

## DEPARTMENT OF THE ATTORNEY-GENERAL AND JUSTICE

### SUBMISSION TO THE ALCOHOL POLICIES AND LEGISLATION REVIEW 2017

#### 1. INTRODUCTION

The Director-General of Licensing, Ms Cindy Bravos, will be making a submission independently of the Department of the Attorney-General and Justice's (AGD) submission. This submission focuses on the relationship between alcohol and the criminal justice system.

It is well known that a significant proportion of offending in the Northern Territory is alcohol-related violent offending, and that alcohol related offending rates in the Northern Territory are some of the highest in Australia.

AGD is responsible for developing justice policy in conjunction with other Agencies involved in the justice system, including the Department of Health, Territory Families and NT Police. AGD has been heavily involved in the various responses to alcohol related offending over the years, in particular in establishing the various therapeutic courts that have been in place in the NT.

Acknowledging that 84% of the adult prison population in the Northern Territory identify as Aboriginal or Torres Strait Islander, these policies have a significant impact on Aboriginal Territorians.

AGD makes the general comment that there have been a number of court diversion lists and specialist courts established to deal with alcohol related offending but none have been in place for a significant amount of time to adequately deal with alcohol fuelled violence. Addressing alcohol related offending requires consistent, evidence based, community led and engaged, longer term policy responses.

AGD has recently established the Aboriginal Justice Unit to develop an Aboriginal Justice Agreement between the NT Government and Aboriginal Territorians to work together to improve the lives of Aboriginal Territorians by:

- providing a framework for government to partner with Aboriginal Territorians to address the complex issues that contribute to the disadvantage of Aboriginal Territorians, and the reduction of Aboriginal incarceration and recidivism rates that are initiatives and that are community led and partnered with the NT Government;

- reducing the over-representation of Aboriginal people in the criminal justice system;
- enabling Aboriginal Territorians to access all benefits within the NT Government justice portfolio;
- developing targeted justice responses for diversionary rehabilitation best practice programs that focus on breaking the cycle of offending; and
- reasserting and supporting traditional leadership to improve the lives of Aboriginal people and make communities safer.

While not focussed on alcohol-related policies, alcohol harm minimisation will inevitably be part of the work of the Aboriginal Justice Unit. The collection of baseline data will form a critical part of assessing the success of any programs, projects or initiatives.

The Chairperson of the Alcohol Policies and Legislation Review has requested the following information from AGD:

1. rates of incarcerations linked to alcohol-related crime;
2. rates of recidivism of offenders linked to alcohol-related crime;
3. rates of domestic and family violence linked to alcohol misuse;
4. methods used by AGD to record and report on alcohol-related matters; and
5. any evaluation or other statistical information available on the operation of the former alcohol court or any other court diversionary programs linked to the misuse of alcohol.

I address these issues below.

## **2. RATES OF INCARCERATION LINKED TO ALCOHOL-RELATED CRIME**

### **2.1 Reception into custody information**

The information available to AGD in the Integrated Offender Management System (IOMS) on the involvement of alcohol in the offending comes from information supplied by the prisoner and the recording of the most serious offence (MSO).

Upon reception into custody, prisoners are asked two questions relevant to alcohol-related offending as part of the Immediate Risk Needs Assessment (IRNA) questionnaire:

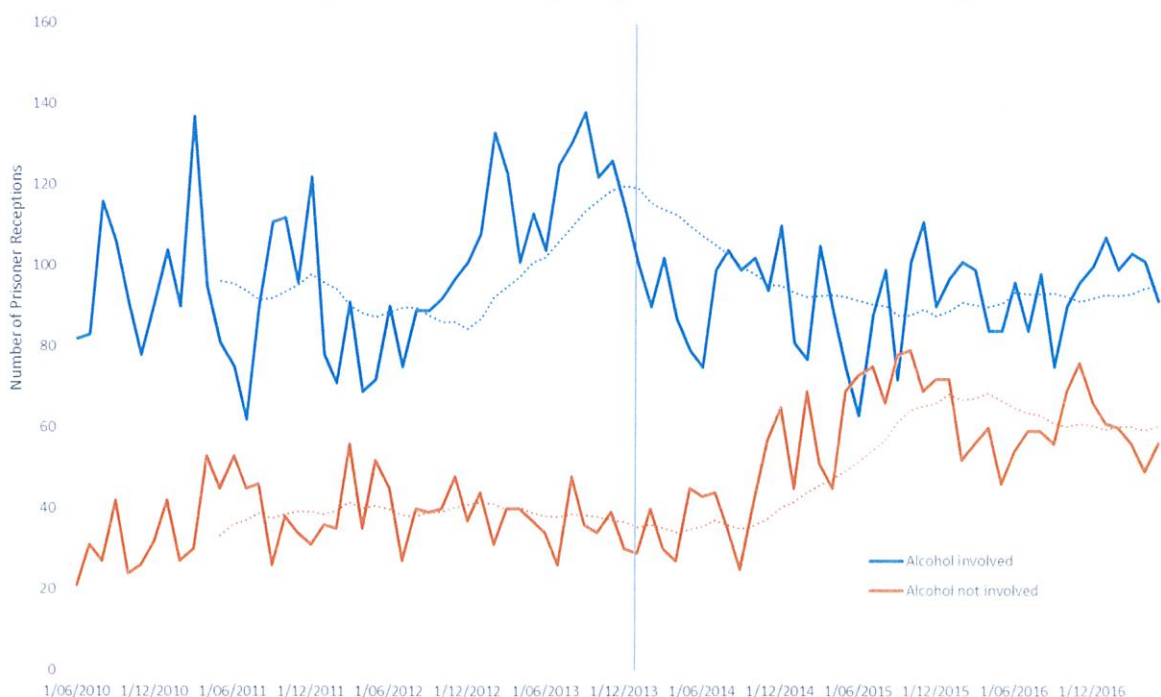
1. whether any of their offences were known to have been committed under the influence of alcohol; and
2. whether any offences were known to have been committed to support a habit of substance abuse of alcohol.

The MSO of the prisoner is also recorded (either based on charges for remand prisoners or sentencing for sentenced prisoners). In some cases, the MSO indicates the involvement of alcohol in the offending (e.g. an MSO of high-range drink driving) even when the prisoner has answered in the negative to the two questions above.

For the purposes of the data provided here, prisoners have been identified as involved in alcohol-related offending if they answered “Yes” to either question 1 or 2 or the MSO indicates alcohol involvement in the offence. Note that prisoners answering “No” to both questions and having MSOs that do not indicate alcohol involvement will not be identified as involved in alcohol-related offending even if some of the offences for which they are in custody involved alcohol.

A count of prisoner receptions at the Alice Springs Correctional Centre shows an immediate drop from January 2014 in the 12-month rolling average (Figure 1, dashed line) for receptions where alcohol was deemed to be involved in the offending according to the assessment above. This corresponds to the time when the Point of Sale interventions began in Alice Springs and Tennant Creek (blue vertical line). In contrast, receptions for non-alcohol-related offending did not show an immediate reaction, although they began to increase after October 2014.

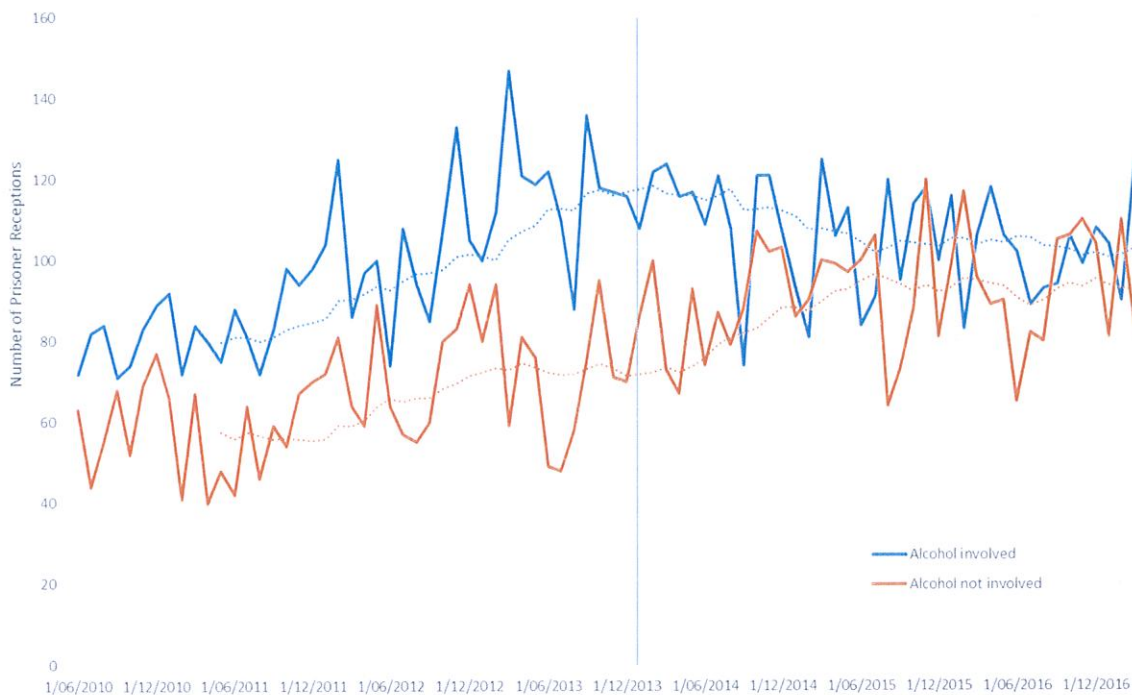
**Figure 1. Prisoner receptions at Alice Springs Correctional Centre by alcohol involvement**





Receptions at Darwin Correctional Centre show a somewhat different pattern (Figure 2). In late 2013, a few months prior to the introduction of the Point of Sale Interventions in Alice Springs and Tennant Creek, the number of receptions where alcohol was involved in the offending appears to stabilise until August 2014 or so, following which it begins to decrease. An increase in receptions for non-alcohol-related offending occurs from approximately May 2014.

**Figure 2. Prisoner receptions at Darwin Correctional Centre by alcohol involvement**



The Point of Sale intervention in Katherine began in December 2014, but the reception patterns don't appear to change at this time (prisoners from Katherine represented approximately 16% of all receptions at the Darwin Correctional Centre during the period shown).

Note that prisoners received at the Alice Springs Correctional Centre occasionally provide a last known address in Darwin or elsewhere in the northern part of the Territory, and similarly prisoners received at Darwin may come from the southern part of the Territory. The last known address data is not coded, and so receptions have not been assessed by region of last known address. However, it is likely that the reception of the prisoner will be in the prison closest to where the offence occurred, even if the prisoner is later transferred within custody. This means that reception location may be more indicative of the geographical conditions that prisoners were experiencing immediately prior to reception than the location of their last known address.

## 2.2 Other alcohol-related offending

Figures 4 and 5 below outline alcohol-related offending data.

Assault statistics for the NT Balance (areas other than Darwin, Palmerston, Alice Springs, Katherine, Tennant Creek and Nhulunbuy) show an increase in non-alcohol related violent offending since 2006 (Figure 3). This can be compared to statistics for the whole of the Northern Territory (Figure 4 below). While alcohol-related assaults also increased in the NT Balance during this period, non-alcohol related assaults increased at a faster rate. A number of the communities in the NT Balance are 'dry' communities. Offence data in the early part of the period represented have been affected by a number of factors, including the addition of remote policing stations between 2007 and 2009, which means that not all patterns are reflective of changing patterns in crime; but in this instance, the increase in non-alcohol-related assaults over the last decade suggests that issues other than alcohol will also need to be managed in order to reduce violence.

**Figure 3. Assaults by alcohol involvement – NT Balance**

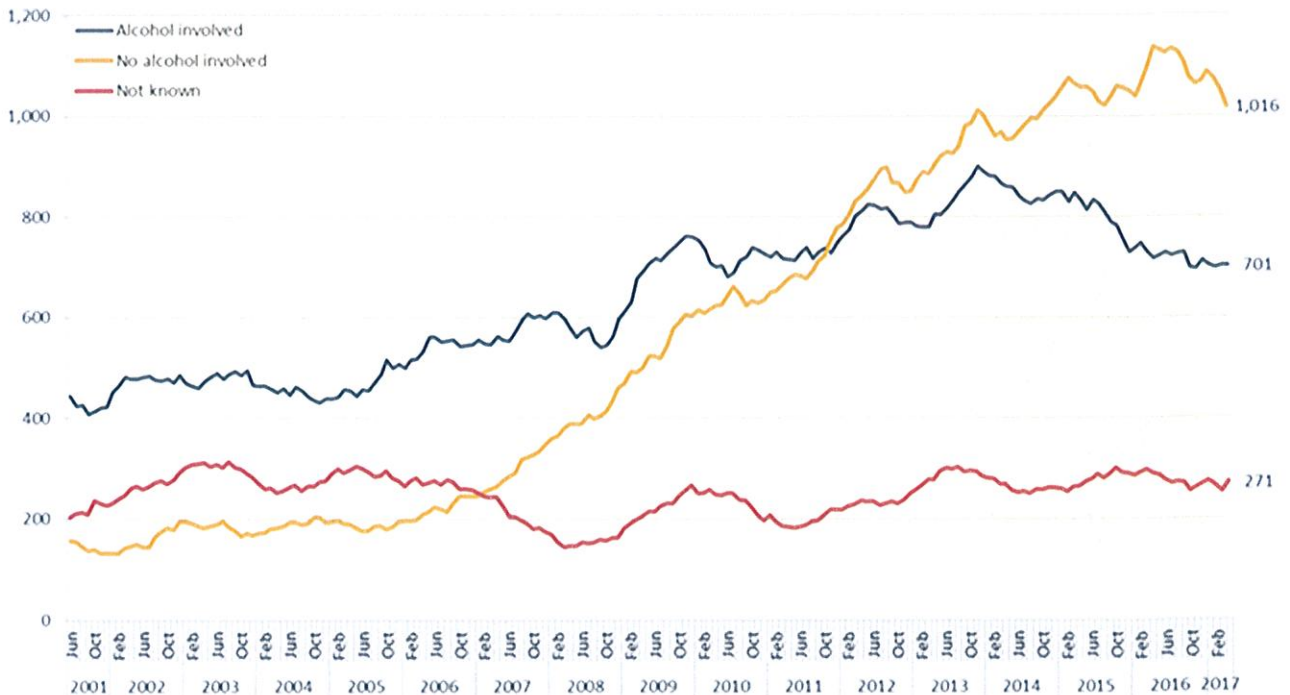


Table 1 below provides data on alcohol-related traffic offending by apprehension or infringement.

**Table 1: Number of infringements issued and persons charged for selected traffic offences**

					01/07/2016 to 29/06/2017
	2012/2013	2013/2014	2014/2015	2015/2016	
Driving under the influence of alcohol or other substance (411)	314	288	178	176	157
Drive while licence disqualified or suspended (1411)	862	833	784	687	681
Drive without a licence (ASOC (1412)	3325	3562	3218	3383	3261
Exceed the prescribed content of alcohol or other substance limit (ASOC 1431)					
Low range blood alcohol content	520	525	406	416	453
Medium range blood alcohol content	1140	1182	992	1006	934
High range blood alcohol content	821	873	820	794	779
Drug in blood	74	53	68	110	229
Other *	321	307	244	279	252
<b>Total (1431)</b>	<b>2876</b>	<b>2940</b>	<b>2530</b>	<b>2605</b>	<b>2647</b>

Source: Extracted from IJIS on 29 June 2017

\* Primarily relate to offences associated with breaching a driver's licence condition of zero alcohol limit.

### **3. RATES OF RECIDIVISM OF OFFENDERS LINKED TO ALCOHOL-RELATED CRIME**

AGD does not have data on rates of recidivism for alcohol-related offences only.

However, the Report entitled *Review of the Northern Territory Sentencing Amendment of the (Mandatory Minimum Sentencing Act) 2015* by Whyte, Yick, Vahlberg & Swart (the Review), at pages 23 to 32 may provide some insight into the impact of policies targeted at alcohol consumption on re-offending rates. The Review found a decline in re-offending rates for violent offences for those offenders who committed offences in May 2013 to April 2014. This was considered likely to be linked to the Point of Sale Interventions (previously called Temporary Beat Locations) which were fully operational in Tennant Creek in September 2013, Alice Springs in February 2014, and Katherine in December 2014.

The Review stated at page 32:

‘Overall, offenders convicted of assault offences committed in May 2013 – April 2014 (post mandatory sentencing) had a significantly lower re-offending rate in the year following their release (from prison or from court) than offenders convicted of assault offences committed in each of the four preceding years.

...

The drop in re-offending seen for overall offenders and for Indigenous males released from prison appears likely to be associated with the Point of Sale Interventions, rather than a deterrent effect of mandatory sentencing.’

### **4. RATES OF DOMESTIC VIOLENCE LINKED TO ALCOHOL MISUSE**

**Appendix A** provides 10 years of Northern Territory Assault Statistics for domestic violence and alcohol-related assaults.



## 5. METHODS USED BY AGD TO RECORD AND/OR REPORT ON ALCOHOL-RELATED MATTERS

### 5.1 Offence data

Information on criminal offences is recorded by the NT Police in the Police Real-Time Online Management System (PROMIS) and reported by AGD in the crime statistics. For each criminal incident, the NT Police record the involvement of alcohol according to the following:

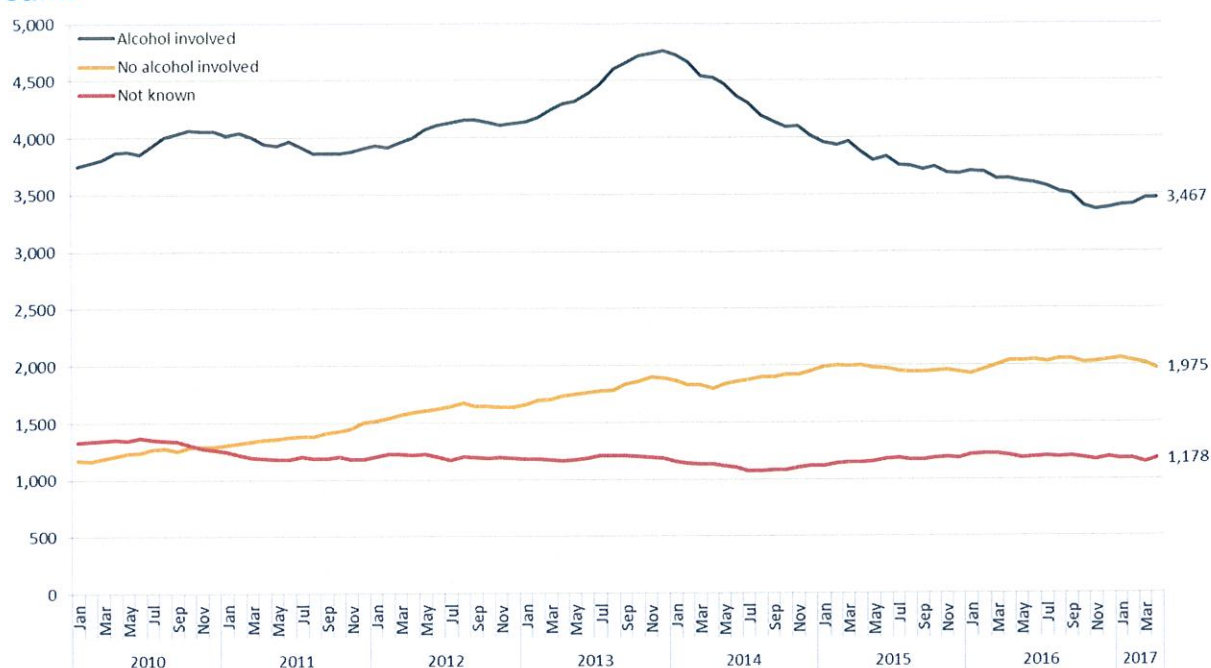
- offender influenced;
- victim influenced;
- both offender and victim influenced;
- neither offender nor victim influenced; and
- alcohol involvement not known.

The first three options (offender influenced; victim influenced; both offender and victim influenced) are combined to identify an incident as alcohol-related.

All of the offences in an incident inherit the incident's value for alcohol involvement. For incidents such as property damage, where a large proportion of offenders are never identified, the involvement of alcohol in the incident can generally not be determined. For incidents involving offences such as assault, however, where a high proportion of offenders are identified, a relatively small proportion of the incidents have "alcohol involvement unknown". Hence, these offences can be used to track change in alcohol involvement in recorded crime (Figure 4).



**Figure 4. Northern Territory assault offences by alcohol involvement, 12-month rolling sums**



Assault offences are published each month according to this breakdown of alcohol involvement, and also by whether domestic violence was involved in the offence. These factors are recorded separately, so it is possible to identify offences involving one, the other, or both factors (Figure 5).

**Figure 5. Extract from the crime statistics published in June 2017 (data through April 2017)**

#### Northern Territory Yearly Assault Statistics

Data for the 12 months ending in April, 2012 to 2017

Domestic violence	Alcohol involvement	2012	2013	2014	2015	2016	2017
DV involved	Alcohol involved	2,438	2,710	2,998	2,482	2,337	2,186
	No alcohol involved	956	1,043	1,135	1,226	1,223	1,207
	Not known	400	466	435	453	473	481
<b>DV involved Total</b>		<b>3,794</b>	<b>4,219</b>	<b>4,568</b>	<b>4,161</b>	<b>4,033</b>	<b>3,874</b>
DV not involved	Alcohol involved	1,555	1,583	1,534	1,392	1,300	1,281
	No alcohol involved	640	690	670	776	821	768
	Not known	818	700	697	700	735	697
<b>DV not involved Total</b>		<b>3,013</b>	<b>2,973</b>	<b>2,901</b>	<b>2,868</b>	<b>2,856</b>	<b>2,746</b>
<b>Total assaults</b>		<b>6,807</b>	<b>7,192</b>	<b>7,469</b>	<b>7,029</b>	<b>6,889</b>	<b>6,620</b>
Assaults with alcohol involved		3,993	4,293	4,532	3,874	3,637	3,467
Assaults with no alcohol involved		1,596	1,733	1,805	2,002	2,044	1,975
Assaults with alcohol involvement unknown		1,218	1,166	1,132	1,153	1,208	1,178
% of assaults associated with domestic violence		55.7%	58.7%	61.2%	59.2%	58.5%	58.5%
% of assaults associated with alcohol		58.7%	59.7%	60.7%	55.1%	52.8%	52.4%

Data extracted from PROMIS on 01/06/2017

The same information can be applied to victims in the incidents, which are also reported from PROMIS. While AGD does not regularly publish on victims' information, this information is prepared to support NTG policy analyses requiring demographic information about victims of crime.

Other than the alcohol involvement in the incident, certain types of offences by their nature will involve alcohol-related offending (e.g. driving with excess blood alcohol). These types of offences can be identified and reported via their offence code. Regulatory alcohol-related offences can also be identified by the relevant legislation (e.g. offences against the *Liquor Act*), whether or not they involve the consumption of alcohol. These are reported as needed.

## 5.2 Court data

Information on defendants is reported from the Integrated Justice Information System (IJIS). At the time of apprehension, NT Police record whether alcohol, drugs, another substance or no substance was involved in the offence. The field allows for only one value (A, D, O or nil), and NT Police have said that in situations where alcohol and another substance are both involved, alcohol is the value that would be recorded as it is the one most easily determined. This flag can be linked to all defendants apprehended by the NT Police, so that court data can be reported according to whether alcohol was involved.

As in the offence data from PROMIS, the involvement of alcohol in certain offences committed by defendants can be identified by the offence code, and regulatory alcohol offences can be identified by the relevant act.

Information specific to defendants whose offending is related to alcohol is not currently published by the NT, though it can be extracted and provided for specific purposes such as policy development or evaluation. Data on offenders and criminal court defendants submitted to the Australian Bureau of Statistics for publication does not specifically identify alcohol-related offending, and the most serious offence categories are published at too high a level for alcohol-specific offences to be identified.

Information for persons taken into protective custody in the Police watch house (generally for reasons of intoxication, though not always) is also stored in IJIS. A summary table of persons held in watch house protective custody is prepared by AGD and sent to NT Police, who publish this information in their annual report (Figure 6). There have been considerable changes in operational practices related to protective custody over recent years that have resulted in a large decrease in the number of persons kept in watch house protective custody. Hence, while this information is relevant from a Police workload perspective, it is not considered adequate as an indicator of the level of intoxicated persons requiring protection due to the changes in operational practice.



Figure 6. Extract from the 2015-16 NT Police, Fire and Emergency Services Annual Report

#### NT PERSONS TAKEN INTO POLICE PROTECTIVE CUSTODY

Year	Indigenous			Non-Indigenous			Unknown			Total		
	Female	Male	Total	Female	Male	Total	Female	Male	Total	Female	Male	Total
2008-09	10 143	23 124	33 267	186	1 939	2 125	0	5	5	10 329	25 068	35 397
2009-10	10 601	23 224	33 825	156	1 857	2 013	17	17	34	10 774	25 098	35 872
2010-11	5 894	13 282	19 176	104	1 060	1 164	1	13	14	5 999	14 355	20 354
2011-12	5 654	12 227	17 881	101	995	1 096	489	507	996	6 244	13 729	19 973
2012-13	3 896	8 339	12 235	66	931	997	331	428	759	4 293	9 698	13 991
2013-14	4 102	7 885	11 987	67	656	723	224	314	538	4 393	8 855	13 248
2014-15	3 710	6 673	10 383	38	427	465	239	260	499	3 987	7 360	11 347
2015-16	3 256	5 505	8 761	42	277	319	212	157	369	3 510	5 939	9 449

Notes: Data extracted from IJIS on 26 August 2016. Data extracted on a different date may show slight variations.

These figures represent police watch house protective custody episodes only.

Unknown Indigenous status figures since 2011-12 are considerably higher than previous years due to a change in recording practices in IJIS regarding person identification and characteristics.

IJIS also stores information recorded for certain alcohol-related initiatives, such as bans issued as part of the Banned Drinker Register; orders issued as part of the Alcohol Mandatory Treatment Program; and Alcohol Protection Orders. This information is reported on as needed to support program monitoring and evaluation efforts.

Other alcohol-related information recorded in IJIS includes alcohol-related restrictions, programs and bans that form part of conditional liberty orders (such as bail orders and suspended sentence orders). These are recorded as free text against the individual orders. As such, these types of conditions are difficult to quantitatively assess and report, as they are not coded by the type of condition and may be subject to spelling and format variations.

### 5.3 Corrections data

The alcohol indicator recorded in IJIS does not transfer to IOMS. Nor is it straightforward to link offending information from IJIS with custodial supervision episodes in IOMS.

The main information readily available in IOMS on the involvement of alcohol in the offending comes from information supplied by the offender and the most serious offence (MSO). See above at section 2.1.

Note that each question asked of the offender can be answered individually for alcohol, illegal drugs, petrol and other substances. Offenders are also asked whether they are under the influence of drugs and/or alcohol at the time of committing the offence, and whether they have suffered withdrawal symptoms during the past week (e.g. hangover, shakes, sweats, etc).

While this information is not routinely reported, the data from the questions can be relatively easily linked to records of prison receptions and episodes for reporting purposes; it is, however, dependent on the offender providing the correct information.

The MSO of the offender is also recorded in IOMS (either based on charges for remand prisoners or sentencing for sentenced prisoners/offenders). In some cases, the MSO indicates the involvement of alcohol in the offending (e.g. an MSO of high-range drink driving) even when the offender has answered the receptions questions in the negative.

Other alcohol-related information recorded in IOMS includes the results of alcohol and drug testing of prisoners and community offenders. This information is not routinely reported, although it is possible to extract it for specific purposes.

## **6. ANY EVALUATION OR STATISTICAL INFORMATION AVAILABLE ON THE OPERATION OF THE FORMER ALCOHOL COURT, OR ANY OTHER COURT DIVERSIONARY PROGRAMS LINKED TO THE MISUSE OF ALCOHOL**

### **6.1 Courts**

There are a range of alcohol-related court and diversionary programs that have operated in the Northern Territory the last 15 years. With the exception of COMMIT, the programs and courts have not been comprehensively evaluated.

#### **6.1.1 CREDIT program**

The Court Referral Evaluation Drug Intervention and Treatment Program (CREDIT) operated from 2003 until 2011.

While not an alcohol court, CREDIT was a 12 week bail program designed to divert offenders, whose charges were illicit drug-related, into treatment. Some of those people also had alcohol-related offending or problematic use. CREDIT did not have a specific legislative basis, but operated in accordance with the *Bail Act* and the *Sentencing Act*. Clients who did well in the program were likely to receive a reduction in their sentence.

The CREDIT program commenced as a result of an agreement between the then Chief Magistrate and the NT Government. It was modelled on the Victorian CREDIT program, the NSW MERIT program, and the Drug Diversion Court in South Australia.

To be eligible the offender must:

- have had an illicit drug problem and want to address this problem;
- have been willing to undertake treatment in Darwin, Alice Springs or Tennant Creek;
- not have had a significant history of violence;
- not have had a mental illness or impairment to the extent that the client could be managed safely in a community drug treatment program;
- not have been subject to any other court order with a drug treatment component; and
- have volunteered to enter the program and be willing to comply with the program requirements.



The CREDIT program was replaced by the SMART Court in 2011. It was not formally evaluated but AGD is aware of the following reports relating to the CREDIT program:

- In 2005, the Australian Institute of Criminology (AIC) released a report entitled *Specialty courts in Australia*. The AIC identified 19 specialty courts across Australia and assigned them each a score according to the level of innovation and change. The former CREDIT Court (Court Referral and Evaluation for Drug Intervention and Treatment) is considered in this report; and
- Blockland J, *Territory trials in alternative sentencing models, the CREDIT court (NT) and Community Courts* paper presented at the CLANT 10<sup>th</sup> Biennial Bali conference 2005.

Tables 2 and 3 below provide numbers of referrals to the CREDIT program and number of treatment orders made as part of the program.

**Table 2. Referrals to CREDIT Program (2008 until 31 March 2011)**

	2008-09	2009-10	1 July 2010- 31 March 2011	Total
<b>Total referrals</b>	162	189	92	443
Darwin	114	101	59	274
Alice Springs	42	74	27	143
Tennant Creek	6	14	6	26
				<b>1577</b>

**Table 3. CREDIT treatment orders (from commencement in May 2003 to 31 March 2011)**

	Darwin	Alice Springs	Tennant Creek	TOTAL
CREDIT treatment	591	204	22	<b>817</b>
Failed treatment	167	68	7	<b>242</b>
Current	19	4	1	<b>24</b>
<b>Completed treatment</b>	<b>405</b>	<b>132</b>	<b>14</b>	<b>551</b>
<b>Success rate</b>	<b>71%</b>	<b>66%</b>	<b>67%</b>	<b>69%</b>

### 6.1.2 Alcohol Court

The Alcohol Court operated from 2006 to 2011. It was established by the (now repealed) *Alcohol Court Act* which commenced on 5 July 2006. It was established in response to an election commitment to implement strategies targeting antisocial behavior. It was designed to form part of a coordinated, whole-of-government approach to breaking the cycle of alcohol abuse, violence and antisocial behavior through innovative sentencing.

The *Alcohol Court Act* enabled the former Court of Summary Jurisdiction to refer individuals to the Alcohol Court, which could consider making either an alcohol intervention order (AIO) or an alcohol prohibition order (APO), based on the advice of Court Clinicians.

In order to be eligible for an AIO:

- the offender must have pleaded guilty or indicated intent to do so;
- the offender must have agreed to be referred to the Alcohol Court and to comply with the order; and
- the Alcohol Court must have considered imprisonment to be an appropriate sentence for the offence committed.

AIOs included conditions that the offender was not permitted to drink alcohol for the duration of the order or to commit an offence punishable by imprisonment, and that the offender must undergo treatment for alcohol dependency. The *Alcohol Court Act* provided for penalties and powers of arrest for breach of an AIO. AIOs accompanied a suspended prison sentence so the offender could be imprisoned if the order was breached. Also the offender was under the supervision of the Director of Correctional Services (delegated to Community Corrections).

APOs were either made in addition to the offender's sentence or prior to sentencing, with sentencing deferred for 6 months. Under an APO, the offender was not permitted to drink alcohol, but the offender was not subject to supervision and there were no other terms of the order. If sentencing had been delayed for 6 months and the offender breached the APO during that period, the breach could be taken into account in sentencing. In order to be eligible for an APO, the offender must have pleaded guilty or indicated intent to do so, but there was no requirement for the offender to consent to the making of the order.

Tables 4 and 5 below provide numbers of referrals and treatment orders made in the Alcohol Court from 2006 to 2011.

The Alcohol Court was replaced by the Substance Misuse Assessment and Referral for Treatment Court (SMART Court) in 2011. There was no formal evaluation of the operation of the Alcohol Court.

**Table 4. Alcohol Court referrals and orders (1 July 2006 to 31 March 2011)**

	Darwin	Alice Springs	Katherine	Nhulunbuy	Tennant Creek	TOTAL
Referred to Alcohol Court	315	323	19	11	22	690*
Ineligible	86	68	5	1	2	162
Prohibition order	6	85	0	1	5	97
<b>Treatment Orders</b>	<b>223</b>	<b>170</b>	<b>14</b>	<b>9</b>	<b>15</b>	<b>431</b>

\* Referral figures represent the number of orders made rather than the number of individuals referred (ie some individuals may have been referred more than once).

**Table 5. Alcohol Court treatment orders (1 July 2006 to 31 March 2011)**

	Darwin	Alice Springs	Katherine	Nhulunbuy	Tennant Creek	TOTAL
Treatment Orders	223	170	14	9	15	431
Failed	68	105	10	1	5	189
Current	12	8	0	1	2	23
Completed treatment	143	57	4	7	8	219
<b>Success Rate</b>	<b>68%</b>	<b>35%</b>	<b>29%</b>	<b>88%</b>	<b>62%</b>	<b>54%</b>

\* These figures represent each treatment order made and may include offenders who have been referred for treatment more than once.

Note: An AIO required a person to undertake treatment. An APO could ban a person from consuming alcohol or entering licensed premises for up to 12 months and/or order treatment.

### 6.1.3 SMART Court

The Substance Misuse Assessment and Referral for Treatment Court (SMART Court) operated from 2011 to 2013. It was established by the now repealed *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* and replaced the Alcohol Court and the CREDIT program. The establishment of the SMART Court was part of the 'Enough is Enough' alcohol reform package of the former Labor Government.

In essence, the SMART Court combined features of the CREDIT program and the Alcohol Court and aimed to assist offenders to address their substance misuse and issues related to rehabilitation.

Conditions of a SMART Order could include curfews, restrictions on drug and alcohol use, directions to follow a treatment plan or attend a rehab facility, restrictions on association with other persons and any other conditions that were relevant to the specific circumstances of the offender.



Key aspects of the SMART Court were:

- offenders were on the program for a minimum of 6 months and a maximum of 12 months;
- participants were required to submit to random breath testing and/or urine drug testing;
- participants were required to attend court review sessions every two weeks to provide a progress report with the Court Team comprising the Magistrate, Police Prosecutor, Lawyer and Court Clinician;
- compliance with a SMART order was rewarded, e.g. by reduction in frequency of testing or supervision;
- if an offender did not comply, sanctions were imposed, e.g. more intensive supervision by Community Corrections;
- a serious breach of a SMART order could lead to the order being revoked and the offender being sentenced (or a suspended sentence being enlivened); and
- when all components of the Action Plan were successfully completed, the offender was finally sentenced and compliance with the Action Plan was taken into account. There was also a graduation ceremony at the Court.

A criminal matter being heard in the former Court of Summary Jurisdiction or the Youth Justice Court could be referred to the SMART Court by the Court, a Prosecutor, a Police Officer or the offender, if the offender:

- had committed an offence where drug and alcohol misuse was a factor;
- had pleaded guilty, intended to plead guilty or had been found guilty of the offence; and
- had not yet been sentenced.

The legislation provided for a specific exclusion from eligibility for offenders who had committed violent and sexual offences.

The *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* was repealed by the *Alcohol Mandatory Treatment Act 2013* which commenced on 1 July 2013. This was in response to an election commitment by the then Country Liberal Government to abolish the Banned Drinker Register and to prepare legislation for mandatory alcohol rehabilitation.

In total, there were 481 referrals to the SMART Court. Details of the locations of the referrals is provided in the table below (Table 6.)



**Table 6. Locations of SMART Court Referrals**

Alyangula	9
Alice Springs	128
Galiwinku	1
Jabiru	1
Katherine	5
Darwin	327
Nhulunbuy	9
Yuendumu	1
<b>Total</b>	<b>481</b>

No formal evaluation of the SMART Court was undertaken prior to the repeal of the relevant legislation.

#### **6.1.4 Local Court Mental Health Diversion List**

The Local Court Mental Health Diversion List was established by Practice Direction in March 2016 and its operation is ongoing. While this is not an alcohol court, it is a diversionary court which deals with those with mental health issues who often have alcohol/drug use present as a contributing factor either directly or indirectly.

In late 2015, the Mental Health Court Liaison Service was established, comprising three mental health court clinicians based in the Local Court at Darwin and two at the Local Court at Alice Springs. The Mental Health Court Liaison Service provides mental state and capacity assessments, advice and reports to the Local Court and other referrers with respect to accused persons where factors related to mental illness need to be taken into account. Information is also provided to the Local Court in relation to the availability and appropriateness of possible programs and treatment, having regard to the accused's circumstances and available resources.

Additionally, in March 2016, the Mental Health Diversion List commenced in the Local Court. This List has been implemented administratively by the Chief Judge of the Local Court, Dr John Lowndes.

At this stage, the Mental Health Diversion List deals with the following matters:

- pre-assessment advices under section 74 of the *Mental Health and Related Services Act*;
- applications and hearings for certificates under section 77 of the *Mental Health and Related Services Act*;
- applications for bail where the accused suffers from a possible mental illness, mental disturbance or cognitive impairment; and
- pleas of guilty or sentence indications where it is likely that a mental illness, mental disturbance or cognitive impairment will be relied on in mitigation of sentence.

### 6.1.5 COMMIT program

The COMMIT Program trial commenced on 27 June 2016. The COMMIT Program is modelled from Hawaii's Opportunity Probation with Enforcement (HOPE).

The COMMIT Program, like the HOPE strategy, targets higher needs offenders who, through drug or alcohol addiction, have become involved in the criminal justice system as well as offenders with a history of breaching conditions of orders. It utilises swift, certain, and fair consequences (a short period of incarceration) for non-compliance with conditions, while maintaining a supportive working alliance with the offender, the probation and parole officer and the judge. The COMMIT Program is available to adult offenders who are sentenced to a suspended sentence of imprisonment.

COMMIT involves a collaborative approach to offender management and behaviour change that involves the Courts, Community Corrections, the Police and legal agencies. Collaboration is necessary to ensure offenders are properly assessed to determine if they are suitable to participate in the program, understand the aims of the program, are warned about the consequences of failure to comply with their conditions of supervision, are brought swiftly before the Court if they fail to comply with the program, and receive a predetermined and proportionate sanction for each breach of their conditions.

The COMMIT program aims to achieve behavioural change by sending a consistent message to offenders about personal responsibility and accountability and includes a consistently applied and timely mechanism for dealing with non-compliance. Probationers understand there will be an immediate consequence and their lives will be interrupted each time they make a poor decision, and how much time they spend in prison is in their hands. The sanctions are intended to be short, reflect the severity and level of responsibility demonstrated for the breach, while not negatively impacting on offender's ability and motivation to participate in behavioural change processes. They are supported by their Probation and Parole Officers throughout the term of their supervision and undertake therapeutic programs to maintain good decision making.

Drug and alcohol treatment is a critical aspect of COMMIT; however treatment is reserved for those who need it most, by targeting offenders who are unable to cease use despite the application of swift sanctions. This allows the program to handle a larger cohort with limited treatment resources. This has been referred to as 'behavioural triage' as compared with universal assess-and-treat models, and is a central feature of 'swift, certain and fair' justice models.

The COMMIT Program has funding for 2017/18 and 2018/19 to provide alcohol and drug treatment and rehabilitation beds and services for COMMIT offenders who require treatment and support.

As at 21 June 2017, there have been 55 COMMIT orders made with respect to adults subject to a suspended sentence of imprisonment. Thirty eight orders have been made in the Supreme Court (Alice Springs and Darwin) and 17 orders have been made in the Darwin Local Court. Forty six males and 9 females have participated in the COMMIT Program.

The majority of the COMMIT cohort are supervised and managed within the Darwin and Alice Springs regions; however, there are a number of COMMIT offenders who are, or have been, managed by Probation and Parole Officers located in Groote Eylandt, Jabiru, Katherine and Nhulunbuy. Arrangements are in place at these locations to ensure a swift response by Community Corrections, Police and the Courts.

The COMMIT Program has recently been subject to a Mid-Point Review. The purpose of this review is to assess the integrity and effectiveness of the foundations and processes that have been developed and implemented since program commencement. The review is being finalised and it is anticipated it will be publicly available in approximately mid-August 2017.

In 2019/20, the COMMIT Program will be subject to a full evaluation to determine if the strategy significantly:

1. improves the number of successfully completed orders;
2. improves offender compliance with order conditions;
3. reduces the number of positive drug and/or alcohol tests;
4. reduces the rate of reoffending; and
5. reduces the number of overall days spent in custody.

Amendments to the *Parole Act* have been introduced to address acts of non-compliance in a 'swift, certain and fair' manner. The amendments authorise the Chairperson of the Parole Board to impose a short period of the person's sentence of imprisonment as a consequence for non-compliance, without revoking the original parole order. Currently, the Chairperson has limited options to address acts of non-compliance and the aim of these amendments is to encourage prisoners to apply for parole and increase the number of successful completed parole orders.

## 6.2 Rehabilitation programs

Alcohol rehabilitation programs that form part of sentencing orders are managed by the Department of Health.

AGD is aware of the following evaluations/reviews of specific rehabilitation programs:

- the Barkly Region Alcohol and Drug Abuse Advisory Group (BRADAAG): Australian Institute of Criminology, *Evaluation of drug and alcohol programs for offenders or people at risk of offending in support of the National Indigenous Law and Justice Framework - Barkly Region Alcohol and Drug Abuse Advisory Group*, June 2014; and
- the Venndale Rehabilitation and Withdrawal Centre: Australian Institute of Criminology, *Evaluation of drug and alcohol programs for offenders or people at risk of offending in support of the National Indigenous Law and Justice Framework - Venndale Rehabilitation and Withdrawal Centre*, October 2014.