some of these instances the person had not received the letter because of their circumstances and if they did receive the letter then weren't aware of the reason it was being sent. That is not to say that some would have received the letter and have also understood what it was about and decided not to attend.

- That if the intention of Parliament expressed through the objectives and purposes of the legislation was to be properly engaged with this class of person then personal contact would need to be tried and achieved.
- That it obliged the Tribunal to consider the issuance of a GAP order when it may well be the case that the person had not received the original notice seeking that an assessment concerning their substance misuse be done.

I initially rejected some of the s25 (1)(c) notices as I was of the view that in the circumstances outlined only sending a letter did not constitute "all reasonable steps" to make the assessment. The Director of Diversions - Clinicians sought legal advice concerning whether I had power to make such a decision under the legislation. The legal opinion was that I did not. In my opinion the legislation should be amended to make it clear that the Tribunal does have this role given the important consequences outlined for the Tribunal's work.

Fortunately over time the clinicians instituted measures to personally engage, out of the office with referred persons. This has led to a number of assessments being completed. For example, clinicians have liaised with police and engaged with those persons regularly being taken into protective custody often in the early morning. This circumstance obviously has its limitations but is an important attempt by the clinicians to engage with the most at risk group of people and one obviously not required by the clinicians' conditions of employment.

I appreciate these efforts in attempting to fulfill the objects of the legislation in this regard.

## 6 (a) Tribunal Order - BADT orders

A BADT order is a Banning Alcohol and Drug and Treatment Order. A BADT order is the main type of order made by the Tribunal in relation to a voluntary applicant and a person found to be misusing a substance.

There were 49 hearings and 18 BADT orders made in the reporting period by the Tribunal.

A BADT order is in broad terms an order that includes prohibitions, requirements or both in relation to the person's consumption of alcohol or other drugs, treatment and income management. I have addressed the interpretation of the provision (s 31(4)) concerning the prohibition of alcohol and other drugs in the section entitled Significant Issues. A BADT order may also include requirements as to a person's residence for example. The statutory purposes of a BADT order for a person at risk – a person misusing a substance are (s 31(2)):

The purpose of a BADT order for a person at risk is to achieve one or more of

> the following objectives:
>
> (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.

The statutory purposes of a BADT order for a voluntary applicant whom is not misusing a substance are (s 31(3)):

> The purpose of a BADT order for a voluntary applicant is to achieve one or more of the following objectives:
>
> (a) a reduction of the person's access to, and consumption or use of, a substance;
>
> (b) a reduction of risks or harm to others, particularly children, associated with the person's ability to access or consume a substance;
>
> (c) enhanced public safety or wellbeing.

A BADT order then in broad terms can encompass:

- a prohibition order in relation to the purchase, possession, consumption and use of alcohol or other drug;
- a treatment order in relation to the substance being misused by the person;
- a referral in relation to income management.

If the Tribunal decides that it is appropriate to make a BADT order it must include a prohibition in relation to the substance. Any prohibition in relation to alcohol is enforced in a practical sense through the BDR.

The making of treatment orders is discretionary and in *most* cases where prohibition orders were made in relation to a substance it was not accompanied by a treatment order. This occurred for the following reasons – the person was or was about to voluntarily undertake treatment and therefore the treatment order was not necessary; the BADT order was made in the person’s absence as they did not attend the hearing and no treatment had been arranged because the person had not consented to undertaking any treatment. In the latter case there was no utility in making a treatment order that would not be complied with in the circumstances of the case. That is not to say that treatment orders were only made where there was consent but it was only in more complex cases. Of course a person can’t be forced to undergo treatment in any event.

There were 6 treatment orders made and 56 persons assessed by Tribunal clinicians during the reporting period. I have dealt with treatment orders and related issues further in the section of the Report entitled Significant issues.

There were no income management referrals for the reasons given in the section on Income Management.

## 6(b) General Alcohol Prohibition (GAP) Orders

A General Alcohol Prohibition (GAP) Order is an order of the Tribunal that only relates to alcohol and prohibits a person from purchasing, possessing or consuming alcohol. It takes effect in a practical sense as does a BADT order that includes a similar prohibition through the BDR.

It is a discretionary order that is intended to be considered when a person has been referred to the Tribunal; the Tribunal has ordered an assessment take place and a clinical assessment has not taken been completed and the Tribunal has been notified of that fact pursuant to section 25(1) (c) of the Act.

> 26 GAP order if person does not attend for assessment
>
> (1) If the Tribunal is given a notice under section 25(1) (c) about a person, the Tribunal may make a GAP order for the person.
>
> (2) A GAP order is a General Alcohol Prohibition order stating that, for the period the order is in force, the person named in the order is prohibited from purchasing, possessing or consuming alcohol.

In other words a GAP order is intended to be used where a person has decided not to take place in the assessment process. It is a short-term order (mostly no longer than 3 months)[11] that is intended to act as an incentive for the person to be involved in the assessment and therefore allow a full BADT hearing to take place if the assessment discloses that the person is misusing a substance under the Act. A further GAP order may be made if the person does not attend for an assessment.[12]

There are amendments to these provisions which are further mentioned in the section of this report on Income Management. These amendments are not strictly relevant as they did not become operational until after the reporting period for this Report.

I have instituted a process of complying with the rules of natural justice by giving a person subject to a section 25(1) (c) prior notice of the fact that the Tribunal will be making a decision as to whether it should make a GAP order in relation to them. This includes an opportunity to make submissions and/or appear in person if they wish to do so.

There were 8 GAP orders made in the reporting period.

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[11] Section 28.
[12] Section 30.

## 7. Review of Banning Alcohol and Treatment (BAT) Notices

The Tribunal performs an administrative law review function as it is empowered to review Banning Alcohol and Treatment (BAT) Notices issued by the police to a person under section 9(2) of the Act. A BAT notice is issued by a police officer pursuant to Part 2 Division 1 of the Act for periods ranging from 3 months for a first notice, 6 months for a second notice and 12 months for a third notice.[13]

The purpose behind this part of the legislation is to encourage those banned in this way to seek treatment and if completed successfully the person can apply to have that ban reduced.

In broad terms these notices are issued by police to a person if they are detained in protective custody (alcohol related) pursuant to s128 of the *Police Administration Act* three times in three months and continue to be so detained. BAT Notices are also issued for "alcohol-related" offences, alcohol related infringement notices and domestic violence orders and where a person knowingly supplies alcohol to a person whom is prohibited from possessing and consuming alcohol under the Act.

The grounds of review are in relation to an "error of fact or law" by a police officer in giving a person a BAT notice. Section 17 is in the following terms:

> **17 Application for review of particular BAT notice**
>
> (1) A banned person given a BAT notice under section 9(2) may apply to the Tribunal for a review of the notice if the person believes the police officer made an error of fact or law in giving the notice.
>
> (2) The banned person must:
>
> (a) make the application, in the approved form, within 30 days after the date on which the BAT notice comes into force; and
>
> (b) state in the application the reasons for the belief that the police officer made an error of fact or law in giving the notice; and
>
> (c) give all the information and evidence available to the applicant to support the belief.
>
> (3) Before deciding under section 53 who will constitute the Tribunal to make a decision about the application, the Chairperson must decide whether the Tribunal must:
>
> (a) conduct a hearing of the application; or
>
> (b) decide the application on the information and evidence given in the application.

[13] See ss 8 – 16 Part 2 Division 1 of the Act.

If a hearing is to take place then there is provision for legal representation if the review involves a question of law. The provision states:

> 18(2) If the application involves a question of law, a party to the application may be legally represented.

I have taken the view that a person is entitled to legal representation whether the review is on the basis of an error of fact or law or both. To the extent that it may be thought the rule of statutory interpretation Expressio unius est exclusio alterius applies, that is an express reference to one matter indicates that other matters are excluded I have come to the view that merely because there is a positive reference to legal representation in Part 2 Division 1 of the Act does not of itself preclude such representation, as it is a basic human right.

It would in my opinion require express exclusion by the legislature. I proffer this opinion as guidance only subject to it being argued in full before the Tribunal in a particular case.

It has been anecdotally reported to me that there have been cases where the police have mistakenly issued a BAT notice to the wrong person and these situations have been corrected administratively by the police withdrawing the notice.

There has only been one review application received by the Tribunal in the reporting period. This is despite the fact that this function of the Tribunal has been in existence since the 1 July 2012 and that some 1735 BAT notices were issued in that period.

I exercised my powers in that review to dismiss the application without a hearing in accordance with section 18 (3) of the Act, as the application did not disclose any grounds for review.

## 8. Income Management

The Income Management (IM) powers of the Tribunal are found in section 31(5) of the original Act. They form part of the conditions of a BADT order that can be made by the Tribunal, which are in the following terms: (author's emphasis in italics and bold):

> A BADT order for a person at risk may also state other prohibitions, requirements or conditions the Tribunal considers appropriate for the person, including (for example) the following:
>
> > (a) the person must undergo treatment, counselling or other intervention as stated in the order;
> >
> > (b) ***the person is referred to a stated entity for assessment for income management.***

It can be seen from the wording of section 31(5)(b) that there is no power vested in the Tribunal to make an IM order but only to refer a person for assessment by another body, being Centrelink in this case. This provision proved unworkable as

the privacy constraints under Federal law on Centrelink precluded Centrelink staff from releasing any information concerning a referred person prior to or after a Tribunal hearing. This meant that for example, the Tribunal was therefore unable to be in a position to know whether the person was already subject to IM and whether after the referral any IM order was made by Centrelink.

In these circumstances the Income Management referral provision was never used.

This situation has now been remedied by amendments made to the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act, 2011* in 2012 and changes to Commonwealth law to allow the Tribunal to make Income Management orders of 70%. These amendments and the necessary approvals under Commonwealth law came into effect on the 27 July 2012 and are due on the 1 October 2012 respectively.

It would be common knowledge to many in the community in the Northern Territory that many recipients of Commonwealth welfare benefits and payments are already the subject of Income Management. Mostly this would be to the amount of 50% of the said income. Some will be managed to the amount of 70% of their income in certain circumstances including those subject to the Child Protection measure in the Northern Territory. This measure empowers the Northern Territory Department of Children and Families to make a person subject to Income Management at the rate of 70%.

The practical introduction of this power to the Tribunal will be an important addition to its powers in my opinion. This is because it has often been the case in evidence before the Tribunal that persons before the Tribunal have stated openly that they mostly drink alcohol to excess – often in quite large quantities every fortnight upon receipt of their welfare benefit.

This pattern of drinking behaviour often continues until the person's money has run out despite the often openly acknowledged adverse consequences to the health and safety of the person, their family and the community. Binge drinking of this nature is common in the Northern Territory.

These are people whom have been found to be clearly persons at risk under the legislation. That is a person who is dependent and/or misusing alcohol in accordance with the international DSM IV criteria according to a clinical assessment report to the Tribunal.

In these circumstances, depending on the facts of any particular case reducing the amount of money available to such a person for the purchase of alcohol may be appropriate until their consumption and associated harm is reduced or ceases.

## 9. Tribunal Members

The Tribunal has nineteen (19) members resident in a variety of locations within the Northern Territory. The names and residential location of those appointed are in the attachment to this report headed Alcohol and Drug Tribunal Members.

I have been particularly pleased with the diligence, intelligence, compassion, common sense and expertise shown by all members whom have sat on hearings to date. The task of making orders and conducting hearings can be quite taxing and emotionally draining as many of those that appear before the Tribunal are often suffering significant social disadvantage, ill health and mental illness as well as the alcohol and other drug misuse that may bring them before the Tribunal.

There are currently three Presiding members of the Tribunal whom can exercise the powers of the Tribunal in accordance with section 53 of the Act. These are the Chairperson, Deputy Chairperson and one Presiding Member. Both of the latter appointees are based in Alice Springs. Section 53 is in the following terms:

> Constitution for proceeding
>
> The Chairperson must decide which member or members (including the Chairperson) will constitute the Tribunal for a proceeding.
>
> A presiding member alone must consider an application for assessment and decide whether to request a clinician to make an assessment of the person for whom the assessment is sought.
>
> In any other proceeding, a presiding member alone may constitute the Tribunal unless the Chairperson decides it is desirable for an additional one or 2 members to conduct the proceeding.
>
> The presiding member for an application for the review of a BAT notice must be:
>
> (a) the Chairperson; or
>
> (b) the Deputy Chairperson; or
>
> (c) a member mentioned in section 48(3) (a).

Members of the Tribunal must and do include persons with expertise in alcohol and other drugs treatment and counselling, legal qualifications, represent the community generally and where practicable consist of persons from culturally diverse backgrounds including members whom are Aboriginal or Torres Strait Islander and of both genders. The relevant provisions of the Act are (s47):

> Membership
>
> (1) The Tribunal is constituted of the following members appointed by the Administrator:
>
> (a) a Chairperson and a Deputy Chairperson, each of whom must have been admitted as a legal practitioner in Australia for at least 5 years;
>
> (b) at least 4 other persons, each of whom has qualifications or experience relating to the functions of the Tribunal;

(c) any other persons the Administrator considers suitable for appointment, each of whom represents the interests of a community or an area of the Territory.

(2) Without limiting subsection (1) (b), a person has qualifications or experience relating to the functions of the Tribunal if the person:

(a) is, or has been, a legal practitioner; or

(b) has a special interest or expertise in the general care, health care, rehabilitation or treatment of persons who are misusing alcohol or drugs; or

(c) has qualifications or experience prescribed by regulation.

(3) As far as practicable, the Tribunal is to be constituted of members of both sexes and from diverse backgrounds, including members who are Aboriginal or Torres Strait Islanders or who demonstrate an understanding of Aboriginal or Torres Strait Islander culture.

Unfortunately the original round of appointments did not include any Aboriginal people or Torres Strait Islanders. I asked for this to be remedied and another round of advertising and interviews took place leading to the appointment of further members including a number of Indigenous members all of whom possessed significant relevant experience. The second round of appointments occurred on the 26 June 2012.

It is my practice wherever possible to appoint three (3) members to conduct a BADT hearing and ensure that at least 1 member has specialist skills pursuant to section 47(2) (b) of the Act.

Training Workshops for all Tribunal members were held on the 11 and 12 October 2011 and then for new members in Alice Springs on the 1 June 2012.

## 10. Stakeholder Meetings

I decided to undertake a range of meetings with stakeholders because of concerns I had about the lack of information concerning the statutory process that the Tribunal was responsible for especially in relation to mandatory police referrals. These referrals commenced on the 1 January 2012 and the monitoring the Tribunal had undertaken (especially in relation to the breach of third BAT notices) in the 6 months prior to that date indicated that there would be a significant number of referrals. Some 673 as it turned out by the end of the reporting period. Consequently most of the meetings occurred prior to the 1 January.

I was particularly concerned to ascertain the resources and preparedness of the treatment sector for the new range of referrals that would be coming from the Tribunal. I have dealt with this issue in another section of the Report. It was also important in my opinion to ensure that the voluntary and authorised applicant pathways were well known as most of the community discussion was around those persons subject to multiple protective custody detentions.

I met with the Non Government Organisation Alcohol and other Drugs treatment sector, the Northern Territory Health Department Alcohol and Drugs services, Northern Territory police, Indigenous Medical Services, AMSANT (Aboriginal Medical Services Alliance NT), Central Australian Aboriginal Legal Aid Service and North Australian Aboriginal Justice Agency and others. A full list of meetings and organisations is included at the end this report.

There is clearly a disproportionate (to the population) number of referrals in the Katherine region. This is borne out by the Tribunal statistics concerning the regional source of applications or referrals to the Tribunal. These are:

| | |
|---|---|
| Darwin | 237 |
| Alice Springs | 195 |
| Katherine | 233 |
| Barkly | 31 |
| East Arnhem | 18 |

These figures indicate that 32.63% (approximately a third) of all referrals were from the Katherine region. Not all of these referrals are mandatory police referrals but a high proportion is from my personal knowledge. The exact figures are not available to me.

Many of these referrals from the Katherine police were for people whose normal residential address was in outlying communities from Katherine. Again many of these people were binge drinkers whom mostly drank in town. Some would come to Katherine specifically for that purpose.

The treatment provider sector and coordinating agencies along with the police in Katherine were particularly keen to meet with the Tribunal and work co-operatively in an attempt to see the process work because of the high level of alcohol related harm and abuse in the community. The Tribunal meets regularly with stakeholders there and hearings are conducted on a monthly basis in Katherine. This has included meetings with the Katherine Interagency Tasking and Coordination Group.

There are no Tribunal clinicians or caseworkers based in Katherine and that was a key concern of local agencies, which I brought to the attention of Government. This was also a concern of agencies in Tennant Creek, although referrals in Tennant Creek have been noticeably lower than elsewhere.

Approval was given for the trial engagement of a local part-time contractor as an approved clinician in Katherine. It is hoped that if this works out well it will become a permanent arrangement. The engagement of caseworkers and Indigenous clinicians and caseworkers has not been achieved to date.

**Issues raised by stakeholders**

A summary of some of the issues raised are as follows: the use of alcohol substitutes such as Listerine and methylated spirits when a person is banned from buying alcohol; sufficient funding and resources for the anticipated numbers of referrals; lack of Indigenous clinicians and caseworkers; whether it was appropriate for health professionals to make referrals without a person's consent; general awareness of the Tribunal's powers and responsibilities; potential withdrawal problems if a person is banned from purchasing and consuming alcohol with immediate effect; access to treatment for people outside major centres; travel assistance for people to treatment providers; debate around treatment provision and the appropriateness of providing an Alcohol Misuse Certificate that would allow a person to reduce their banning period; the need for continuing education and communication; debate around whether sobering up shelters should refer people; the utility of ordering people to undertake treatment; the difference between the SMART Court and the Tribunal; a concern that treatment providers be consulted before treatment orders are made; the specific need for more qualified treatment providers in Tennant Creek and the Barkly region generally; the need for a local coordinating committee in Tennant Creek in the alcohol and other drugs treatment area.

It was a specific request of some members of the Yirrkala Permit Committee operating under the East Arnhem Alcohol Permit System that it be approved as an authorised applicant under the Act. The status was sought as a way of maintaining the privacy of community members and especially members that sought to refer a person. It was pointed out that privacy was provided for all authorised applicants under the Act including family members and that the local police could also refer a person upon request subject to compliance with the Act. I passed this request on to the Minister whom is able to approve further persons under the Act pursuant to section 5(2) (f) of the Act. There are no doubt difficulties with approving the request in that form as the Committee is an unincorporated entity.

The Tribunal will continue to conduct stakeholder information meetings as resources allow, as it is a valuable source of information to enhance the work of the Tribunal and facilitate the work of treatment providers and Tribunal clinicians.

# 11. Recommendations

### Advocates

It is important that a process of selection and appointment be finalised by the Department in relation to Advocates to enable this important part of the Act to be utilised by the Tribunal

### Reasonable steps by a clinician to make an assessment

It is recommended that the Act be amended to clarify that the Tribunal may determine whether reasonable steps have been undertaken in accordance with section 25(1)(a) of the Act.

### Indigenous Field Staff

It is recommended that the Government consider the employment of Indigenous Field staff to be able to work with the Tribunal and clinicians to optimise engagement with people referred under the mandatory police referrals part of the Act.

### Identification

It is recommended that the Government consider maintaining some form of identification requirement with the purchase of alcohol. The Tribunal prohibitions in relation to alcohol use in a BADT order cannot be effectively enforced without that requirement. This is particularly important for voluntary applicants seeking a banning order as part of their treatment for alcohol dependency or misuse.

# 12. Statistics

**1 July 2011 – 30 June 2012**

**Applications to Tribunal on Regional Basis**

| | |
|---|---|
| Darwin | 237 |
| Alice Springs | 195 |
| Katherine | 233 |
| Barkly | 31 |
| East Arnhem | 18 |

**Type of Application or Referral**

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| | |
|---|---|
| AIC | 2 |
| BAT Review | 1 |
| Self Referral (Humbug) | 4 |
| Self Referral (Misuse) | 11 |
| Authorised Applicant | 18 |
| Mandatory Police Referrals | 673 |
| **Total referrals:** | **821** |

## 13. ALCOHOL DRUGS TRIBUNAL STAKEHOLDER MEETINGS

### 2011-2012

**Alice Springs**

**8 July 2011**

- CAAPU, CLC, CAALAS

**28 November 2011**

- CONGRESS – Safe & Sober, Social and Emotional Well being program

**24 April 2012**

- Mount Nancy Town Camp AODT information session

**22 May 2012**

- Titjikala Community AODT information session

**31 May 2012**

- AODT information session with NPY Womens Council manager.

**1 June 2012**

- Meeting with Central Australian Aboriginal Legal Aid Service (CAALAS) regarding Income Management.
- AODT Information session with staff members from Department of Health and Department of Children and Families.

**29 June 2012**

- Alice Springs Correctional Centre meeting to discuss Voluntary referrals and the possibility of holding Tribunal Hearings at the Gaol.

**Darwin**

**9 August 2011**

- NAAJA
- CEO NT Family and Childrens Services

**16 August 2012**

- Police

**2 September 2011**

- NAAJA Board meeting

**5 September 2011**

- Danila Dilba Meeting

**7 September 2011**

- Alcohol Policy (DOJ) and Alcohol Management Plans

**26 September 2011**

- DOJ Chaired whole of Government Meeting - Alcohol Reforms

**29 September 2011**

- Joint SMART Court & Tribunal - Treatment providers Workshop NT wide

**18 October 2011**

- Law Society NT

**26 October 2011**

- DOJ Licensing Inspectors NT Meeting

**7 December 2011**

- Darwin Treatment Providers Meeting – Department of Health; Department of Justice (Alcohol Policy); CAAPS; Danila Dilba; Banyan House; EASA; Salvation Army; FORWAARD; Catholic Care NT.

**18 June 2012**

- Law Society Northern Territory to discuss income management

**4 July 2012**

- Darwin Correctional Centre to discuss possibility of holding Tribunal hearings at the gaol.

**<u>Katherine</u>**

**31 August 2011**

- AMSANT NT wide meeting

**8 December 2011**

- Katherine Police

- Katherine Treatment Providers Meeting – Mission Australia (Sobering Up Shelter); AODP; KHRAHRS; Senior Social Worker Katherine Hospital; NTLAC; CRS Australia; Kalano, Venndale; LRAS DOJ.

**12 January 2012**

- Katherine Interagency Tasking & Coordinator Group Meeting

**9 February 2012**

- Katherine Interagency Tasking & Coordinator Group Meeting

**Nhulunbuy**

**13 March 2012**

- Nhulunbuy Treatment Providers Meeting; Project Officer – East Arnhem, Alcohol Strategy, DOJ; Government Business Manager, FaHCSIA; Community Child Safety and Wellbeing Team Practitioner, Yirrkala, Regional Services Unit, DCF; Senior Family & Community Worker, East Arnhem, DCF; Community Support Officer, Alcohol & Other Drugs Program East Arnhem, Do H Manager, Nhulunbuy Alcohol and Other Drugs Rehabilitation Service, Do H AOD Programme Coordinator East Arnhem Shire Night Patrol and Sobering Up Shelter, East Arnhem Mental Health Team, Do H; Police.

**Tennant Creek**

**20 December 2012**

Meeting with Tennant Creek Treatment Providers (BRADAAG**,** Anyinginyi Health Aboriginal Corporation, Julalikari Council Aboriginal Corporation, ADSCA)

# 14. Alcohol and Drugs Tribunal Members

**Southern Region Tribunal Members**

| NAME | POSITION | RELEVANT QUALIFICATIONS | PLACE OF RESIDENCE |
|---|---|---|---|
| Sarah McNamara | Deputy Chairperson | • Bachelor of Laws<br>• LEADR Institute Mediation and Accreditation | Alice Springs |
| Jodi Mather | Presiding Member | • Bachelor of Laws | Alice Springs |
| Rayleen Burns | Member | • Graduate Certificate in Indigenous Healing Arts<br>• Alcohol & Drug Management Program<br>• Bachelor of Social Work<br>• Certificate in Aboriginal & Islander Welfare | Alice Springs |
| Vicki Gillick | Member | • Bachelor of Law (Hons)<br>• Graduate Diploma in Legal Practise<br>• Certificate in Broadcasting | Alice Springs |
| Shirley Lewis | Member | • Certificate III Building & Construction<br>• Certificate III Train the Trainer<br>• Certificate II Commercial Cookery<br>• Certificate II Security | Tennant Creek |
| Louise Samways | Member | • B. Sc Grad. Dip. Educ. Grad. Dip. Educ. Psych.<br>• Registered Psychologist<br>• Medicare Specialist Provider (Clinical Psychology) | Alice Springs |
| Philip Ward | Member | • Master of (Counselling) Psychology<br>• Bachelor of Behavioural Science (Honours)<br>• Bachelor of Arts (Majors: Psychology & Sociology) | Alice Springs |

| | | | |
|---|---|---|---|
| | | • Advanced Diploma in Hypnosis<br>• Diploma in Counselling Psychology<br>• Diploma in Hypnosis<br>• Certificate of Counselling Psychology<br>• Certificate IV – Training & Assessment<br>• Certificate IV – Small Business Management<br>• Certificate in Cognitive Behaviour Therapy<br>• Certificate in Rational Emotive Behaviour Therapy | |

**Northern Region Tribunal Members**

| NAME | POSITION | RELEVANT QUALIFICATIONS | PLACE OF RESIDENCE |
|---|---|---|---|
| Michael O'Donnell | Chairperson | • Bachelor of Arts; Bachelor of Laws.<br>• LEADR Advanced Mediation Training and National Accreditation | Darwin |
| Ingrid Clarke | Member | • BIITE NT | Maningrida |
| Kate Crawley | Member | • Master of Psychology<br>• Bachelor of Arts (Honours in Psychology) | Darwin |
| Bernard Dwyer | Member | • Registered Psychiatric Nurse.<br>• Certificate IV- Community Services (Alcohol and Other Drugs) | Darwin |
| Shirley Grace | Member | • Doctor of Philosophy<br>• Honours level subject - Psychology Applied to Criminal Justice<br>• Bachelor of Social Science (Honours) | Darwin |

| | | | |
|---|---|---|---|
| | | • Bachelor of Arts (Social Welfare) | |
| Carol Kelly | Member | • Diploma of Community Development<br>• Diploma of Alcohol & Other Drug Education<br>• Cultural Awareness Certificate<br>• Certificate IV in Training & Assessment | Katherine |
| Geoff Lohmeyer | Member | • Justice of the Peace<br>• Diploma and Certificate of Alcohol and Other Drugs<br>• Diploma of Community Welfare Work<br>• Undertaken a range of courses and other qualifications (see CV) | Katherine |
| Veronica McClintic | Member | • Certificate IV – Training & Assessment<br>• Indigenous Women's Leadership Program<br>• Graduate Certificate in Education (Continuing)<br>• Bachelor of Laws<br>• General Nursing Certificate | Darwin |
| Sharon Mununggurr | Member | • Masters of Indigenous Studies (Well-being)<br>• Certificate IV Workplace Training & Assessor<br>• Certificate IV Aboriginal Health Worker (Clinical)<br>• Certificate in Health Science, Aboriginal Health Worker<br>• Certificate in Clerical & Administration | Yirrkala |
| Dee Robinson | Member | • Bachelor of Science (Nursing)<br>• Registered Nurse | Howard Springs |
| Paul Rysavy | Member | • Bachelor of Psychology, and Master of Arts in Psychology | |

| | | | |
|---|---|---|---|
| | | • Certificate IV in Community Services, Alcohol and Other Drugs<br>• Accredited Assessor – Illicit Drug Pre-Court Diversion Program | Douglas Daly |
| Phil Sampson | Member | Community Member | Nhulunbuy |

## 14. Functions of the Tribunal

52 Functions and powers

(1) The Tribunal has the following functions:

(a) to consider and decide applications made to it;

(b) to request clinicians to make assessments;

(c) to make GAP orders, BADT orders and other orders in relation to its decisions;

(d) to make inquiries in relation to proceedings, as appropriate;

(e) to perform other functions conferred on it under this or another Act.

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

## 15. Glossary

Alcohol Intervention Certificate (AIC) – a certificate lodged with the Registrar of the Tribunal indicating satisfactory participation in treatment for alcohol misuse which triggers reduction of BAT banning period pursuant to statutory formula in section 12 (2) of the Act.

Banned Drinkers Register (BDR) – computer registers of person subject to prohibition orders concerning alcohol.

Banning Alcohol and Drug and Treatment Order (BADT order)

Banning Alcohol and Treatment (BAT) Notices

General Alcohol Prohibition Order (GAP order)

Income Management (IM)