

Submission of the Victorian Alcohol & Drug
Association Inc.

to the

Sentencing Advisory Council Inquiry
into Suspended Sentences



VICTORIAN ALCOHOL & DRUG ASSOCIATION

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VAADA Submission

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Introduction

In June 2000 there were 3,153 prisoners in Victorian jails. A conservative estimate is that two thirds (2,102) of these prisoners have either committed their crimes to obtain money for drugs, or committed their crimes while intoxicated or using drugs (VAADA Budget, 2005).

VAADA is a strong advocate for flexible sentencing options – and therefore supports the continuation of the option of suspended sentences in the hierarchy of sentencing options. VAADA opposes any changes to suspended sentencing and the sentencing regime that would result in a further increase in incarceration rates. The steady increase in incarceration rates in Victoria is cause for concern – particularly with the rates of those with alcohol and other drug issues and mental health issues.

The Alcohol & Other Drugs Council of Australia (ADCA) has noted that an estimated “80% of prisoners are in custody for drug related offences” (ADCA, 2003). Furthermore, people in custody often “have limited or no access to drug treatment” (ADCA, 2004). Upon release, offenders frequently confront the same issues (compounded by their criminal record) they faced prior to their incarceration. This puts them at high risk of re-offending.

Flexible sentencing options have the potential to divert offenders with alcohol and other drug (AOD) issues from the prison system, and to direct them into therapeutic environments for rehabilitation. VAADA is supportive of strategies that aim to address high incarceration rates through such diversions. Currently, the sentencing system is based on escalation – there is no accounting for the reality of drug dependency.

For those addressing the issue of drug dependency in their lives, the reality is often a long-term struggle interspersed with periods of relapse.

The following submission is in response to the key questions posed to the alcohol and other drugs sector by the Sentencing Advisory Council.

Who is VAADA?

VAADA is the peak advocacy organisation for alcohol and other drug agencies in Victoria. It has a membership of approximately 90 organisations and individuals. These members include agencies that are involved in or have a specific interest in prevention, treatment, rehabilitation or research related to alcohol and other drugs.

1. Are suspended sentences of imprisonment in their current form (i.e. without conditions) a useful sentencing disposition for offenders who have a drug and/or alcohol addiction?

Suspended sentences form an important part of the sentencing hierarchy. They allow for greater sentencing flexibility and provide the penultimate sanction before immediate imprisonment.

Many opponents of suspended sentences argue for their abolition on the basis that they do not allow for conditions and rehabilitation and are therefore futile. This is not an accurate reflection of current sentencing practices. Where there is more than one charge before the courts, a magistrate can impose a suspended sentence to reflect the gravity of the offending (and to satisfy

the punitive aspect of sentencing and can then proceed to place the defendant either on a bond with a treatment condition or a CBO with assessment and treatment conditions, to promote rehabilitation.

There is, however, scope for sentencing options to be increased rather than decreased to allow for more personalised and appropriate rehabilitative measures.

Presently, the lack of flexibility in how suspended sentencing is meted out to those with AOD issues (ie. without conditions) can set them up to fail. There are unrealistic expectations of recovery without relapse or of abstinence – and with no court orders instructing offenders to undertake treatment.

2. Should a form of conditional suspended sentence be introduced for offenders with a drug and/or alcohol addiction?

VAADA supports the addition of conditions to suspended sentences that are solely for the purpose of addressing any therapeutic needs of AOD offenders, whilst ensuring support structures are present so that the offender can comply with these conditions.

VAADA does not support the implementation of conditions that would make it more difficult for offenders to comply with suspended sentences, or possibly result in increased breach or incarceration rates.

3. If a form of conditional suspended sentence for drug and/or alcohol addicted offenders was reintroduced in Victoria, what form should it take? For example:

- **Should the court be permitted to wholly and/or partially suspend a term of imprisonment?**

VAADA supports the need for flexibility and discretion in sentencing – and considers that any sentence ought to be made with a view to minimising the potential for breaches or incarceration rates.

- **What should be the upper limit of imprisonment able to be suspended (5 years or some other limit)?**

This is a choice that is best left to the court system to decide based on the mitigating factors of each individual case.

VAADA has concerns, however, that longer suspended sentences could lead to situations where there is more time to risk failure. Yet, on the other hand, longer suspended sentences may provide additional time to work towards recovery or rehabilitation.

- **What conditions should apply?**

Conditions should apply that will ultimately assist in facilitating an offender's rehabilitation. These conditions must remain flexible, well resourced, responsive and individualised.

They must also be accompanied by a clear assessment process that enables the needs of the individual to be adequately determined.

It is important that processes for compliance with any conditions are clear and consistent – and do not put undue pressure on treatment agencies to monitor compliance.

The conditions themselves might be similar to those attached to intensive correction and community based orders, requiring that offenders:

- Undergo treatment for alcohol and drug addiction and submit to medical, psychological or psychiatric treatment;
- Report to, or receive visits from a community corrections officer; and
- Attend educational or other assistance providing programs.

Additionally, these conditions must take into account or address such environmental factors such as those described to the Drug Policy Expert Committee by the Department of Justice (Submission 2000) which include:

- Inadequate specialist drug services for offenders with complex needs;
- Long waiting times for access to treatments;
- A reluctance by agencies to take forensic clients; and
- A lack of accommodation facilities.

- **How should breach of conditions (as opposed to breach by further offending) be dealt with?**

This should depend on the type of breach, and ultimately the choice should remain with the court. It is important, however, that the court bear in mind that relapse is a common occurrence on the road to rehabilitation within the AOD field.

Furthermore, if therapeutic support is introduced as a condition of suspended sentencing, VAADA is of the view that the breach of a suspended sentence should not result in a breach of the suspended sentence (and subsequent incarceration).

4. Should the 'exceptional circumstances' provision be retained, or should some other standard apply (for example, a return to the pre-1997 situation to allow a court to take into account any changed circumstances in determining whether to restore the sentence)?

Any breach of a suspended sentence needs to take into account the needs of more 'chaotic' drug users. Again, the importance is about increasing flexibility in regard to sentencing practices where these offenders are concerned.

Presently, the 'exceptional circumstances' doesn't allow for the degree of discretion where drug use is involved.

The Fitzroy Legal Service has suggested that an alternate possibility allow for more personalised and appropriate rehabilitative measures would be to "expand sentencing options and flexibility through a graded system of suspended sentences, some with rehabilitative components and some without, and some imposing an exceptional circumstances test following breach and some not".

In the AOD field, it is commonly accepted that a significant number of users will take more than ten attempts at rehabilitation before they are successful, because of the enormity of the challenge that participants face. At the best of times, AOD clients have poor retention rates in treatment; tend to have high vulnerability to relapse; and equally high rates of reoffending.

5. Should the court have the power to resentence on breach?

This is a choice that is best be left to the court system to decide based on the mitigating factors of each individual case.

References

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