



# Drug and Alcohol Treatment Bill 2007

## < H2>Drug and Alcohol Treatment Bill 2007

Extract from NSW Legislative Council Hansard and Papers Wednesday 6 June 2007.

### Second Reading

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Justice)

[5.40 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

I am pleased to bring before the House the Drug and Alcohol Treatment Bill 2007. This Bill reflects a new direction the NSW Government is taking in the treatment of a particular group of people who are in extreme situations of long term and entrenched substance abuse.

These are people who already have very significant health and other issues and who have been placed at even greater risk because they are no longer able to make decisions for themselves about seeking help and treatment.

The Bill provides the legal basis for a two year trial of short term involuntary care and treatment during which this group would undergo detoxification, rebuild their health and be linked in a planned and considered way to longer term rehabilitation and support.

The Government does not take the concept of involuntary treatment lightly. Every effort has been taken to ensure the Bill provides a therapeutic framework in which people only enter the Trial when they will benefit from the treatment with all controls being the least restrictive possible.

As Honourable Members would know, the NSW Government has long been committed to reducing the level and impact of drug and alcohol related harms in the community.

We highlighted this commitment through the Drug and Alcohol Summits and continue to do so under the new State Plan, which has specific priorities related to reducing the incidence and impacts of illicit drug use and risk drinking.

This Bill arises from a Government commitment in response to the 2003 Summit on Alcohol Abuse that recommended an inquiry into the Inebriates Act 1912, given concerns that the Act could better reflect modern medical practice, treatment options and legal safeguards.

The NSW Government asked the Legislative Council Standing Committee on Social Issues to undertake this inquiry, and we thank those Honourable Members who were involved for their comprehensive and compassionate work and report on this issue.

The Government also thanks the medical, legal, academic, government agency and community representatives who contributed their expertise and experience to the Inquiry and its report.

The Bill gives effect to the Government's response to the Inquiry which we released in January this year. In this response, the Government adopted the majority of the Committee's recommendations.

However, in line with our evidence based approach to drug and alcohol policy, the

Government has agreed to first trial the proposed new framework for involuntary care before considering wider application.

I would now like to take the House through some of the key provisions in this Bill which has been developed in consultation with Emeritus Professor Ian Webster, AO, the chair of the Government's Expert Advisory Group on Drugs and Alcohol; the Chief Magistrate, Aboriginal Justice Advisory Council, Professor Bob Batey; clinicians from Nepean Hospital; and government agencies which will be implementing the Trial.

Part 1 of the Bill sets out the objects of the legislation which include improving the health and safety of persons with a severe substance dependence through the provision of involuntary treatment. The objects are generally consistent with the Committee's recommendation 3.

This Part also incorporates important principles to safeguard the rights of persons who are detained and treated under the Act, emphasising that this is an intervention of last resort and the interests of the person are paramount.

The Act will apply only in an area or areas prescribed by regulation. This will be the Sydney West Area Health Service for the purposes of the Trial, with the possibility of extension to other areas depending on progress and outcomes. The Inebriates Act 1912 will continue to operate elsewhere in NSW.

Minors are excluded from the Trial under this Part.

The definition section includes the important threshold issue of what is "severe substance dependence". The Bill definition has been carefully developed in consultation with clinicians and aims to include each of the factors a medical practitioner would consider in diagnosing such a condition.

"Tolerance" to a substance of dependence, which is part of this definition, is a term familiar to medical practitioners and health workers and, as it relates to this population, refers to a very high level of the substance being required to achieve an effect originally produced by lower doses.

The definition of severe substance dependence also brings in the concept that to be eligible for involuntary care the person must have lost the capacity to make decisions about their substance use and personal welfare due primarily to their dependence on the substance.

This is consistent with the criteria for involuntary care recommended by the Committee and, according to clinicians, is pivotal to identifying the intended target group of this legislation.

Part 2 sets out the process of involuntary detention and treatment.

"Accredited medical practitioners" appointed by the Director-General of NSW Department of Health may detain and treat a person under the Act after assessing the person and issuing a "dependency certificate".

The person will be held in a treatment centre declared for this purpose by the Director-General of the NSW Department of Health. This will be the Inpatient Withdrawal Management Facility at Nepean Hospital during the Trial.

Any medical practitioner may ask an accredited medical practitioner to assess a person under clause 9(1). This process recognises that involuntary detention and treatment is essentially a clinical decision. It will not prevent families and other interested parties from approaching any medical practitioner in the catchment area and asking them to formally initiate the process for detention and treatment under the Bill.

The assessment criteria to ensure only suitable persons enter the Trial are set out in clause 9(3). The accredited medical practitioner must be satisfied the person has a

severe substance dependence—as described earlier—and needs protection from serious harm. Treatment is likely to benefit the person but the person has refused treatment. There are no other appropriate and less restrictive means of dealing with the person.

Throughout the assessment process under the Bill, the interests of the person remain paramount. However, in assessing the person the accredited medical practitioner may also have regard to any serious harm that may occur to children or dependants of the person.

Clause 10 makes provision for compulsory assessments to be ordered by the court and assisted by police where necessary. This will occur if someone appears to meet the criteria for involuntary care but the accredited medical practitioner is unable to access them. For example, someone might be too ill to go to the facility or they may be uncooperative.

There are powers under clause 20 to transport dependent persons to the treatment centre and use reasonable force if necessary. There are also powers under clause 22 for police or others to apprehend any person under a dependency certificate who escapes and return them to the treatment centre.

These are powers of last resort to help give effect to the involuntary scheme. They are modelled on similar provisions in the Mental Health Act 1990 and the Mental Health Bill 2006. Their use, and particularly any police involvement in the Trial, will be guided by an interagency Memorandum of Understanding that will underpin implementation and will be monitored as part of the evaluation.

Detention is for up to 28 days under clause 14. This may be extended to three months by court order under Part 4 in cases of alcohol-related brain injury. This may occur where more time is required to treat and prepare a discharge plan for the person.

Under clause 14 and Part 4 the accredited medical practitioner's decision to issue a dependency certificate is subject to review by a magistrate as soon as practicable after it has been issued. This will generally be within 7 days. The magistrate may decide to confirm the certificate, confirm it for a shorter period or discharge the person.

During the process of assessment and detention the person will have rights to legal representation and assistance by interpreters if necessary. The person will also have the right to apply to the Administrative Decisions Tribunal for a review of a magistrate's decision.

There are powers to treat people in Part 3, and under Part 5 accredited medical practitioners can take action to protect a dependent person or others in the treatment centre from serious physical harm.

This will allow the restraint and seclusion of patients where absolutely necessary and guidelines will be developed for this consistent with occupational health and safety requirements.

The accredited medical practitioner may discharge a person from a treatment centre at any time. This does not require recourse to the courts, again in recognition that involuntary treatment under the Act is essentially a clinical decision. This is consistent with the Standing Committee's recommendations.

There are requirements in clause 25 to consult the dependent person, his or her nominated primary carer and other agencies in planning the discharge of the person and any later treatment or other action considered in relation to the person. This reflects the Government's intention that there will be a strong component of aftercare for dependent persons following discharge from the treatment centre.

The detention and treatment of dependent persons under the Act is subject to monitoring by official visitors under Part 3. The Trial will rely on the existing system of official visitors established under the Mental Health Act 1990 for this purpose. Part 5 includes standard protections from personal liability for police officers and health care professionals in exercising functions under the Act.

Finally the Minister is required to review the legislation in operation and report to Parliament within two years.

The Government intends to arrange a comprehensive evaluation of both the legislation underpinning the Trial and the new system of short term involuntary care to be tested. The Trial will inform decisions about the future of the Inebriates Act 1912.

I commend the Bill to the House.