

ANGLICARE

TASMANIA

Response to
Department of Justice discussion paper
Breaking the cycle:
Tasmania Corrections Plan 2010-2020

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1. INTRODUCTION

Anglicare Tasmania welcomes the opportunity to provide comment on the *Breaking the cycle* discussion paper released by the Department of Justice. Anglicare's response draws on service delivery experience, particularly that connected to our delivery of components of the Court Mandated Diversion program, and on original research conducted by our Social Action and Research Centre.

The discussion paper (Department of Justice c. 2010) lays out the issues involved in developing a 10 year strategic plan for the entire corrections system. It is long, complex and broad in scope. Anglicare will not be responding to it in its entirety, but will confine our comments to those areas where we have relevant expertise. Our focus in this submission is therefore on sentencing options, and particularly the development of options designed to divert particular groups of offenders from custodial sentences. While we have not addressed the specific questions in the discussion paper, our comments are most relevant to the questions relating to Outcome 1 and the questions relating to the treatment of mentally ill offenders under Outcome 3.

2. COMMENTS AND RECOMMENDATIONS

2.1. Diversionary programs

Anglicare has been delivering aspects of the Court Mandated Diversion program (CMD) since it was first implemented and following the restructure of the service delivery model, our role in delivering the program has increased. That there is a demand for court-mandated diversionary programs such as CMD and that magistrates see it as a useful alternative is illustrated by the fact that take up of the program in its first year of operation was almost 30% higher than its funded target, with over 95% of referrals coming from magistrates (Success Works 2008, pp. 1, 53). The 2008 evaluation of CMD noted that 'Magistrates are "voting with their feet" and seeing value in the problem solving approach at least as an alternative for highly problematic and complex high risk offenders' (Success Works 2008, p. 106). The program is also potentially life-changing for participants: 'for over half of the offenders referred to the program [in its first year], CMD has been their first ever opportunity to confront their need for treatment and to gain support to deal with their addiction related issues' (Success Works 2008, p. 68). In Anglicare's experience, the CMD program has also enabled non-government organisations such as Anglicare to have a positive role in offender rehabilitation and a place in the justice system. This in turn has allowed our workers to advocate on behalf of offenders in a way which was often not possible prior to the introduction of CMD and which has had extremely positive outcomes for clients.

However, Anglicare's experience is that while diversionary programs like CMD are valuable and effective ways to respond to certain types of offending behaviour, they cannot be successful without sufficient resources being available and without the necessary cultural change from within government and the justice system.

Resources: Anglicare workers are concerned that in some aspects of CMD delivery, funding constraints may be compromising the best interests of clients.

The evaluation of the first year of CMD found that there were higher than expected referrals to individual counselling and lower than expected participation in group counselling. Anglicare's experience is that while group therapy can be effective for some participants, it is not appropriate for all clients; those with particular mental health issues like social phobia and anxiety, for example, find it difficult to feel safe in group situations. At the time however, the evaluators attributed this trend not as a response to a high level of need for individual therapy, but more negatively, as a consequence of 'either a potential overuse of this condition on IMPs [individual management plans] and/or the lack of other intervention options (or both)' (Success Works 2008, pp. 3, 76). CMD program staff are concerned that in 2009 there has been an increased emphasis upon the use of group rather than individual counselling even where it has not been appropriate for individual clients. In

some cases referred to CMD individual counselling has been refused as an option under bail diversion orders even when it has been recommended as the best option for that particular client. This is an issue of concern, because it would be unfortunate if this trend were related to the lower unit cost of group therapy or artificial targets.

As noted by the CMD evaluation report, '[i]mplementation of CMD has been in the context of a recognised incapacity of the existing alcohol and drug service system in Tasmania to meet the client needs [sic]' (Success Works 2008, p. 2). This assertion is backed up by the findings of a review into the Tasmanian alcohol and other drug service sector, which identified significant service shortfalls (Healthcare Management Advisors, cited in Success Works 2008, p. 47). Anglicare research on the experiences of workers in community service organisations responding to clients with problematic drug and alcohol issues also identified delays in access to and long waiting lists for the limited specialist services that are available as persistent problems within the Tasmanian sector. Workers also identified critical service gaps, such as the lack of support for families facing substance abuse issues and the limited accommodation options for people, especially young people, exiting treatment services (Hinton 2008, pp. 43-7).

The CMD program adopted a number of strategies to deal with the limitations in the Tasmanian drug and alcohol treatment sector, including a focus on capacity building, shared funding and the commissioning of an evaluation of the first year of the program (Success Works 2008, pp. 47-8). The evaluation also found that there was significant need among clients for services outside CMD, and argued that the lack of funding for these additional services had the potential to undermine the program's success in reducing recidivism if the issues with which offenders needed additional support were related to their offending (Success Works 2008, pp. 65, 69). Addressing service shortages within the alcohol and drug treatment sector as well as increasing the availability of non-specialist services to address other issues is critical to the success of the CMD program and will require a substantial resourcing commitment.

Cultural change: Anglicare stresses the importance of a program of cultural change to underpin the corrective services system and in particular therapeutic jurisprudence processes. Anglicare is concerned that there has recently been a more adversarial approach to some clients from within the Department and an overly legal flavour to the operation of the program. Workers are concerned that the approach to case management is too strongly influenced by the court, which means individual management plans (which are developed by court diversion officers attached to the Department) may not be fully taking into account the diverse and complex needs of the offender, and do not provide the flexibility necessary for the development of innovative, community-based interventions.

Anglicare workers have also observed inconsistency between presiding magistrates. While some magistrates embrace the concept of CMD, others appear to have little belief in the process. This means there can be inconsistency in sentencing and rehabilitation options provided through the courts. Anglicare believes that to be successful, magistrates involved in diversionary programs need to have a genuine interest in this area and to receive appropriate training and professional development opportunities. The CMD evaluation report noted that the decline in referrals from magistrates towards the end of CMD's first year 'indicates that attention may be required to ensure that Magistrates and others remain confident that the program has beneficial effects' (Success Works 2008, p. 56).¹

It is also the view of Anglicare workers that there needs to be more of a focus on rehabilitation for non-custodial offenders. Non-government organisations would welcome the opportunity to have a greater voice in suggesting options for offenders as presently, the Department determines what is 'rehabilitative' and sometimes the options thus presented are limiting. The shortage of funding available for non-custodial programs means that it is difficult to provide continuity of support for people throughout supervised probation,

¹ Anglicare notes that the evaluation also found out that reluctance to refer to CMD among magistrates in Burnie was not because of a lack of belief in the program, but because of a lack of funded support services in the local area (Success Works 2008, p. 57). This is related to the well-documented lack of capacity within Tasmania's drug and alcohol sector.

custodial and court-mandated diversion sentencing options. Resolving these issues will require adequate resourcing, but also a commitment to overcoming established practices and assumptions within the corrective services system.

It will also be important to extend cultural change initiatives right across the criminal justice system, including to Tasmania Police, the courts and the legal fraternity. The CMD evaluation conducted in 2008 recommended that priority be given to maintaining magistrates' belief in the benefits of the program and to building support amongst defence counsel and police through providing regular feedback on the achievements and directions of the program to the court community (Success Works 2008, p. 121). Anglicare supports this recommendation.

2.2. People with a gambling problem

In addition to providing information on learnings from the CMD program in this submission, Anglicare would also like to draw attention to its recent research on gambling and crime, and specifically to the recommendation arising out of that research that a diversionary program be established for offenders whose crime is linked to gambling.

This research, titled *Nothing left to lose* (Law 2010), explored the issue of problem gambling and criminal behaviour in Tasmania.² There is a link between problem gambling and crime. In 1999, the Productivity Commission described the path of having a win, playing more regularly, losing more money, 'chasing' losses, and eventually committing a crime. The Commission concluded that 'once a problem gambler has committed a gambling related offence, they generally continue to do so until they are discovered' (Productivity Commission 1999, vol. 3, p. H.5). The Commission reviewed studies of the prevalence of crime among problem gamblers and concluded the proportion of problem gamblers offending to support their gambling ranged from 30-50% up to as high as 60-70% for some categories of problem gamblers (Productivity Commission 1999, vol. 3, p. H.11). Tasmanian research into the experiences of people on low incomes who have gambling problems uncovered stories of people stealing essentials such as nappies and baby formula because of a partner's gambling problem, of family members paying back stolen money so there were no legal proceedings and of shoplifting by eating food directly from the shelves in supermarkets because gambling left insufficient money to purchase food (Law 2005, pp. 47-8).

Anglicare's research looked at all cases held on the Tasmanian Supreme Court database for the period January 2004 to December 2009 where the offender had a gambling problem, and reviewed the comments on passing sentence for those cases where the gambling problem was clearly linked to the crime. For the purposes of the research, a 'gambling problem' was taken to exist where the judge had determined it to be so and made the gambling problem the subject of comments on passing sentence. Forty-one cases were identified where the offender had a gambling problem which was cited as the main reason, or in two cases, one of the reasons, for the crime being committed.

Among the issues raised by the research are the following points:

- In 21 cases, the offender had no prior convictions, and in all 21 cases involving first-time offenders, the crime was not violent. Prior to their conviction, the majority of these people were employed and often held positions of trust. Six of those imprisoned had dependent children, but apart from one mention of a child being placed into foster care, no reference was made by the judges to what might happen to dependents.
- Nineteen of the cases involved defendants who the judge accepted had a drug or alcohol problem (13 cases) or a mental illness (six cases). Drugs, alcohol and mental illness are all likely to impair the person's decision-making capabilities when gambling, as well as their decision-making at the time of committing a crime. Some forms of gambling, in particular gambling on poker machines, are designed to help people 'zone out' so that they can 'escape'.

² The full report, *Nothing left to lose*, is attached to this submission as Appendix 1.

- Only 14 people received counselling for problem gambling either before committing the crime or as a result of being arrested. In one case, the judge directed that problem gambling counselling was required as part of the sentence.

It is important to note that the research did not capture all gambling-related crimes. Gambling problems do not always come up in court, even when it is a major causal factor in the person's life. This research did not consider cases heard in the Magistrates Court, nor did it discuss the many crimes that remain undetected or unreported or that are covered up by relatives to protect families.

As part of *Nothing left to lose*, Anglicare recommended that there be a range of sentencing options for gambling-related crimes including a trial of a court-mandated diversion scheme. Such a scheme would give judges the option of diverting those eligible away from a prison sentence and into counselling for their gambling problem and community service for their crime. Anglicare reiterates this recommendation to this review.

2.3. People with a mental illness

Anglicare is supportive of the approach to offending by people with a mental illness evident in the pilot Magistrates Court Mental Health Diversion List, which allows for eligible adults to address their mental health or other disability issues while any legal proceedings are temporarily suspended and notes the findings of the 2009 evaluation of the List, which identified that the program had been 'largely successful' in achieving its objectives of offering a more therapeutic approach for mentally ill defendants, reducing recidivism and improving coordination between the criminal justice system and health service providers (Newitt & Stojcevski 2009, p. 6).

However, while the present discussion paper notes the higher rates of mental illness and psychological distress among the offending population, especially among those in prison and among female offenders (Department of Justice c. 2010, pp. 16, 42), it offers only a limited response to the needs of offenders with a mental illness. An expansion in the provision of mental health services, including services for people with substance use disorders, is identified as a possible strategy under Outcome 3 (offender rehabilitation and reintegration, and community safety), and the paper recognises that improvements in the treatment of mental health and substance abuse needs among offenders would be likely to result in reduced recidivism, but it goes on to comment that an 'issue/barrier' with this approach would be that '[a]ddressing these needs would require significant staffing resources', particularly in the area of pharmacotherapy (Department of Justice c. 2010, pp. 39, 42).

In Anglicare's view, significant resources are required in this area, but this is justified by the level of need.

Anglicare recommends the provision of an ongoing training program for all people employed within the corrections system who have contact with offenders. In the experience of Anglicare workers, people with serious mental illness sometimes 'slip through the gaps', which means that all corrections officers or workers have an important role to play in identifying the possible existence of a mental health condition and referring the person to appropriate specialist services. This role needs to be supported by appropriate training so that behaviours are appropriately identified. In the experience of Anglicare workers, without this training there is an ongoing risk that behaviour that, for example, is driven by psychosis is instead identified as anti-social – that is, that people are seen as 'bad rather than mad', This means they are denied the opportunity of appropriate specialist treatment. Offenders with a mental illness are highly vulnerable both because of their condition and because of the stigma attached to it and to their offending behaviour. It is vital that the criminal justice system responds sensitively and appropriately to this vulnerability.

However, enhancing awareness of mental health issues throughout corrective services is of little use if specialist services are stretched to capacity and unable to respond. The discussion paper notes in particular the limited

availability of appropriate support services for community-based offenders with mental health issues and the eligibility and resource constraints that act to exclude people from the support they need (Department of Justice 2010, p. 42). In Anglicare's view, the genuinely appalling over-representation of people with a mental illness among the offending population – an incidence rate of major mental illness of 10% compared to 2% in the general population is just one alarming statistic – justifies the investment of considerable resources in this area and warrants a more explicit focus within the corrections plan.

Anglicare notes that the National Justice Chief Executive Officers' Group (which includes representation from Tasmania's Department of Justice) and the Victorian Government Department of Justice are presently working on the development of a framework for best practice in the diversion and support of offenders with a mental illness. While the framework and its accompanying guidelines are still in draft form, they provide a guide to kind of approach associated with best practice in this area. The suggested approach includes providing

- a "single system" experience for people moving between mental health, criminal justice, and other support sectors';
- a strong emphasis on the protection of human and legal rights;
- extensive consumer and carer participation in the planning, development and evaluation of services at an individual, program and policy level;
- early and accurate identification, assessment and treatment of mental health problems that incorporates both psychosocial and criminogenic needs;
- clear and express protocols accommodating the different roles of mental health services focussing on health and wellbeing outcomes and justice services focussing on compliance, community safety and perhaps addressing criminogenic risk factors; and
- a recovery-oriented response to mental illness (National Justice Chief Executive Officers' Group & Victorian Department of Justice c. 2010, pp.8-13).

The Tasmanian Department of Justice's involvement in this project is a positive sign of commitment from within the Department to implementing a best practice framework within Tasmania. Anglicare urges the State Government to support this commitment by ensuring that it is underpinned by adequate resources.

3. CONCLUSION

Once again, Anglicare welcomes the opportunity to provide input into aspects of the development of a strategic plan for corrective services in Tasmania. In summary, our concerns are that diversionary programs for people with drug and alcohol issues, gambling problems or mental illnesses are made available; that these programs be backed by appropriate resources, including within the wider service system, so that people can receive all the support they need; and that resources are also directed into promoting and sustaining cultural change within the criminal justice system to ensure that programs are valued and supported.

4. REFERENCES

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Hinton, T 2008, *Just another manic Monday: the challenge of working with clients with alcohol and other drug issues in community service organisations*, Anglicare Tasmania, Hobart.

Law, M 2005, *House of Cards: problem gambling and low income earners in Tasmania*, Anglicare Tasmania, Hobart.

Law, M 2010, *Nothing left to lose*, Anglicare Tasmania, Hobart.

National Justice Chief Executive Officers' Group & Victorian Department of Justice c. 2010, *Diversion and support of offenders with a mental illness: a framework for best practice*, version 1.6, consultation draft circulated to stakeholders (including Anglicare), in possession of Anglicare Tasmania, Hobart.

Newitt, E & Stojcevski, V 2009, *Mental health diversion list: evaluation report*, Magistrates Court of Tasmania, Hobart.

Productivity Commission 1999, *Australia's gambling industries*, 3 vols., report no. 10, Ausinfo, Canberra.

Success Works 2008, *Tasmania's court mandated drug diversion program: evaluation report*, report to the Department of Justice, Hobart.

APPENDIX 1:

Attached: Copy of Law, M 2010, *Nothing left to lose*, Anglicare Tasmania, Hobart.