



**ANCD**

AUSTRALIAN NATIONAL COUNCIL ON DRUGS

# MANDATORY TREATMENT

## POSITION STATEMENT

### **Introduction**

“Mandatory treatment” is a term used to encompass a range of responses to alcohol and other drug use by both non-offenders and offenders. Whilst these responses are briefly described below, for the purpose of this position paper mandatory treatment is defined as a court-ordered treatment as part of sentencing orders, and civil commitment, in which cases treatment interventions occur without the consent of those receiving them. Voluntary diversion programs are not included

## Background

### Mandatory treatment

In Australia, legislation and government-implemented programs allow for mandatory alcohol and other drug treatment.<sup>1,2</sup> These include court-mandated treatment of offenders in which the offender is given no choice about whether to receive treatment or not, and civil commitment of those who may not have committed an offence.<sup>3</sup>

Mandatory treatment includes a variety of treatment types from detoxification to counselling, education, and residential rehabilitation.<sup>4,5</sup> The stated goals of mandatory treatment are to improve individuals' health, wellbeing, and overall quality of life, and to reduce health, economic and social costs associated with problematic alcohol and other drug use. These include the costs to police, courts, prisons and public health. There is also an expectation that families and the broader community will benefit.<sup>6</sup>

Mandatory treatment is currently used in many countries, including Britain, the United States of America, the Netherlands, New Zealand, Italy, Sweden, Germany, Canada, Spain and in various Southeast Asian countries,<sup>7</sup> but there is considerable variability in approach to mandatory treatment and its implementation. In the United States of America, the focus of mandatory treatment is on offenders charged with any drug-use offence; in the Netherlands and Britain, the focus is on persistent drug-using offenders who may have committed non-drug-related offences; and courts in Europe can impose sentences that include alcohol and other drug treatment.<sup>8</sup> Whilst most European countries require the offender's consent to enter treatment, there are those that do not, including Austria, Germany and the Netherlands.<sup>9</sup>

In New Zealand, under the *Alcoholism and Drug Addiction Act 1966*, offenders and non-offenders who are persistently and severely affected by alcohol and/or other drugs can be detained and treated in certified institutions. In addition, there are treatment programs in prisons.<sup>10</sup>

In some Southeast Asian countries, including Cambodia, China, Indonesia, Lao, Myanmar, Thailand, Vietnam and the Philippines, people who are known to be using drugs or who are just suspected of using drugs can be forcibly confined in compulsory centres for drug users (CCDUs) for extended periods, even years. The "treatment" in CCDUs is abstinence-based; generally restricted to detoxification, which is often not medically supervised; fails to meet evidence-based drug dependence treatment protocols, lacks harm reduction or after care

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<sup>1</sup> Stevens et al., 2006; Schaub et al., 2010; Schaub et al., 2011

<sup>2</sup> Klag et al., 2005; Pritchard et al., 2007

<sup>3</sup> Ip et al., 2008; Dore et al., 2013

<sup>3</sup> Pritchard et al., 2007

<sup>4</sup> Weisner, 1990; Miller, et al., 2000; Klag, et al, 2005

<sup>5</sup> Farabee, et al, 1998; Broadstock, et al, 2008; Pritchard, 2007

<sup>6</sup> Pritchard et al., 2007

<sup>7</sup> Klag et al., 2005; Pritchard et al., 2007

<sup>8</sup> Wild et al., 2006

<sup>9</sup> Stevens et al., 2005

<sup>10</sup> New Zealand Law Commission Te Aka Matua O Te Ture: A Review of the Alcoholism and Drug Addiction Act 1966: 2010: Report 118

services; and does not meet with recognised human rights.<sup>11</sup> There have also been very forceful declarations made by United Nations agencies citing the many problems associated with CCDUs as a reason for their closure ( [UN Joint Statement](#) ).

### Civil commitment

Civil commitment legislation provides for inebriated and drug-dependent persons to be detained and placed into treatment when at risk of harm to themselves and/or others. The objective is to restore the person's decision-making capacity so that he or she can decide about future alcohol and other drug use. Civil commitment is not a full program of alcohol and drug treatment, but rather short-term treatment to stabilise a person's health and to restore his or her capacity to evaluate the risk of harm in alcohol and other drug use and to make decisions about further voluntary treatment.<sup>12</sup>

New Zealand's *Alcoholism and Drug Addiction Act 1966* provides for compulsory detention and treatment of non-offenders for up to two years.<sup>13</sup> The New Zealand Law Commission Te Aka Matua O Te Ture, in its 2010 review of the *Act*, urged that the *Act* be significantly overhauled to reflect current thinking about evidence-based treatment and human rights.<sup>14</sup>

The Scandanavian countries differ from each another in their approaches to compulsory interventions towards alcohol and other drug users. The Swedish Ministry of Health and Social Affairs *Care of Alcoholics, Drug Abusers and Abusers of Volatile Solvents (Special Provisions) Act 1988* provides for individuals to be placed in compulsory care institutions for up to six months (with provision for a further six months detention) or as soon as the purpose of care has been achieved. But intervention can be mandated for other than medical reasons, including when an alcohol and/or other drug user is deemed to be at risk of destroying his or her life in relation to work and normal behaviour.<sup>15</sup> The objective of intervention is to motivate alcohol and other drug users to accept treatment,<sup>16</sup> as well as to fulfil the state's mandate to protect its citizens from harming themselves or others.<sup>17</sup>

Under Norwegian law, detention and treatment of adult alcohol and other drug users is allowed only in order to sober up a person and motivate him or her to enter into voluntary treatment. Nevertheless, detention and treatment under these statutes can be for as long as three months. Also, the law warrants 'voluntary detention', which is detention based on the alcohol and/or other drug user signing a contractual agreement with a treatment institution to be detained for treatment. In 1996, legal provision for compulsory treatment intervention for pregnant women came into effect. In order to protect the unborn child from harm from the mother's alcohol and/or other drug use, the woman can, in principle, be detained for her entire pregnancy.<sup>18</sup>

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<sup>11</sup> UNICEF Position on Compulsory Detention Centres in East Asia and Pacific; Joint Statement: Compulsory Drug Detention and Rehabilitation Centres; APPDIC & ANCD Joint Statement: Compulsory Drug Detention and Rehabilitation Centres

<sup>12</sup> Pritchard et al., 2007

<sup>13</sup> Council of Social Services New South Wales Standing Committee on Social Issues, 2004

<sup>14</sup> New Zealand Law Commission Te Aka Matua O Te Ture: A Review of the Alcoholism and Drug Addiction Act 1966: 2010: Report 118

<sup>15</sup> Nilssen, 2007

<sup>16</sup> Nilssen, 2005

<sup>17</sup> Palm & Stenius, 2002

<sup>18</sup> Nilssen, 2007

In Denmark, the *Act on Detention of Drug Abusers in Treatment* (1992) provides for the voluntary detention of drug-dependent people. The application of this law is voluntary within each county, and in those counties where the *Act* is permitted to apply, social services can decide whether or not to offer a drug-dependent person a treatment contract.<sup>19</sup>

The United Kingdom does not have specific schemes for the civil commitment of people with alcohol and/or drug dependence. But, under the *Mental Capacity Act* (2005) (UK), treatment can be given to an incapacitated person without his or her consent if it is necessary to protect the person from serious harm and assist him or her to regain capacity.<sup>20</sup>

In Australia, civil commitment of people with alcohol and drug dependence is determined at the state and territory level. There are some variations between states and territories allowing for intervention to save people's lives or to prevent serious damage to their health, and for when people are incapable of making, or have lost the capacity to make, decisions about their alcohol and other drug use. In New South Wales, Tasmania, Victoria and the Northern Territory, legislation provides for the civil commitment and compulsory treatment of people who are at risk of serious harm and when less restrictive means of response are not available.<sup>21,22</sup> In addition, alcohol and other drug dependence must be determined to be severe and treatment deemed to be beneficial to the person. Major objectives of these interventions include stabilising health and enhancing or restoring a person's capacity to make decisions about future alcohol and other drug use, treatment, and personal welfare.<sup>23</sup>

Recent Northern Territory legislation enables civil commitment and mandatory treatment for volatile substance users,<sup>24</sup> and for alcohol-intoxicated adults who are taken into protective police custody three or more times within two months.<sup>25</sup> Intoxicated people taken into custody are clinically assessed and an independent tribunal decides on treatment options. Treatment options include placing the person in a secure residential treatment facility for up to three months, or treating the person in a community residential treatment facility or other form of community management, including income management.<sup>26</sup>

The Northern Territory legislation particularly affects Aboriginal and Torres Strait Islanders, for whom there are specific implications and concerns. Many Aboriginal and Torres Strait Islanders face serious social and economic disadvantage, cultural displacement, trauma and grief, and poor health and living conditions, all of which contribute to excessive alcohol use.<sup>27</sup>

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<sup>19</sup> Nilssen, 2007

<sup>20</sup> New Zealand Law Commission Te Aka Matua O Te Ture: A Review of the Alcoholism and Drug Addiction Act 1966: 2010: Report 118

<sup>21</sup> New Zealand Law Commission Te Aka Matua O Te Ture: A Review of the Alcoholism and Drug Addiction Act 1966: 2010: Report 118

<sup>22</sup> Pritchard, et al, 2007

<sup>23</sup> Pritchard, et al, 2007

<sup>24</sup> Pritchard et al., 2007

<sup>25</sup> Northern Territory Government Alcohol Mandatory Treatment Reform, 2013

<sup>26</sup> Northern Territory Government Alcohol Mandatory Treatment Reform, 2013

<sup>27</sup> NIDAC Bridges and Barriers: Addressing Indigenous Incarceration and Health, 2013

The National Indigenous Drug and Alcohol Committee (NIDAC) states that any approach to reducing alcohol-related harm among Aboriginal and Torres Strait Islanders should be based on the Aboriginal and Torres Strait Islander Peoples Complementary Action Plan.<sup>28</sup> Some of the major tenets of the Plan are that Aboriginal and Torres Strait Islanders need to be involved at every stage of the development and implementation of strategies to address harmful alcohol use in their communities; that strategies should be evidence-based and culturally secure<sup>29</sup>; and that the underlying reasons for harmful alcohol use must be addressed.<sup>30</sup> In 2013, NIDAC urged the Northern Territory Government to facilitate an independent evaluation of the outcomes of its *Alcohol Mandatory Treatment Act*.<sup>31</sup>

Some civil commitment legislation has been criticised for being focussed on the interests of the public rather than on the rights of the individual. There are concerns that human rights, as laid down in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, Principles for the Protection and Care of People with Mental Illness and the Improvement of Mental Health Care, as well as Victoria's Charter of Human Rights and Responsibilities are being contravened.<sup>32</sup> In addition, mandatory alcohol and other drug treatment of minors raises issues beyond those associated with the mandatory treatment of adults. These include issues of consent, including parental or guardian consent.

Although claims that short periods of civil commitment might have harm-reducing effects are predominantly anecdotal, and empirical evidence of the long-term effectiveness of civil commitment legislation is largely lacking, civil commitment in emergency situations in which severe threat is apparent has been found by some researchers to help to minimise harm in the short-term.<sup>33</sup>

### **Mandatory treatment and civil liberties**

Although it is a fundamental right of the individual to choose his or her own actions,<sup>34</sup> our society has determined that it is ethical for the State to override this right in order to protect the health and safety of its citizens, including making medical treatment decisions for individuals who do not have the capacity to do so for themselves. In the same way, restricting the choice of alcohol and/or drug-dependent offenders to either processing by the criminal justice system or undertaking treatment for their alcohol and/or drug dependence is also considered by many to be ethical.<sup>35</sup>

But there are those who say that there should be clear limits to the encroachment on individual freedom, even when it is considered to be in the interest of the individual being encroached upon. Some of the identified limitations with regard to mandatory treatment are that:

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<sup>28</sup> NIDAC, Addressing harmful alcohol use amongst Indigenous Australians, 2009

<sup>29</sup> See Standard on Culturally Secure Practice (Alcohol and Other Drug Sector), 2012

<sup>30</sup> NIDAC, Addressing harmful alcohol use amongst Indigenous Australians, 2009

<sup>31</sup> NIDAC, Addressing harmful alcohol use amongst Indigenous Australians, 2009

<sup>32</sup> Pritchard et al., 2007

<sup>33</sup> Broadstock et al., 2008

<sup>34</sup> Fry & Hall, 2002

<sup>35</sup> Council of Social Service of NSW. Submission to the Legislative Council Standing Committee on Social Issues: Inquiry into the Inebriates Act 1912, the Inebriates Act, 2004

- the intervention should not be more intrusive than criminal sanctions
- there must be a justifiable basis for infringing on the individual's liberty, and
- the possible negative impacts and unintended adverse outcomes on the individual and the community need to be understood.<sup>36</sup>

In addition, it has been stated that there needs to be recognition that:

- there are various agencies involved in enforcing mandatory treatment and these agencies can have different priorities, values, attitudes and ethical paradigms, (for example, the judiciary, police, lawyers, corrections workers, health care professionals and policy makers)<sup>37</sup> addiction is subject to conflicting ideologies: crime and punishment on the one hand, and illness and treatment on the other.<sup>38</sup>

### Research evidence

There is a well-documented relationship between alcohol and other drug use and crime. But the empirical evidence demonstrating the effectiveness or otherwise of responding to this with mandatory alcohol and other drug treatment is both limited and inconclusive. Also, the relationships between legal coercion; client motivation; treatment type, quality, length, and intensity; and reduced recidivism and improved health and well-being are unclear.<sup>39</sup>

A number of meta-analyses of research on mandatory drug treatment have been undertaken and include those by Klag et al. (2005) in Australia, Stevens et al. (2005) of the European Institute of Social Services, and Wild (2006) of the University of Alberta. Each indicates that the empirical evidence for the effectiveness of mandatory treatment is inadequate and inconclusive.<sup>40</sup>

Nevertheless, mandatory treatment has been shown to be effective in reducing drug use and crime for some people<sup>41</sup> and completion of diversion programs, especially drug court programs, has been associated in Australia with reductions in both recidivism and drug use.<sup>42</sup> Also, a review by Stevens et al. (2003) of English, Dutch, German, French and Italian research literature found that drug treatment is effective in reducing drug use and crime and that treatment is more effective if it lasts several months, although they state that the links between dependent drug use and crime are complex and there is no single, causal connection between them.

In Europe, reductions in alcohol and other drug use and crime, as well as improvements in health and social integration, have been noted with quasi-compulsory treatment (QCT) for

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<sup>36</sup> Conrad et al., 1980

<sup>37</sup> Pritchard et al., 2007

<sup>38</sup> Conrad et al., 1980

<sup>39</sup> Council of Social Service of NSW. Submission to the Legislative Council Standing Committee on Social Issues: Inquiry into the Inebriates Act 1912, the Inebriates Act, 2004; Klag et al., 2005; Pritchard et al., 2007

<sup>40</sup> Pritchard et al., 2007

<sup>41</sup> Klag, 2005; Stevens et al., 2005; Wild 2006

<sup>42</sup> Pritchard et al., 2007

substance-dependent offenders.<sup>43</sup> QCT is the treatment of drug-dependent offenders that occurs outside prison but is supervised by the criminal justice system. In most European countries offenders can choose to either enter treatment or be subject to other consequences, such as imprisonment. Many drug-dependent offenders entering QCT have expressed both a sense of pressure to enter treatment and gratitude for receiving treatment. Interestingly, perceived medical pressure has been found to be a more powerful motivation to be in treatment than perceived legal pressure.<sup>44</sup>

Still, the motivation to be in treatment can be affected by the quality of support and services, with motivation dropping when the service and support are poor and increasing when they are good.<sup>45</sup> This might shed light on why the outcomes of some Scandinavian studies of compulsory and quasi-compulsory treatment were poor,<sup>46</sup> while in other studies outcomes were found to be beneficial to both offenders and society and equivalent to those for voluntary treatment.<sup>47</sup>

It also seems that individual characteristics such as clients' social values; education; employment status; frequency of drug-use; commitment to treatment;<sup>48</sup> trust that treatment works; and being future-oriented and confident that life can be better<sup>49</sup> are strong predictors of success in diversion.<sup>50</sup> The given welfare system also seems to have an influence on treatment outcomes,<sup>51</sup> as do after-care strategies, leading to reductions in drug use and re-offending.<sup>52</sup>

Larsson-Kronberg et al. (2005) state that future research on mandatory treatment might benefit from the inclusion of large sets of variables, including: how judicial and treatment systems cooperate; how decisions to begin and end treatment are taken; how coercion affects staff commitment and client engagement; treatment characteristics; post-treatment follow up and support; and people's experience of mandatory treatment.<sup>53</sup>

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<sup>43</sup> Schaub et al., 2010

<sup>44</sup> Schaub et al., 2011

<sup>45</sup> Stevens et al., 2006

<sup>46</sup> Storbjork, 2006; Ekendahl, 2009; Svensson, 2010

<sup>47</sup> Chick, 1998

<sup>48</sup> Lindahl et al., 2010

<sup>49</sup> Ekendahl, 2007

<sup>50</sup> Feld, 1994

<sup>51</sup> Butzin et al., 2002

<sup>52</sup> Pritchard et al., 2007

<sup>53</sup> Larsson-Kronberg et al., 2005

## Best practice

Whilst there would appear to be no agreed single best practice approach, there are important evidence-based principles that are consistently recommended to guide best practice in mandatory drug treatment.<sup>54</sup>

### ***Best practice principles include:***

- Clear eligibility and assessment criteria guidelines.<sup>55</sup>
- Implementation of protocols.<sup>56</sup>
- Speedy access to assessment, appropriate treatment and complementary services.<sup>57</sup>
- Clearly articulated, consistent and timely compliance monitoring.<sup>58</sup>
- Program monitoring and evaluation.
- Standardised information collecting, record keeping, and procedure management.
- Clients having every opportunity to know their rights.
- Partnerships and good communication between treatment service providers and police.
- Legislation and guidelines that reflect the complexity of effective alcohol and other drug treatment.
- Social support and follow up beyond clinical treatment.<sup>59</sup>

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<sup>54</sup> Alcohol and Other Drug Council of Australia (1999, 2000): Principles of best practice in drug diversion programs.

<sup>55</sup> McLeod, et al, 1999; Farrell Grant Sparks Consulting, & Farrell, 2002

<sup>56</sup> Young & Belenko, 2002

<sup>57</sup> McLeod et al., 1999

<sup>58</sup> Belenko, 2001; Harrell et al., 2002; Huddleston, 1998; Nolan, 2001; Turnbull et al., 2000

<sup>59</sup> Rodriguez, 2011

## ANCD Position on Mandatory Drug Treatment

The Australian National Council on Drugs (ANCD), after reviewing the evidence, is of the view that people with drug and alcohol use problems are often particularly vulnerable and that they should have every opportunity to be assessed and to receive interventions that might improve their chances in life; be given opportunities to access rehabilitation, and be able to receive necessary (sometimes life-saving) treatment. People who use alcohol and other drugs can have health problems and should not be criminalised for their drug and alcohol use.

The ANCD opposes the use of mandatory treatment except under exceptional circumstances.

These circumstances are when:

1. The person is at immediate risk of harm to self or others.
2. The person lacks mental capacity to consent to treatment.
3. There are no other reasonably available, appropriate and less restrictive means of response.

### Minimum acceptable standards for mandatory alcohol and other drugs treatment

- The purpose of mandatory treatment must be to:
  - comprehensively assess
  - stabilise through evidence-based medical treatment, including, for example, medically-assisted withdrawal
  - restore decision-making capacity over substance use, treatment, and personal welfare
  - coordinate comprehensive aftercare and link into longer-term voluntary treatment services.
- If at all possible, treatment should be given with the informed consent of the person receiving the treatment.
- Existing advanced care directives or living wills should be considered during the development of treatment plans.
- Legal representation should be provided to the client.

People with problems related to their use of alcohol and other drugs must be treated with dignity and respect.

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The Australian National Council on Drugs (ANCD) is the principal advisory body to Government on drug policy and plays a critical role in ensuring the voice of the community is heard in relation to drug related policies and strategies.

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