Submission No 45

INQUIRY INTO DRUG AND ALCOHOL TREATMENT

Organisation: NSW Young Lawyers Criminal Law Committee

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THE LAW SOCIETY OF NEW SOUTH WALES
young LAWYERS

Criminal Law Committee

Parliament inquiry into drug and alcohol treatment

Submission

15 March 2013

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Introduction

The NSW Young Lawyers Criminal Law Committee ("the Committee") refers to the terms of reference to inquire into drug and alcohol treatment dated 21 November 2012.

NSW Young Lawyers, a division of the Law Society of NSW, is made up of legal practitioners and law students, who are under the age of 36 or in their first five years of practice. Our membership is made up of some 13,000 members.

The Young Lawyers Criminal Law Committee provides education to the legal profession and wider community on current and future developments in the criminal law, and identifies and submits on issues in need of law reform.

Summary

The Committee has confined the following comments to its area of expertise. This is directed to item seven of the terms of reference, and to the legal aspects of item six.

The Drug and Alcohol Treatment Amendment Bill 2012 ("the Bill") proposes significant amendments to the *Drug and Alcohol Treatment Act 2007* ("the Act"). The amendments are directed to four main objects:

1. Creating the framework for out-patient treatment (Category B Dependency Certificates).
2. Lowering the age of persons who may be subject to a dependency certificate to 16.
3. Introducing new restrictions on the conduct of persons subject to dependency certificates and compulsory expulsion for such behaviour.
4. Increasing the period of detention from 28 to 90 days.

The Committee is of the view that these last two elements are not consistent with the objects of the Act.

The Committee has also identified a number of minor matters requiring attention, such as typographical errors, grouped under the heading "Miscellaneous comments".

As a final comment, the Committee is aware that the Bill does not provide for forced surgical procedures. Nonetheless, it cannot express comfort with a piece of legislation that asks very vulnerable persons to consent to surgery or face detention for three months. Consent issued in those circumstances is questionable.

Background

Current treatment services for individuals addicted to drugs

Pharmacotherapies for Opioid Dependency

Two pharmacotherapies are registered in Australia for treatment of opioid dependence:

1. Methadone, buprenorphine and buprenorphine/naloxone; and
2. Naltrexone.

These pharmacotherapies are registered only for use in their oral forms. Methadone and buprenorphine are registered for use in detoxification and/or long-term maintenance, whereas Naltrexone is only registered for long-term maintenance and not detoxification.

- **Methadone, buprenorphine and buprenorphine/naloxone maintenance and treatment**: a treatment in which an illegal opioid drug is replaced by methadone or buprenorphine, legal opioids. Patients have to attend a clinic or community pharmacy daily or several times a week to receive their dose of methadone or buprenorphine. They are physically dependent on opioids during treatment and their prescribing doctor will usually undergo a staged program in which the methadone or buprenorphine dose is decreased aiming for complete removal of physical dependency. However, the dose is not always decreased and patients may remain on a stable dose indefinitely.
- **Naltrexone**: a drug that blocks the effects of opioids by blocking opioid receptors, this has the effect of removing the 'high' associated with opioid drug use. Naltrexone also makes the person feel ill if they use opiates concurrently with naltrexone. The rationale for using naltrexone is that if a person does not experience any positive effect, they will stop using opioids. [1] Patients who use naltrexone do not develop a tolerance to or dependence on it. [2] An important difference of naltrexone to methadone or buprenorphine is that it is an abstinence-based treatment so patients must have undergone detoxification prior to commencement.[3]

Current Pharmacotherapies for Alcoholism

Treatment of alcoholism with pharmacotherapies is dealt with in two stages, the management of withdrawal and after-care treatment. There are a number of pharmacotherapies are registered in Australia for treatment of alcoholism, and they may be used in combination therapy. The most commonly used are:

Management of withdrawal:

- Benzodiazepines are depressants, so have a similar action in the brain to alcohol. This allows them to relieve many of the symptoms of alcohol withdrawal.
- Thiamine is one of the group B vitamins (vitamin B1). It is important to the normal functioning of the nervous system. Chronic alcohol drinkers do not absorb thiamine well from the gut and are often deficient. Thiamine deficiency may cause symptoms such as memory disturbance, confusion, double vision, poor coordination and

[1] O'Brien S. (2004) *Treatment options for heroin and other opioid dependence: a guide for users*. Commonwealth of Australia.
[2] Navaratnam V, Jamaludin A, Raman N, Mohamed M & Mansor SM (1994) Determination of naltrexone dosage for narcotic agonist blockade in detoxified Asian addicts. *Drug & Alcohol Dependence*, 34(3):231–6; and Rawson RA, McCann MJ, Hasson AJ & Ling W. (2000) Addiction pharmacotherapy 2000: new options, new challenges. *Journal of Psychoactive Drugs*, 32(4):371–8; both cited in Lobmaier P, Kornor H, Kunoe N & Bjørndal A. (2008) Sustained-Release Naltrexone for Opioid Dependence. *Cochrane Database of Systematic Reviews*, Issue 2.
[3] Naltrexone implant treatment for opioid dependence: Literature Review, National Health and Medical Research Council at p. 5.

unsteadiness. As such administration of thiamine may alleviate some withdrawal symptoms.

After-care treatment

- Acamprosate is thought to reduce drinking by modulating the brain GABA[4] and glutamate function that is implicated in withdrawals.
- Naltrexone blocks opioid receptors and so reduces levels of dopamine and reduces alcohol intake. [5]
- Disulfiram primarily works by inhibiting the metabolism of alcohol. This leads to the accumulation of certain compounds in the body when an individual consumes of alcohol while taking disulfiram. This results in unpleasant symptoms such as unpleasant flushing, dizziness, nausea and vomiting, irregular heartbeat, breathlessness and headaches. As such, disulfiram acts as a deterrent l because the patient expects to experience these negative consequences when they drink alcohol. [6]

Structure of amended Act

The Bill adds to the present legislative scheme by providing for the option of out-patient treatment. Under the current Act the involuntary detention and treatment of a dependent person is restricted to in-patient treatment.

The Bill would allow approved medical practitioners to issue two kinds of dependency certificates, one that recommends that a dependent person be detained (a Category A dependency certificate) and one that recommends that the dependent person receive out-patient treatment (a Category B dependency certificate).

The flowchart annexed to this submission shows how the proposed provisions would sit within the Act.

Approaches in other jurisdictions

In the Committee's view, the approach adopted in the UK is more useful than that of Sweden. There are a number of cultural and practical differences between Australia and Sweden that affect implementability and comparability. In particular:

- Alcohol is largely a state monopoly in Sweden;
- Sweden has half the population of NSW;
- Sweden has developed its involuntary treatment programs over 90 years;
- Commercial advertising of alcohol is forbidden; and
- Cultural differences in Sweden see the state assuming a greater role in the protection and rehabilitation of individuals than in Australia.

However, plainly there is no technical reason why NSW could not introduce a more comprehensive education programme from the primary-school level, as is the case in Sweden.

Noteworthy approaches taken from the UK are incorporated into the comments below.

[4] Gammaaminobutyric acid.
[5] Proude E, Lopatko O, Lintzeris N and Haber P (2009) Chapter 7: Pharmacotherapies for alcohol dependence, *The treatment of alcohol problems: a review of the evidence,* Prepared for the Australian Government Department of Health and Ageing at p. 144.
[6] Ibid p. 156.

Offences while detained

The proposed s24(3)(a) provides that the Director-General ***must*** discharge a detained dependent person if he or she reasonably believes that the dependent person has committed an offence while detained for treatment.

Considering the express purpose of the Act and Bill in providing for persons with serious substance dependency issues, and the criminality that comes with it, in the Committee's submission the proposal of mandatory discharge is extremely ill-considered.

The Committee proposes, firstly, that "must" be "may" in relation to this section, and secondly that "offence" be amended to "serious offence" (appropriately defined – for example, as an indictable offence).

Detention

The Bill proposes to increase the maximum number of days of detention to 90 days under amended s14(1). This reflects the removal of the extension provisions in ss35 and 36: in effect, all detention periods will reflect what is, at present, the maximum allowable period. The Committee is not aware of any difficulties, at present, with the administration of the extension provisions in the Act, or any reason why the default period of detention should be tripled. While the objects of the Act (s3) only apply to the interpretation of the provisions, the proposed amendment is not consistent with these statements of purpose, especially s3(2)(a). The Committee submits that the proposal ought to be reconsidered.

The Committee does see a genuine reason to create a default period of treatment for persons issued with Category B dependency certificates. The format of outpatient treatment may require a longer period of compliance. It is the amendment in its current form and the extension of detention for Category A patients that is objected to.

Naltrexone implants

As alluded to above, the Committee submits that the voluntariness of "consent" to invasive surgical procedures as an alternative to detention is questionable. Creating a proper framework for the provision of out-patient treatment services is a worthwhile goal. However, the inclusion of Naltrexone implants as part of the treatment plan, when backed up with essentially punitive powers, is a grave overreach. In the strongest possible terms, the Committee recommends decoupling surgical procedures from adverse consequences: naltrexone as an option is one thing, but it should not be a choice between that and detention.

There is also a separate question of effectiveness. The UK Drug Intervention Program, introduced in 2003, aims to get adult, Class A drug-misusing offenders out of crime and into treatment and support.[7] In an evaluation of the program's effectiveness, it was stated that users have to be in the "right frame of mind" and it often takes more than one go.[8] The Committee agrees with these findings and submits that a willingness to participate in treatment programs is important for rehabilitation. This indicates that consent given less than freely will compromise the effectiveness of the treatment.

Lastly, naltrexone treatments ought not to be available for minors, firstly for fundamental (and obvious) ethical reasons, and secondly because it has been shown that young persons do not require or respond to pharmacological treatments.[9]

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[7] These drugs include heroin, cocaine/crack cocaine. Home Office, United Kingdom, *Drug Interventions Programme Operational Handbook* (2003) 1.
[8] Home Office, United Kingdom, *Evidence of the impact of the Drug Interventions Programme: Summaries and Sources* (2008) 35.
[9] Department of Health (England), United Kingdom, *Drug Misuse and Dependence: UK Guidelines on Clinical Management* (2007) 85.

Other issues

Review rights

Amended s14A preserves the provision for a review by a Magistrate of Category A, in-treatment dependency certificates. However, it does not extend Magistrate review to Category B certificates. Invasive surgical procedures should not be regarded as inherently less serious than detention. In the Committee's view, it would be sensible to require that Magistrates review the grant of Category B certificates to ensure that naltrexone treatment and the terms of out-patient treatment are appropriate and genuinely consented to.

Conduct requirements

Section 20A is not expressed in terms to only apply to Category B patients, but the term "punishable breach" is linked to contravention of its provisions, and that is a term used in respect of that class of patients. For Category A patients, the consequences of a breach of any of the sub-items of ss20A(1) or 20A(2) is unclear. It is only provided for with the term "must". This must be made clear: how will such an offence affect treatment? The Committee submits that a breach should not lead to expulsion from detention.

Right to legal representation

The Bill inserts s21A to the Act, which requires that the director of in-patient treatment centres ensure detainees have "unrestricted access to legal representation at all reasonable times". Whilst supportive in principle, the Committee submits this ought to be fleshed out further. The notorious expression "reasonable" tells us nothing about what is actually proposed, nor is it clear to what extent legal services are provided: a person in a treatment facility will probably require more assistance to acquire representation than access to a telephone.

Minors

Proposed s11B deals with consent of parents and guardians for the treatment of minors. It does not explicitly deal with the (presumably not uncommon, in this context) situation of young people under the protection of the Department of Community Services. In that situation, a delegate of the Minister would presumably make the decision. The Committee submits that the interests of transparency would favour that the delegate have access to a set of criteria contained in the Act itself.

As a related matter, the Committee submits that specific programs be developed that assist young persons with dependency transition into adult treatment. The Committee has noted above that young persons with drug and alcohol issues do not generally have full-fledged substance dependency, and do not respond to pharmacological intervention.

Assessment while detained

Proposed s24(3)(a) provides that the Director-General must discharge a detained dependent person if an accredited medical practitioner certifies that the purpose of detention has been achieved. There is no mechanism for how the Director or the dependent person (or other parties) might request such an assessment. In the Committee's submission, this ought to be enabled by the legislation.

Aftercare and funding

The provisions for post-rehabilitative care are comprehensive with respect to contact, assistance and reporting. They place a heavy burden on the appointed caseworker. The provisions are admirable, but are only realistic if it is also proposed to fund the Ministry of Health to provide the required services.

Miscellaneous comments

1. Schedule 1 [13] (on page 7 of the Bill), in relation to s9 of the Act:

   The amended s 9A (5) (ii) has a typographical error of "persons's", should be "person's".

2. Page 27 of the Bill, [47] under the proposed savings and transitional sections and the heading titled "Application of amendment relating to dealing with offences by the dependent person' refers to s 47A (in the first sentence of the clause).

   There is no s47A outlined in the Bill, nor in the Act. The relevant reference is most likely to be proposed s 19A of the Bill.

3. Schedule 1 [31] does not explicitly amend the heading of s22, but should do so in order to include the term "in-patient" as it appears in the Bill.

Further queries

The Committee thanks you for the opportunity to make a submission. We would welcome any opportunity to provide evidence within the areas of our expertise.

If you have any questions in relation to the matters raised in this submission, please contact:

Greg Johnson, President of NSW Young Lawyers (president@younglawyers.com.au).

OR

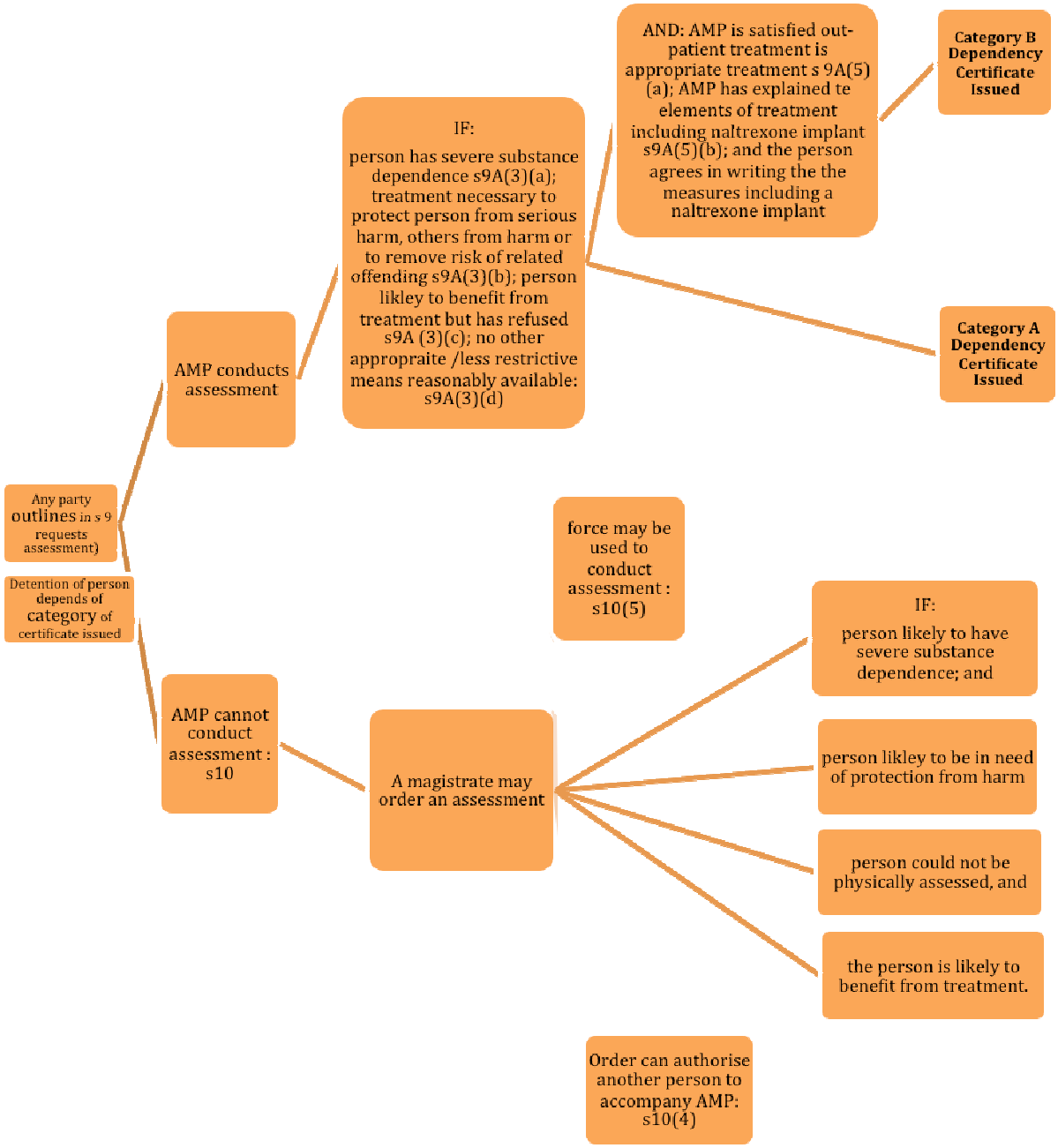
Thomas Spohr, Chair of the NSW Young Lawyers Criminal Law Committee (crimlaw.chair@younglawyers.com.au)

Yours faithfully,

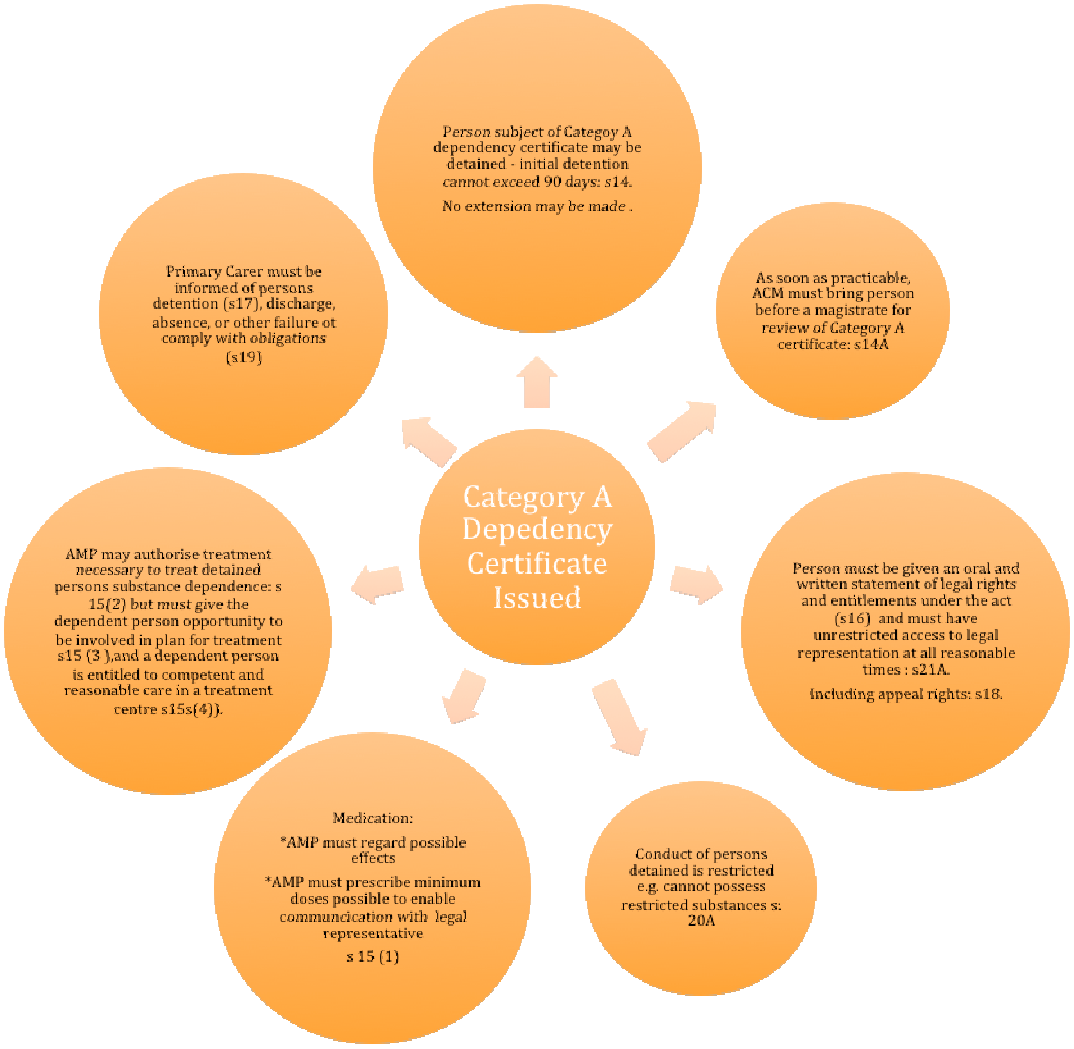
Thomas Spohr | Vice President, NSW Young Lawyers | Chair, Criminal Law Committee
NSW Young Lawyers | The Law Society of New South Wales

Annexures

Act as amended by Bill



Amended procedure for assessing persons for involutary treatment: from dependency certificate to treatment (Category A)



Proposed procedure for assessing persons for involutary treatment: from dependency certificate to treatment (Category A)