

Inquiry into the provision of drug rehabilitation services in regional, rural and remote New South Wales: Legal Aid NSW response to Questions on Notice taken on 12 March 2018

Question on Notice (Transcript of Report on Proceedings, page 22):

From your experience, what would be the cost of a hit—I do not know the appropriate term—of ice in rural and regional community?

Response

Legal Aid NSW suggests that the New South Wales Police Force may be a more appropriate source of expertise concerning this issue.

Question on Notice (Transcript of Report on Proceedings, page 23):

How many courts have the program? [MERIT] ... Could you also take the locations of those courts on notice?

Response

We refer the Committee to the following NSW Department of Justice website which includes a list of Local Health Districts and Local Courts where the MERIT program operates:

<http://www.merit.justice.nsw.gov.au/Pages/merit/coverage.aspx>

We do not know the currency of this list.

Question on Notice (Transcript of Report on Proceedings, page 23):

We spoke about the Youth Koori Court, and I understand that is, as I said, undergoing an evaluation. We can take it on notice to provide you with a copy of that evaluation, should it be available.

Response

Legal Aid NSW understands that the evaluation has not yet been published. The evaluation is being conducted by Professor David Tait and Ms Mythily Meher of Western Sydney University.

Question on Notice (Transcript of Report on Proceedings, page 27):

Professor Dunlop, who was here before, talked about ... the Act in terms of when someone had to be compulsorily told to detox. I suppose it is like a schedule 8 in a more general health sense in terms of the Mental Health Act, but he said that you cannot invoke the Act for someone who absolutely needs detox if there is no bed available. So then the question is what happens to the person?

Response

Under section 9 of the *Drug and Alcohol Treatment Act 2007* (NSW), a medical practitioner can issue a dependency certificate stating the person may be detained for treatment if the medical practitioner is satisfied that:

- (a) the person has a severe substance dependence, and
- (b) care, treatment or control of the person is necessary to protect the person from serious harm, and
- (c) the person is likely to benefit from treatment for his or her substance dependence but has refused treatment, and
- (d) no other appropriate and less restrictive means for dealing with the person are reasonably available.

The *Drug and Alcohol Treatment Act 2007* (NSW) does not authorise detention other than 'for treatment.' If treatment is not available, as Professor Dunlop correctly indicated, the person could not be detained under this legislation. Outpatient treatment could be administered on a voluntary basis.

Alternatively, the person could be detained under the *Mental Health Act 2007* (NSW) (the **MHA**), if they are a 'mentally disordered person'. Section 15 of the MHA provides that a person is 'mentally disordered' if 'the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm, or
- (b) for the protection of others from serious physical harm.

The MHA authorises the involuntary admission of a mentally disordered person to a mental health facility if a mental health practitioner is satisfied (among other things) that 'no other appropriate means for dealing with the person is reasonably available, and that involuntary admission and detention are necessary': section 19(2)(c).

Finally, various police powers are available to deal with intoxicated persons in certain circumstances. The police power to arrest is available for the detention of people who are suspected of committing an offence: *Law Enforcement (Powers and Responsibilities) Act 2002* NSW (**LEPRA**) section 99(1)(a)), or if arrest is necessary to protect the safety and welfare of the person (LEPRA, section 99(1)(b)(viii)).

The police can also issue move on directions to intoxicated persons in public places (LEPRA, section 198). Intoxicated persons may be detained if they are behaving in a disorderly manner, or in a manner likely to cause injury to a person or another person, or damage to property, or if the person is in need of physical protection (LEPRA section 206). A person detained under section 206 of LEPRA must be released into the care of a responsible person willing to undertake the care of the intoxicated person, but can be detained in police custody if the person is behaving violently or a responsible person cannot be found (section 206(4)).