

**REMARKS BY THE HONOURABLE PETER UNDERWOOD AC,  
GOVERNOR OF TASMANIA TO OPEN THE 2014 BIENNIAL  
CONFERENCE OF THE ALCOHOL, TOBACCO AND OTHER  
DRUGS COUNCIL OF TAS INC, HOBART**

**WEDNESDAY 7<sup>TH</sup> MAY 2014**

It is my pleasure as the Governor of Tasmania to welcome you all here this morning to the 2014 biennial conference of the Alcohol, Tobacco and other Drugs Council of Tasmania. There are some very distinguished guests here from overseas and interstate – although if you don't live in Tasmania, you must all come from overseas – who are especially welcome and whom I hope will be able to find a little time to look around our State while they are here, because it is particularly beautiful in the Autumn.

During my 24 years on the Bench of the Supreme Court of Tasmania, first as a puisne judge and then as Chief Justice, I often used to think that if it wasn't for alcohol and other drug abuse, I would not have a job! Although I do not have hard data to hand, my impression, and that of my then judicial colleagues, was that almost all crimes were committed as a consequence of alcohol and/or other drug abuse; abuse principally by the offender and sometimes by those who were not themselves abusers, but who sought to profit from the addiction of others to drugs or alcohol or both.

I expect that most people at this conference would say that treatment for a drug abuser is the paramount obligation of a caring society, and many would say that drug abuse should be a health issue and not a criminal issue. There may be a lot to be said for that point of view, but the fact of the matter is that most crimes are connected to alcohol and other drug abuse, either directly or indirectly, and thus will

remain an issue for the criminal courts and be particularly relevant to the issue of sentencing.

In the century before last, the consumption of alcohol and/or drugs causally linked to criminal conduct was considered a circumstance of aggravation and increased the severity of the sentence. Today, here in Tasmania and in other Australian jurisdictions, the consumption of alcohol and/or drugs causally linked to some criminal conduct may result in the offender being treated for his or her addiction in lieu of the imposition of a sentence. However, here in Tasmania and I believe in most, if not all other Australian jurisdictions, such diversionary options are limited to magistrates' courts and are not applicable in the Supreme or County Courts, except perhaps in a limited way such as a condition of a probation or other supervisory order.

Recently, here in Tasmania there has been much discussion about mandatory and minimum sentences for certain crimes and so I thought I would take a moment of your time at this conference to say something about the process of sentencing.

In the absence of mandatory sentencing provisions, when the Parliament creates an offence or crime it also prescribes a penalty for anyone who commits that offence or crime. The Parliament might enact that, for commission of this crime, a person is liable to a sentence of – say, 2 years imprisonment or a fine of, say, \$10,000 or both. That means that 2 years prison and/or \$10,000 are the maximum penalties that may be ordered and it is up to the judicial officer to find the appropriate penalty up to those maximums. Leaving aside murder, under our *Criminal Code*, the Parliament has prescribed that anyone who commits

any crime is liable to be sentenced to 21 years imprisonment. There is another Act of Parliament that increases the judge's sentencing options and that deals with such things as suspended sentences, probation orders, community service orders and the like.

Now, the judge or magistrate has to exercise his or her discretion to find the appropriate sentence up to the maximum, but that discretion must be exercised in accordance with principles that have developed over the years; namely, the appropriate sentence must be one that strikes the right balance between the need to punish the offender; the need to deter the offender from repeating the offence, the need to deter others from committing the same crime; the need to rehabilitate the offender; and the need to mark the public's condemnation of the crime committed.

It will be immediately obvious to you that the difficulty the judicial officer has is that it is seldom, if ever, that any one order will satisfy all those needs. To satisfy the need to condemn the criminal conduct points to imposing an immediate prison sentence, while the need to rehabilitate the offender may call for some kind of drug treatment order. So, in considering what would be an appropriate sentence, the judge bears in mind all those needs and then looks at all the circumstances of the particular case under consideration and tries to strike the right balance between those competing needs. This is called an *exercise of judicial discretion*, and it is informed by all the circumstances of the crime and all the circumstances of the offender. For example, how serious was the crime, how badly affected was the victim of the crime, what were the consequences of the crime to the victim's family; how old was the offender, has he or she any prior convictions, does the offender have any mental health issues and, of course, what is the causal

connection between the commission of the crime and drugs or alcohol. The judge has to balance, as best as he or she can, all those competing issues which will tug in different directions for every individual case.

I say all this at the start of this conference because, although successful treatment for alcohol and/or other drug abuse would certainly be rehabilitative for an offender and also be likely deter him from offending again, if the crime is a serious one, or if the victim's family suffered badly from the criminal conduct, public opinion may say but what about punishment for what the offender has done and what about retribution? Public opinion is likely to say there is not enough attention being paid to satisfy those needs of the sentencing process.

The public has an interest in the criminal justice system and if the courts fail to heed properly informed - and I stress that - *properly informed* criticism of the judicial exercise of the sentencing discretion, the independent judiciary will lose its authority and may result in the Parliament stepping in to fix minimum penalties to the great detriment of our society.

I have read the last Annual Report of the Alcohol, Tobacco and other Drugs Council of Tasmania, and there is no doubt you are all doing a great job to battle the scourge of, and far-reaching damage done by tobacco, and alcohol and other drug abuse, and I urge you to keep up the relentless pressure on the policy makers in relevant areas of government. As your Policy and Research Officer wrote, the consequences of these abuses touch every social determinant of community health. These abuses certainly loom large in the criminal justice system, but when trying to get to grips with them it must be

borne in mind that they are not the only issues that have to be considered when the courts impose sentence.

Now, before I formally open this conference, I have to tell you that I have a clear recollection of imposing a sentence on a young man about 25 years ago. He had committed an armed robbery and his counsel was urging me to appoint a probation officer because the offender was addicted to methamphetamine and had said that he wanted to get clean, but he needed the help of a probation officer to do that. I acceded to the request and made the appointment, but pompously lectured the offender, telling him that if he wanted to get off the drugs it was up to him and no one else, and that he had to accept that he alone had the responsibility to do that. I then adjourned the Court and retired to my Chambers. Without conscious thought, the first thing I did was put my hand in my pocket and pulled out a packet of cigarettes and lit one. Suddenly, I realised what I was doing, and I felt embarrassed and ashamed of the remarks I had just directed to the young offender. It took me more than a year to get clean.

I wish you all well at this important conference, and hope that each of you has a stimulating and interesting time over today and tomorrow that will help to make your contribution in this important sector more effective.

The 2014 biennial conference of the Alcohol, Tobacco and other Drugs Council of Tasmania is now open.