

# Consultation Paper

## **Considering a model for mandatory assessment and/or treatment for those at extreme and immediate risk, based on the Victorian Severe Substance *Dependency Treatment Act 2010***

**January 2018**



For Official Use Only - I1 - A1

## **South Australian Ice Action Plan**

The *Stop The Hurt South Australian Ice Action Plan* was launched on behalf of the Government by the Premier on 15 June 2017.

As a result of the *South Australian Ice Action Plan*, the Government is investing \$8 million over four years in targeted strategies to reduce supply, increase support to families, build capacity and increase treatment. This is in addition to the approximately \$5.7 million of SA Health's current annual budget which has been allocated for the provision of treatment services to people with methamphetamine use issues.

Initiatives focus on the key priority areas of reducing supply, increasing treatment and family support, building community education and capacity.

The *South Australian Ice Action Plan* included the action, “Considering a model for mandatory assessment and/or treatment for those at extreme and immediate risk, based on the *Victorian Severe Substance Dependency Treatment Act 2010*.”

### **Consultation**

SA Health is inviting feedback on the feasibility, costs and impacts of trialling a model for mandatory assessment and/or treatment for those at extreme and immediate risk, based on the *Victorian Severe Substance Dependency Treatment Act 2010* (the Victorian Act). We are engaging in targeted consultation with non-government alcohol and other drug service treatment providers and peak organisations, Aboriginal health and community organisations, legal and judicial agencies and officers, and alcohol and other drug addiction and other related health workers and experts.

Significant social costs are associated with alcohol and other drug problems. These include health, criminal justice, productivity and other social or family costs. The proposed trial of court-ordered medically-assisted withdrawal and assessment would test the efficacy of an approach which is potentially more compassionate and effective for the very small group of people who cause serious continuing harm to themselves and put their lives at risk through their drug or alcohol dependence.

### **The proposed trial**

In considering a trial, it is recognised that involuntary detention and treatment engages significant human rights such as the right to liberty and security of person and the right not to be subjected to medical treatment without full, free and informed consent. While the Ministerial Crystal Methamphetamine Taskforce (the Taskforce) heard that the evidence does not support mandatory treatment, it was clear that the community support coercive measures that motivate people to seek treatment as an alternative to the criminal justice system.

We propose that the trial's objectives should be the same as those set out in Section 3 of the Victorian Act:

1. to provide for the detention and treatment of persons with a severe substance dependence where this is necessary as a matter of urgency to save the person's life or prevent serious damage to the person's health; and
2. to enhance the capacity of those persons to make decisions about their substance use and personal health, welfare and safety.

The proposed trial's objectives are consistent with the principle of personal autonomy. The Victorian Act – upon which the trial is being modelled – requires that the Act that must be interpreted, and every function conferred or imposed by the Act must be performed or exercised, so that:

- a) detention and treatment is a consideration of last resort; and
- b) any limitations on the human rights and any interference with the dignity and self-respect of a person who is the subject of any actions authorised under this Act are kept to the minimum necessary to achieve the objectives specified [above].

The proposed trial of court-mandated assessment orders will require enabling legislation to be enacted to ensure any limitations on rights are reasonable and are the minimum necessary in the circumstances. Any legislation would be required to include a comprehensive and integrated range of safeguards to achieve this end, and have a sunset clause so that the law allowing mandatory detention for the purposes of the trial would cease to have effect at the conclusion of the trial.

### **The Victorian Severe Substance Dependency Treatment Act 2010**

The Victorian Act came into effect in Victoria on 1 March 2011. It repealed and replaced the Victorian *Alcoholics and Drug-dependent Persons Act 1968*.

The purpose of the Victorian Act is to give the person access to medically assisted withdrawal, time to recover, capacity to make decisions about their substance use and the opportunity to engage in voluntary treatment.

### **Features of the Victorian Legislation**

The Victorian Severe Substance Dependency Treatment Act 2010:

- provides for a brief period of detention and treatment of people with severe substance dependence in a treatment centre where this is necessary as a matter of urgency to save the person's life or prevent serious damage to their health.
- only applies to people with the most severe substance dependence who are incapable of making decisions about their substance use and personal health, welfare and safety due primarily to their substance dependence.

- provides that people with severe substance dependence may be forced to undergo medical examination for the purpose of determining whether they are suitable for detention and treatment.
- has the purpose of giving the persons to whom it applies access to medically-assisted withdrawal, time to recover capacity to make decisions about their substance use, and the opportunity to engage in voluntary treatment.
- provides that detention and treatment must always be an option of last resort, and that the period of detention and treatment is limited to a maximum of 14 days.

### **Who constitutes ‘a person at extreme or immediate risk’?**

The Victorian Act sets out very strict criteria under which a detention and treatment order may be made with respect to a person at extreme or immediate risk. These are that:

#### **1. Severe substance dependence**

The person has a “severe substance dependence,” as defined by law. Under the Victorian Act, a person is considered to have a *severe substance dependence* if—

- the person has a tolerance to a substance; and
- the person shows withdrawal symptoms when the person stops using, or reduces the level of use of, the substance; and
- the person is incapable of making decisions about his or her substance use and personal health, welfare and safety due primarily to the person’s dependence on the substance; and

#### **2. Immediate treatment necessary**

Because of the person’s severe substance dependence, immediate treatment is necessary as a matter of urgency to save the person’s life or prevent serious damage to the person’s health; and

#### **3. Treatment can only be provided through admission and treatment**

The treatment can only be provided to the person through the admission and treatment of the person in a treatment centre; and

#### **4. No less restrictive means reasonably available**

There is no less restrictive means reasonably available to ensure the person receives the treatment.

A summary of the Victorian *Severe Substance Dependency Treatment Act 2010* is attached ([Appendix 1](#)).

The attached flow-chart ([Appendix 2](#)) summarises the procedure for making an application for a detention and treatment order under the Victorian legislation.

**Consultation Questions:**

**Do you support the proposed trial's objectives, as set out in this paper? Should amendments be made?**

**Should the current Victorian Act's definition 'of a person at extreme or immediate risk' (sections 5 and 8) apply?**

**Are the four criteria under which a detention and treatment order may be made under the Victorian Act:**

- **sufficient to capture those who might be 'at extreme or immediate risk'?**
- **clear enough to ensure that any limitations on peoples' rights are reasonable and are the minimum necessary in the circumstances?**

**Victorian Act Reviewed**

The Victorian Act required that it be reviewed by 1 March 2015 to determine whether its objectives were still being achieved and were still appropriate, and whether the Act was effective or required amendment. The Victorian Government's 2015 Report and Response is attached in Appendix 3.

The Victorian Act was reviewed in 2015 in accordance with Section 41 and a final report was submitted to the Victorian Government. The review found that in the period between 1 March 2011, when the service commenced, and 2 February 2015, when client records were reviewed, a small number of people with severe substance dependence were detained and treated (28 admissions over the period related to 23 clients)<sup>1</sup>.

The outcomes of 25 treatment cases at six months post-discharge were available to the review and reported as follows [three cases had not yet reached 6 months post-discharge follow-up]<sup>2</sup>:

- five clients abstinent (20%)
- two clients reduced substance use (8%)
- 12 clients relapsed (48%)
- three clients deceased (12%)
- three clients lost to follow-up and presumed relapsed (12%).

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<sup>1</sup> Final Report of the Review of the Victorian SSDTA 2010, Vol 1, 2015, p 10

<sup>2</sup> Final Report of the Review of the Victorian SSDTA 2010, Vol 1, 2015, p 18

## Requirements for a trial in South Australia

### Legal requirements

Were a trial to proceed, enabling legislation would be required, which would allow a trial to be conducted by SA Health for a defined period. Such legislation could include:

- Provisions to protect and safeguard the rights of persons subject to the trial or court-mandated assessment orders.
- Conditions to ensure that mandatory treatment can only be ordered following a hearing and decision of the Court.
- An examination and recommendation to the Court to be conducted by an accredited medical practitioner.
- A defined period(s) of short term care (up to 14 days).
- Provisions that an order for mandatory treatment can be reviewed by the court.
- A commencement date to be prescribed.
- A sunset clause to be prescribed.
- A requirement that a report to be provided to Parliament on the outcome of the trial by a specified date (e.g. by 31 December 2021) to permit adequate time to collect data and review the outcome of the trial.

### Court processes

In addition to this, it would be necessary to work with the Courts Administration Authority to put in place processes for the application for, and the issuing and oversight of Court orders in the context of the Trial.

#### **Consultation Questions:**

**Are there other legislative and legal requirements or protections which might need to be put in place to ensure adequate safeguards of patients' rights and interests?**

**Are the processes for legal review and oversight appropriate?**

### Treatment principles and requirements

The following principles apply to the provision of treatment to persons detained under the Victorian Act:

- a) voluntary treatment must be promoted in preference to detention and treatment wherever possible;
- b) the person must be given the best possible treatment based on best evidence;
- c) treatment must be provided in the least restrictive environment and least intrusive manner that will enable treatment to be effectively given and identified risks to be effectively managed;
- d) if the person has a coexisting medical condition or mental disorder, the person must be appropriately assessed and referred to relevant welfare, health, mental health or disability services, and treatment must be coordinated with services provided by those other service providers;
- e) the person must be involved in decisions about his or her treatment and discharge planning and must be given sufficient information and supported where necessary, to enable this to occur;
- f) the age-related, gender-related, religious, cultural, language, and other special needs of the person must be taken into consideration;
- g) the role of families and other persons who are significant in the life of the person must be considered and respected.

In addition, the following requirements may also need to be considered prior to the establishment of a trial:

- Developing a Model of Care for Involuntary Clients under the trial, whereby clients detained and treated in the course of the trial will be for by a senior clinician and/or an addiction medicine consultant, working in a team with a clinical nurse consultant as part of a treating team in an inpatient medical unit at DASSA Withdrawal Services, Glenside.
- Training staff (including medical, nursing and other professional staff) who may be involved with the trial.
- Developing a referral system involving health and court systems.

Even though it is estimated – based on the experience in Victoria between 2011 and 2015 and taking into account South Australia’s population relative to that of Victoria - that only a small number of people would be likely be engaged in the trial, it is recognised that this will require a number of treatment beds to be made available for use by those involved in the trial. This will entail either diverting beds which would otherwise be available for voluntary treatment of clients or requiring an investment in new withdrawal management beds for use in the trial.

While the mandatory treatment model delivered in accordance with the Victorian Act is state-wide in scope and operation, the two declared treatment centres are located in metropolitan Melbourne. The *Review of the Severe Substance Dependence Treatment Act* found that “the lack of a more distributed service system has been identified as a problem for people in rural areas, both in terms of access to family and local service providers whilst they undergo treatment and the risks of transporting sick people long distances to the treatment centre.”<sup>3</sup>

Given the geographic and demographic features of South Australia, the proposed trial will need to account for the feasibility and costs of transporting severely dependent people to Adelaide for court-ordered assessment and treatment.

**Consultation Questions:**

- **Does the model provide for the best possible treatment in the least restrictive environment and in the least intrusive manner possible?**
- **What elements should be included in any Model of Care for Involuntary Clients under the trial?**
- **What other evidence should be taken into consideration?**
- **What practical limitations may need to be considered for the operation of a trial if it were to proceed? What is the feasibility and likely cost impact of transporting severely dependent people to Adelaide for court-ordered assessment and treatment?**

**Administrative and other requirements**

If there is support for a trial, SA Health will appoint a small team to coordinate all aspects of the trial in accordance with the enabling legislation and within the required timeframes.

Capital and Infrastructure costs will need to be addressed in advance of a trial to provide secure beds for those ordered to undergo medically-assisted withdrawal and assessment.

SA Health will also establish a Clinical Reference and Oversight Group to provide oversight and advice on the conduct of the trial in accordance with the legislation, the recording of information and maintenance of records, and the collection of data for the purposes of review and evaluation.

SA Health proposes to commission an independent research agency to review and evaluate the trial and to prepare a report for the consideration of the Minister and Parliament as is likely to be required in the enabling legislation.

**Consultation Questions:**

**What additional administrative measures and arrangements might need to be considered?**

**What components of the trial will need to be essential parts of the evaluation at its conclusion?**

<sup>3</sup> Final Report of the Review of the Victorian SSDTA 2010, Vol 1, 2015, p 45.

## **Feedback**

SA Health is inviting your feedback on the feasibility, costs and impacts of trialling a model for mandatory assessment and/or treatment for those at extreme and immediate risk, based on the Victorian *Severe Substance Dependency Treatment Act 2010* (the Victorian Act). It is engaging in targeted consultation with a range of non-government alcohol and other drug service treatment providers and peak organisations, Aboriginal health and community organisations, legal and judicial agencies and officers, and alcohol and other drug addiction and other related health workers and experts.

Your feedback and submissions should be forwarded by mail to:

SA Health Mandatory Drug Treatment Consultation  
C/- Drug and Alcohol Services South Australia (DASSA)  
75 Magill Road  
Stepney SA 5069

or by email to: [dassahealthpolicy@sa.gov.au](mailto:dassahealthpolicy@sa.gov.au)

**The closing date for feedback and submissions is 5:00 pm on Friday, 9 February 2018.**

### **Confidentiality of submissions and disclaimer**

Submissions may be quoted or published and available online for the purposes of evaluating the proposal. If you do not wish your submission to be quoted or published, please make this clear in your submission. However, please note that confidentiality of submissions cannot be guaranteed. This is because submissions may be accessed by the public under the *Freedom of Information Act 1991*.

This discussion paper has been prepared for the purposes of informing decision-making for legislative change. Whilst every effort has been made to ensure the accuracy of the information contained in this discussion paper, no responsibility is taken for reliance on any aspect of it and it should not be used as a substitute for legal or other professional advice. Any action taken in anticipation of the outcomes of this consultation paper is solely at the risk of persons taking such action.

## **Appendices**

- Appendix 1      Summary of the Victorian *Severe Substance Dependency Treatment Act 2010* (Victorian Government Department of Health)
- Appendix 2      Flow Chart: Summary of the procedure for making an application for a detention and treatment order under the Victorian *Severe Substance Dependency Treatment Act 2010* (Victorian Government Department of Health)
- Appendix 3      Review of the Severe Substance Dependence Treatment Act 2010, Victorian Government Report and Response, 2015
- Appendix 4      Evidence on Mandated Treatment

# Severe Substance Dependence Treatment Act 2010 — A summary

## Severe Substance Dependence Treatment Act 2010

### Key message

The Severe Substance Dependence Treatment Act provides for a brief period of detention and treatment of people with severe substance dependence in a treatment centre where this is necessary as a matter of urgency to save the person's life or prevent serious damage to their health.

It only applies to people with the most severe substance dependence who are incapable of making decisions about their substance use and personal health, welfare and safety due primarily to their substance dependence.

The purpose is to give the person access to medically-assisted withdrawal, time to recover capacity to make decisions about their substance use, and the opportunity to engage in voluntary treatment.

Detention and treatment must always be an option of last resort.

Detention and treatment is limited to a maximum of 14 days.

### Introduction

The Severe Substance Dependence Treatment Act (the Act) provides for a brief period of detention and compulsory treatment (up to 14 days) of people with severe substance dependence in a treatment centre.

The Act is intended for those people with the most severe substance dependence who urgently require treatment to save their life or prevent serious damage to their health. Detention must be the only means by which treatment can be provided and there must be no less restrictive means reasonably available to ensure the treatment.

In addition, the person must be incapable of making decisions about their substance use and personal health, welfare and safety due primarily to their dependence on the substance.

The Act has been developed as an option of last resort for a very small group of people with severe substance dependence.

The Act provides a critical intervention that will give the person access to medically-assisted withdrawal, time to recover capacity to make decisions about their substance use, and the opportunity to engage in voluntary treatment.

### Summary of the Act

The Magistrates' Court makes detention and treatment orders. Any person over the age of eighteen years can apply to the court for a person to be placed on an order (except the medical practitioner making the recommendation for the order).

### How is an application made?

The first step is to complete an *Application for a Detention and Treatment Order* form.

An application to the court must be accompanied by a *Recommendation for a detention and treatment order* form completed by a 'prescribed registered medical practitioner'. The purpose of the recommendation is to provide clinical evidence to the court that all the criteria for detention and treatment apply to the person.

Both forms are available at <[www.health.vic.gov.au/ssdta](http://www.health.vic.gov.au/ssdta)>.

## Background

The Severe Substance Dependence Treatment Act 2010 came into effect in Victoria on 1 March 2011.

It repealed and replaced the Alcoholics and Drug-dependent Persons Act 1968.

## What are the criteria for making a detention and treatment order?

The criteria for making an order are:

1. The person has a 'severe substance dependence'. A person is considered to have a *severe substance dependence* if—
  - o the person has a tolerance to a substance; and
  - o the person shows withdrawal symptoms when the person stops using, or reduces the level of use of, the substance; and
  - o the person is incapable of making decisions about his or her substance use and personal health, welfare and safety due primarily to the person's dependence on the substance; and
2. Because of the person's severe substance dependence, immediate treatment is necessary as a matter of urgency to save the person's life or prevent serious damage to the person's health; and
3. The treatment can only be provided to the person through the admission and treatment of the person in a treatment centre; and
4. There is no less restrictive means reasonably available to ensure the person receives the treatment.

## Who is a prescribed registered medical practitioner?

The Severe Substance Dependence Treatment Regulations 2011 prescribe the following groups to be prescribed registered medical practitioners:

- Fellows or affiliates of the Royal Australian and New Zealand College of Psychiatrists (psychiatrists)
- Fellows of the Chapter of Addiction Medicine (addiction medicine specialists)
- Medical practitioners engaged by Victoria Police to provide medical care to persons in police custody (custodial medical officers).

## What is the role of the prescribed registered medical practitioner?

The role of the prescribed registered medical practitioner is to provide a clinical opinion as to whether all the criteria for detention and treatment apply to the person. The practitioner must personally examine the person to form this opinion.

Before the examination commences, the practitioner should explain the purpose of the examination to the person and answer any questions.

If following the examination the practitioner is satisfied that all the criteria apply, they must then consult with the senior clinician of the treatment centre before making a recommendation. The senior clinician is an addiction medicine specialist.

If following the consultation with the senior clinician the practitioner is satisfied that all the criteria apply to the person, they may complete a recommendation.

## What is the process for making a detention and treatment order?

Once the application and recommendation have been completed, these must be lodged at the Magistrates' Court closest to where the person lives.

The applicant must then provide a copy of the application (and all supporting documents) to the person named in the application within 24 hours. The applicant must also provide copies of the application to the manager of the treatment centre where it is proposed to detain the person and the person's guardian (if they have one).

The court must list the application for hearing within 72 hours of the application being lodged.

The person has the right to attend the court and have legal representation.

At the hearing, the applicant must satisfy the court that each of the criteria for detention and treatment apply to the person. The Magistrate will decide the application based on the available evidence.

If the court makes a detention and treatment order, the applicant must make the necessary arrangements (in consultation with the treatment centre) for the person to be taken and admitted to the treatment centre.

## What happens when the person is admitted to the treatment centre?

When the person arrives at the treatment centre, they will be admitted and given treatment for their severe alcohol or drug dependence.

Within the first 24 hours the senior clinician of the treatment centre must examine the person to decide whether all the criteria for detention and treatment continue to apply. If the senior clinician believes that all of the criteria apply to the person, they must confirm the order.

If the senior clinician finds that one or more of the criteria do not apply, they must discharge the person from the order.

## About information circulars

The information provided in this circular is intended as general information about the Severe Substance Dependence Treatment Act and Regulations and not as legal advice.

If individuals or service providers have queries about their obligations under the Act they should obtain independent legal advice.

## Further information

For further information about the Severe Substance Dependence Treatment Act, visit [www.health.vic.gov.au/ssdta](http://www.health.vic.gov.au/ssdta).

## Acknowledgements

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If you would like to receive this publication in an accessible format, email:  
[ssdta@health.vic.gov.au](mailto:ssdta@health.vic.gov.au)

Guideline issued: March 2011

This update: June 2011

Review date: June 2012

## Safeguards

The Act includes a number of important safeguards when the person is admitted to the treatment centre.

The person must be given and have explained a statement of their rights and entitlements under the Act, including the right to seek legal advice and obtain a second medical opinion. A copy of the statement of rights can be downloaded and printed from [www.health.vic.gov.au/ssdta](http://www.health.vic.gov.au/ssdta).

The person will be asked to nominate someone of their choice to protect their interests while they are in the treatment centre and to be consulted about treatment and discharge options.

Within the first 24 hours, the nominated person, the person's guardian (if they have one) and the Public Advocate will be told that the person has been admitted to the treatment centre. The Public Advocate must visit the person as soon as practicable to provide advice and assistance.

If at any time the criteria no longer apply to the person, the senior clinician must discharge the person from the order.

## Treatment

The Act provides for compulsory treatment of the person's substance dependence. Compulsory treatment is limited to anything done in the course of the exercise of professional skills to provide medically assisted withdrawal from a severe substance dependence or to lessen the ill effects, or the pain and suffering, of the withdrawal.

The senior clinician will develop a treatment plan in consultation with the person, their nominated person and the guardian (if they have one).

The person has the right to obtain a second medical opinion at any time about the treatment provided and whether the criteria still apply.

## Discharge from the treatment centre

The detention and treatment order ends when it expires after 14 days or if it is discharged by the senior clinician. The person also has the right to apply at any time to the Magistrates' Court for the order to be revoked.

The senior clinician will prepare a discharge plan in consultation with the person.

Following discharge from the detention and treatment order the person will be encouraged to continue treatment in a voluntary capacity. The person will be offered ongoing case coordination support for up to six months following discharge.

## Summary of procedure for making an application for a detention and treatment order under the Severe Substance Dependence Treatment Act 2010

### MAKING AN APPLICATION

Before you do anything, get expert advice from an alcohol and other drugs (AOD) service or call DirectLine on 1800 888 236 for information, advice or referral. You should do everything you can to help the person get voluntary treatment for their alcohol or drug problems before you apply for a detention and treatment order.

**Do you have enough evidence to believe the criteria for detention & treatment apply to the person?**

Yes

#### STEP 1:

##### OBTAINING A CERTIFICATE FROM A DOCTOR

Request a prescribed registered medical practitioner to examine the person. The process is explained at: [www.health.vic.gov.au/ssdta/application/step1.htm](http://www.health.vic.gov.au/ssdta/application/step1.htm)

**Is the prescribed registered medical practitioner able to examine the person?**

Yes

Prescribed registered medical practitioner examines the person.

**Does the prescribed registered medical practitioner believe the criteria for detention & treatment apply to the person?**

Yes

Prescribed registered medical practitioner completes a medical certificate known as a **Recommendation for a detention and treatment order** (a Recommendation).

#### STEP 2:

##### MAKING THE APPLICATION TO THE MAGISTRATES' COURT

Complete an **Application for a detention and treatment order** form. See the procedure at: [www.health.vic.gov.au/ssdta/application/step2.htm](http://www.health.vic.gov.au/ssdta/application/step2.htm)

Take 5 copies of the **Application** and the **Recommendation** to the Magistrates' Court closest to where the person lives. To find the closest Magistrates' Court visit: [www.magistratescourt.vic.gov.au](http://www.magistratescourt.vic.gov.au)

The court registrar will tell you the date and time the application will be heard by a magistrate. You must write the date and time on all 5 copies of the application. The registrar will then date and stamp each copy.

#### STEP 3:

##### GIVING COPIES OF THE APPLICATION TO OTHER PEOPLE

###### **Copy 1:**

The registrar at the court will keep one copy for the magistrate.

###### **Copy 2:**

Keep one copy for you.

###### **Copy 3:**

You must take 'all reasonable steps' to give a copy to the person (named on the application) within 24 hours. You must give it to them personally. You cannot send it in the mail or fax a copy to the person. At the hearing, the magistrate will ask you to explain how and when you gave a copy of the application to the person.

###### **Copy 4:**

You must take 'all reasonable steps' to give a copy to the manager of the treatment centre (where the person will be detained and treated) within 24 hrs.

###### **Copy 5:**

You must take 'all reasonable steps' to give a copy to the person's guardian (if they have one) within 24 hrs. At the hearing, the magistrate will ask you to explain how and when you gave a copy of the application to the guardian (if the person has one).

Contact the Victorian Civil and Administrative Tribunal (VCAT) to find out if the person has a guardian. The process to contact VCAT is explained at: [www.health.vic.gov.au/ssdta/application/step3.htm](http://www.health.vic.gov.au/ssdta/application/step3.htm)

The information provided in this flowchart is intended as general information about the Severe Substance Dependence Treatment Act 2010 and not as legal advice. If individuals or service providers have queries about their obligations under the Act they should obtain independent legal advice.

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No  
Encourage the person to seek treatment from an AOD service on a voluntary basis; or  
Prescribed registered medical practitioner provides services and/or refers the person to other health services.

### APPLY FOR SPECIAL WARRANT

You can apply for a special warrant to the Magistrates' Court if you have a reasonable belief that a person may be in need of a detention and treatment order and the person is unable to be examined by a medical practitioner to make a recommendation.

**Is the court satisfied that it is reasonably likely that the criteria apply to the person?**

Yes  
Court issues a special warrant authorising a member of the police accompanied by a prescribed registered medical practitioner to visit and examine the person and use force if reasonably necessary to enable the doctor to examine the person.

No

#### STEP 4:

##### BEFORE THE HEARING

The magistrate will need enough information to make a decision about the application. Think about what you want to say. You may take notes to help you remember all the things you want to say. See more information at: [www.health.vic.gov.au/ssdta/application/step4.htm](http://www.health.vic.gov.au/ssdta/application/step4.htm)

#### STEP 5:

##### THE HEARING

The court must hear the application within 72 hours. You must go to the hearing to support your application. See more information at: [www.health.vic.gov.au/ssdta/application/step5.htm](http://www.health.vic.gov.au/ssdta/application/step5.htm)

**Is the court satisfied that the criteria for detention & treatment apply to the person?**

No

### COURT MAKES A DETENTION & TREATMENT ORDER

#### STEP 6:

##### ARRANGING TRANSPORT TO THE TREATMENT CENTRE

You must arrange transport to the treatment centre. The preferred method of transport is ambulance. The process is explained at: [www.health.vic.gov.au/ssdta/application/step6.htm](http://www.health.vic.gov.au/ssdta/application/step6.htm)  
You must contact the manager of the centre to discuss the arrangements.

#### STEP 7:

##### ADMISSION TO THE TREATMENT CENTRE

Person is admitted to the treatment centre and given treatment. See: [www.health.vic.gov.au/ssdta/application/step7.htm](http://www.health.vic.gov.au/ssdta/application/step7.htm)

# *Review of the Severe Substance Dependence Treatment Act 2010*

Victorian Government Report and Response  
2015

# *Review of the Severe Substance Dependence Treatment Act 2010*

Victorian Government Report and Response  
2015

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# Background

## **The Severe Substance Dependence Treatment Act 2010**

Legislation providing for the involuntary detention of persons with substance dependence for treatment has existed in Victoria for more than a century in the form of a number of 'Inebriates Acts' and, more recently, the *Alcoholics and Drug-dependent Persons Act 1968* (Vic).

The current legislative scheme, the *Severe Substance Dependence Treatment Act 2010* (the Act), has the following objectives:

- to provide for the detention and treatment of persons with severe substance dependence where this is necessary as a matter of urgency to save the person's life or to prevent serious damage to the person's health; and
- to enhance the capacity of those persons to make decisions about their substance use and personal health, welfare and safety.

Treatment under the Act can only be provided through an admission to a gazetted treatment centre at the direction of a Magistrates' Court where there is no less restrictive means of support available. This, and other procedural matters set out in the Act, seek to ensure that the scheme may only be applied where:

- detention and treatment is a consideration of last resort; and
- any limitations on the human rights and any interference with the dignity and self-respect of a person who is the subject of any actions authorised under this Act are kept to the minimum necessary to achieve the objectives specified.

The Bill received Royal Assent on 10 August 2010 and the new Act came into effect on 1 March 2011.

In March 2011, after a competitive procurement process, St Vincent's Health began operating the treatment service under the Act through its existing 12 bed residential alcohol and drug withdrawal unit, DePaul House, and St Vincent's Hospital, located in Fitzroy.

## **Basis for the review**

The Act provides a mechanism for detaining people and subjecting them to drug treatment on an involuntary basis. In doing so, it impinges on a number of human rights protected by the Charter of Human Rights, namely the right to liberty, freedom of movement, security of person and the right not to be subjected to medical treatment without full, free and informed consent.

A set of safeguards are contained in the Act, including procedural requirements, which are designed to ensure its use is limited to urgent and serious matters given it impinges on these rights.

At the time the Severe Substance Dependence Treatment Bill was before Parliament, the limitations to human rights protected by the Charter issue were raised and concerns expressed that over time, 'net widening' may occur and the Act applied more broadly than intended. This was considered to be a significant risk by some Members of Parliament.

In response, the Bill was amended to include section 41, requiring:

- a review of the Act to be undertaken by 1 March 2015, to determine whether the objectives of the Act are being achieved and are still appropriate, and whether the Act is effective or needs to be amended; and
- a report of the review, including the Government's response to the review, to be made available to the public by 1 June 2015.

This document provides both a report of the review and the Government's response to it.

# Report of the review

## Methodology

In December 2014, DLA Piper was appointed via a competitive process to conduct the review of the Act. A team of staff (the reviewers) undertook a range of activities to inform the review process, including literature review, detailed analysis of activity under the Act, comparison of the Act with other legislation, and a significant program of consultation.

Stakeholder input was a critical part of the review, and the reviewers received contributions from 68 organisations and individuals, including five consumers and eight family members of a person with a substance use issue.

Representatives from Aboriginal services, addiction medicine specialists, alcohol and drug treatment services, mental health, legal and court services, ambulance and health service providers, local government, the Office of the Public Advocate, police, child protection and nursing services were also consulted. A full list of contributors is provided at Attachment 1.

This input was provided through a range of mechanisms including interviews, workshops, written submissions and consumer and family forums.

## Operation of the Act to date

The review found that in the period 1 March 2011 to 2 February 2015, the Act has, consistent with its intended objectives:

- provided for the detention and treatment of a small number of people with severe substance dependence (28 admissions over the period related to 23 clients); and
- improved the capacity of most clients detained under the Act to make decisions about their substance use, health, welfare and safety.

The outcomes of 25 treatment cases at six months post-discharge were available and reported as follows (three cases had not yet reached 6 months post-discharge follow-up):

- five clients abstinent (20%)
- two clients reduced substance use (8%)
- 12 clients relapsed (48%)
- Three clients deceased (12%)
- Three clients lost to follow-up and presumed relapsed (12%)

The review found that the combined abstinence/reduced use rate of almost 30% was an 'encouraging' rate for such a complex group of substance dependent clients.

## Stakeholder perspectives

Some of the key issues raised include:

- Limited knowledge of the Act and how and when it should be used.
- Concerns that this is a complex client group that requires long term intensive supports and that people being discharged may not have these, which led some people to suggest the period a person could be detained should be extended.
- Processes for seeking orders are complex.
- Lack of clarity around the services provided under the Act and level of activity over time.

The review process highlighted that views about the Act, its appropriateness and its operation varied between different stakeholders.

Across the gamut of stakeholders, for example, views ranged from some consumers advocating that there should not be any such involuntary detention for the purposes of treatment through to drug treatment clinicians and other treatment providers advocating for a longer period of detention and more applications under the Act.

There was also divergence of views within some groups of stakeholders. For example some consumers and family members expressed support for the Act while others strongly objected to involuntary detention and treatment.

While the review report notes points of general consensus, a range of the findings and suggestions put through the review are not based on consensus amongst stakeholders but rather highlight the views of particular groups, which sometimes varied based on the nature of their engagement with the scheme's operation.

## Opportunities for improvement

The review found that there were a range of areas where operation of the legislative scheme could be enhanced within its current scope of application. These included:

- Enhancing awareness of the Act and its operation through education for stakeholders, to expand its use where needed.
- Improving post-withdrawal care pathways for people who are being discharged following a period of detention, so they receive the ongoing rehabilitation and care required, including care coordination, access to multidisciplinary services and active post-discharge support.
- Simplifying administrative processes throughout the scheme. While it was acknowledged that the procedural requirements sought to minimise limitations on a person's human rights, some stakeholders strongly supported streamlining these requirements to ensure prompt intervention when required.
- Establishing more robust and transparent performance arrangements for the designated treatment services.
- Monitoring (and as necessary responding to) demand, with the suggestion that a minimum data set be collected and reported on.

While the primary purpose of this review was to determine whether the Act was meeting its intent and whether 'net widening' had occurred, a range of opportunities for improving the overall administration of the scheme or enhancing longer term outcomes for people with severe substance abuse were also identified, which if adopted, would result in more people being detained for treatment, people being detained for longer periods or the nature of their detention changing.

Suggestions included:

- Broadening the objectives of the Act, which are currently limited to short term detention for medically-assisted withdrawal, to support longer term care and recovery of these clients beyond the period of detention.
- Extending the period of time a person can be detained, to provide additional time in which to stabilise the client's condition and establish and implement a comprehensive treatment plan.
- Amending procedural arrangements associated with seeking an order to admit someone under the Act simpler.
- Considering changes to legislative arrangements to make the scheme more like and/or integrated with the Mental Health Act 2014, although there was a diversity of views regarding this.

- Developing secure facilities for better management of the small number of clients at high risk of absconding.

It is important to note that while views were put by some stakeholders, others (particularly some consumers) opposed any changes that would broaden the reach of involuntary treatment.

## Government Response

The Government thanks the many individuals and organisations who contributed to the review of the Act.

Involuntary detention for purposes of treatment is a complex matter, which requires balancing the risks to the individual against their human rights. The review of the Act reflects this complexity and the differing views of stakeholders around where the appropriate balance lies.

The report itself provides a comprehensive overview of the Act's operation, how it compares to and/or interfaces with other legislative schemes, and identifies a wide range of potential opportunities to enhance its operations.

The Government accepts the review's findings that the Act has met its intended objectives, and that the comprehensive and integrated safeguards in the Act have ensured that initial concerns regarding the potential for net-widening have not been borne out in the early years of implementation.

The Government acknowledges the Review's finding that the Act is effective in so far as improvement has been reported for around one third of clients, six months after discharge. Given the nature of the client group and their complexity, such improvements are encouraging.

The Government is strongly committed to the principles of human rights, and to safeguarding the health and welfare of individuals severely affected by their alcohol and other drug use. The Government notes the review's finding that the vast majority of stakeholders, whilst recognising the infringement on human rights associated with involuntary detention and treatment, believe that the Act remains appropriate as a last resort for a small group of people. To date, the people detained under the Act have reflected the targeted client group of highly complex substance dependent people at serious risk of death or harm.

An analysis of two other legislative schemes, the Victorian *Mental Health Act 2014* and the NSW *Drug and Alcohol Act 2007*, was undertaken by the review. The Government acknowledges the range of views in regards to features of these Acts however notes that the purpose of these Acts and the context within which they operate vary considerably. In the Victorian context, it is considered appropriate to maintain the existing balance between the *Mental Health Act 2014* and the *Severe Substance Dependence Treatment Act 2010*.

It has been established that the current procedural arrangements for applications under the Act are onerous and, in some cases, may create barriers to access. The Government notes that the fundamental purpose of these procedural requirements is to provide checks and balances where the rights of people subject to the Act are impinged upon.

In some instances stakeholders have suggested that legislative reform occur to expand the Act's reach or streamline procedural arrangements however the government does not intend to amend or extend the reach of the scheme at this time as it believes there are a range of non-legislative approaches that can enhance the scheme's operation without compromising the high standard in place that protects an individual's human rights, except in extreme circumstances.

The Government will progress work on administrative and policy responses to the identified areas where there are opportunities to improve the operation of the Act. This will include immediate action to:

- Strengthen client pathways to community based alcohol and drug treatment and support services following discharge from involuntary treatment under the Act, in order to further improve outcomes for clients. For example, recent reforms to the non-residential adult alcohol and drug service system provides for a new dedicated treatment function known as Care and Recovery Coordination which delivers intensive alcohol and drug treatment and coordinated care to the most complex clients. These new service arrangements prioritise clients at the greatest risk and engage closely with other service providers to meet the range of needs with which clients present and further work will occur with the sector to ensure that these and other supports are effectively used to support clients who are discharged.
- Enhance communication and education approaches, particularly to clinicians and service providers, with a view to supporting timely and appropriate applications for people who may require treatment under the Act. The Department of Health and Human Services in partnership with key stakeholders will develop and disseminate information materials for a range of audiences to describe the Act, appropriate application, procedural requirements and supports available to the diverse stakeholder groups identified in the review.
- Improve monitoring and accountability mechanisms in relation to the operation of the Act, and of the service provided to people detained under its provisions. This will involve establishment of a service level agreement with the declared treatment centre which documents data collection and reporting requirements, thereby strengthening the monitoring and accountability mechanisms that contribute to the existing safeguards within the Act.

These activities will commence in 2015, and will be informed by input from a range of stakeholders who participated in the review. Given the nature of the scheme and its interface with the courts and the health system, close ongoing work will be required between those sectors to explore opportunities for enhancement.

The Government acknowledges the range of other suggestions made through the review of the Act, and will explore where there is scope to address some of the underlying issues within the existing legislative and service delivery settings.

This Act provides a critical extension to the voluntary alcohol and drug treatment system in Victoria by ensuring involuntary detention and treatment is available to the community's most vulnerable substance dependent people.

This Government remains committed to supporting and enhancing the Act's operation, and will work with stakeholders to enhance its operation and associated monitoring and accountability mechanisms.

# Attachment 1

## **CONSUMER FORUM**

5 service user participants

## **FAMILY MEMBER FORUM**

8 family member participants

## **EXPERT REFERENCE GROUP**

Ms Judith Abbott, Director Drugs, Primary Care and Community Programs, Department of Health and Human Services

Ms Leanne Beagley, Director, Mental Health, Wellbeing and Ageing, Department of Health and Human Services

Ms Pauline Ireland, Director Health Review and Regulation, Department of Health and Human Services

Ms Kathryn Johnston, Director of Legal Services - Health, Department of Health and Human Services

Mr Peter Lamb, Director, Courts Policy, Department of Justice and Regulation

Prof Dan Lubman, Director, Turning Point Alcohol and Drug Centre

Ms Heather Pickard, Chief Executive Officer, Self Help Addiction Resource Centre

Professor Greg Whelan, Addiction Medicine Specialist, Consultant to review team

## **WRITTEN SUBMISSIONS RECEIVED**

Dr Rodger Brough, Addiction Medicine Specialist

Dr Mike McDonough, Addiction Medicine Specialist

Dr Benny Monheit, Addiction Medicine Specialist

South West Healthcare

Uniting Care ReGen

Victorian Alcohol and Drug Association

## **INDIVIDUAL AND ORGANISATIONAL PARTICIPANTS IN INTERVIEWS AND FORUMS**

Ms Mary Baker - Mallee District Aboriginal Services

Dr Rodger Brough - Addiction Medicine Specialist, South West Healthcare, Warrnambool

Ms Linda Bryant - Youth Justice Mental Health Initiative, Goulburn Valley Health

Ms Charlotte Byrne - Victoria/Tasmania Representative, Drug and Alcohol Nurses Australasia

Mr Paul Burke - Ambulance Victoria

Mr Brett Cain - State Coordinating Registrar, Melbourne Magistrates Court

Mr Matthew Carroll - President, Mental Health Tribunal

Ms Jenny Collins – Department of Health and Human Services, Grampians Region

Dr Ruth Collins - Consultant Addiction, Psychiatrist/Drug and Alcohol Services, Barwon Health

Ms Shelley Cross - General Manager, Stepping Up

Ms Liz Dearn - Senior Policy and Research Officer, Office of the Public Advocate

Ms Maria De Grazia - Ballarat Community Health

Ms Kerry Donaldson - Manager Community Programs, YSAS Bendigo

Mr Neil Duggan – Manager, Mental Health and Ageing, Department of Health and Human Services Loddon Mallee Region

Ms Meghan Fitzgerald - Fitzroy Legal Service

Dr Matthew Frei - Head of Clinical Services, Turning Point Alcohol and Drug Centre

Ms Eleanore Fritze - Senior Lawyer, Mental Health and Disability Advocacy

Ms Ann Hamden - Manager, Drug Treatment Services, Latrobe Community Health Service

Professor Margaret Hamilton - Melbourne University

Mr Paul Hurnall - Loddon Campaspe, Southern Mallee Dual Diagnosis Consultant, Psychiatric Services Professional Development Unit, Bendigo Health

Mr Rod Jackson – Chief Executive Officer, Wathaurong Aboriginal Co-operative

Dr Paul Lee, Clinical Director Mental Health, Latrobe Regional Hospital

Ms Debra Little - Service Development Officer of Territorial, AOD Unit, The Salvation Army

Dr Martyn Lloyd-Jones – Senior Clinician, St Vincent's Hospital Melbourne

Ms Anne Malloch - Team Leader, City Issues, City of Melbourne

Ms Megan McDonald - Area Manager, Loddon Mallee, Mind Australia

Ms Claire McNamara - Office of the Public Advocate

Mr Eugene Meegan - Manager of Youth and Primary Mental Health Services, Bendigo Health

Ms Jillian Michaelski – Goulburn Valley Health

Ms Chantelle Miller - Manager, Drug and Alcohol Strategy Unit, Victoria Police

Mr Edward Morgan - Senior Police Custodial Medical Officer, Victoria Police

Mr Allan Muntz - Practice Leader, Child Protection, Goulburn East Division, Department of Health and Human Services

Deputy President Genevieve Nhill - Head of Human Right Division, Victorian Civil and Administrative Tribunal

Dr Ed Ogden, Addiction Medicine Consultant, St Vincent's Hospital Melbourne

Ms Helen O'Neill - Clinical Nurse Consultant, Department of Addition Medicine, St Vincent's Hospital Melbourne

Ms Josephine Parkinson - Senior Policy and Projects Officer, Civil Justice, Victoria Legal Aid

Ms Maria Plakourakis - Senior Policy Officer, City Safety, City of Melbourne

Deputy Chief Magistrate Jelena Popovic, Melbourne Magistrates' Court

Ms Rosie Rand, Connect Team Leader, ACSO

Ms Sonia Rowe – Care and Recovery Clinician, Drug Treatment Services, Latrobe Community Health Service

Mr Glenn Rutter - Manager - Court Support and Diversion Services, Melbourne Magistrates' Court

Ms Claire Ryan - AoD and Refuge Services Team Leader, Ballarat Community Health

Ms Maggy Samaan - General Counsel - Ambulance Victoria

Mr Rod Soar - Federation Training

Ms Cheryl Sobczyk, Senior Manager, Alcohol and Other Drugs Services, Bendigo Community Health Services

Ms Raelene Stephens - Manager Social & Emotional Wellbeing Program, Mallee District Aboriginal Services

Ms Jenny Strauss - Regional Assessor, ACSO

Magistrate Stella Stuthridge - Melbourne Magistrates Court

Mr Peter Treloar - Emotional Wellbeing Nurse, Ballarat and District Aboriginal Co-operative

## Evidence on Mandatory Treatment

There is little supporting data to indicate mandatory treatment and mandatory detention of alcohol and drug dependent people is effective.

Mandatory treatment is a costly and resource-intensive intervention which involves depriving an individual of his or her liberty and may involve detaining them against their will. In the face of this, systematic reviews of the literature undertaken by the International Centre for Science in Drug Policy<sup>1</sup> and by the Review of the Victorian Severe Substance Dependence Treatment Act 2014<sup>2</sup> have concluded that evidence of effectiveness of civil commitment involuntary treatment is limited and there is little evidence to support the effectiveness of mandatory treatment in rehabilitating or achieving long-term behavioural change amongst those dependent on alcohol or other drugs.

Other studies suggest that there is some evidence that compulsory treatment may have poorer outcomes than voluntary treatment. Research into compulsory drug detention centres and voluntary drug treatment centres in Malaysia<sup>3</sup> found that opioid-dependent individuals in compulsory treatment are significantly more likely to relapse to opioid use after release, and sooner than those voluntarily treated with evidence-based treatments such as methadone. This led the study's authors to suggest that compulsory drug detention centres have no role in the treatment of opioid-use disorders.

Simple attendance at treatment programs is not sufficient, as individuals must be active participants and be engaged in the treatment process to achieve positive outcomes. They are more likely to succeed in overcoming drug problems when offered a degree of choice through the provision of a range of treatment options.

The strategies that research and clinical experience demonstrate are more likely to yield effective outcomes include: ensuring treatment is accessible, evidence-based and responsive to individual need; having a comprehensive assertive outreach process and specifically considering the needs of children; examining the evidence about diversion from criminal justice into public health services; and strategies to provide short term care to people who, either through intoxication or acute effects of drug use, are at immediate risk of harming themselves or others.<sup>4</sup>

<sup>1</sup> Werb, D., Kamarulzaman, A., Meacham, Rafful, C., Fischer, B., Strathdee, S. and Wood, E. (2016) "The effectiveness of compulsory drug treatment: A systematic review," *International Journal of Drug Policy*, 28: 1-9. ([https://d3n8a8pro7vhmx.cloudfront.net/michaela/pages/61/attachments/original/1455111336/The\\_effectiveness\\_of\\_compulsory\\_drug\\_treatment-\\_A\\_systematic\\_review.pdf?1455111336](https://d3n8a8pro7vhmx.cloudfront.net/michaela/pages/61/attachments/original/1455111336/The_effectiveness_of_compulsory_drug_treatment-_A_systematic_review.pdf?1455111336) – last accessed 12 January 2017)

<sup>2</sup> Review of the Severe Substance Dependence Treatment Act 2014 (Vic), Volume 2, page 4.

<sup>3</sup> Wegman, M. P., Altice, F. L., Kaur, S., Rajandaran, V., Osornprasop, S., Wilson, D., Wilson, D. P., Kamarulzaman, A., "Relapse to opioid use in opioid-dependent individuals released from compulsory drug detention centres compared with those from voluntary methadone treatment centres in Malaysia: a two-arm, prospective observational study," *The Lancet Global Health*, Published online December 7, 2016 ([http://dx.doi.org/10.1016/S2214-109X\(16\)30303-5](http://dx.doi.org/10.1016/S2214-109X(16)30303-5) – last accessed 13 January 2017).

See also, Bergenstrom, A., and Vumbaca, G., "Compulsory drug detention centres: time to question their continued use?" *The Lancet Global Health*, Published online December 7, 2016, ([http://dx.doi.org/10.1016/S2214-109X\(16\)30352-7](http://dx.doi.org/10.1016/S2214-109X(16)30352-7) – last accessed 13 January 2017)

<sup>4</sup> Dr Steve Allsop, 2016, A review of alcohol and other drug services provided by Drug and Alcohol Services South Australia and funded by SA Health