The Law Society of New South Wales

170 Phillip Street
Sydney NSW 2000
DX 362 Sydney
Phone (02) 9926 0333
Fax (02) 9231 5809
ACN 000 000 699

FAXED 21.11.03 SR

Our Ref: RB:SRC:CRIN2003-001
(PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE)

18 November 2003

The Hon Jan Burnswoods MLC
Chair
NSW Legislative Council
Standing Committee on Social Issues
Parliament House
SYDNEY NSW 2000

Dear Ms Burnswoods

Re: Inquiry into the Inebriates Act 1912

Thank you for inviting the Law Society of New South Wales to make a submission to the Legislative Council Standing Committee on Social Issues Inquiry into the *Inebriates Act*. The Law Society notes that the Standing Committee received the following reference from the Attorney General on 23 September 2003 as a result of the NSW Summit on Alcohol Abuse:

That the Standing Committee on Social Issues inquire into and report on:

(1) the *Inebriates Act 1912* and the provision of compulsory assessment and treatment under that Act;

(2) the appropriateness and effectiveness of the Act in dealing with persons with severe alcohol and/or drug dependence who have not committed an offence and persons with such dependence who have committed offences;

(3) the effectiveness of the Act in linking those persons to suitable treatment facilities and how those linkages might be improved if necessary;

(4) overseas and interstate models for compulsory treatment of persons with severe alcohol and/or drug dependence including in Sweden and Victoria;

(5) options for improving or replacing the Act with a focus on saving the lives of persons with severe alcohol and/or drug dependence and those close to them; and

(6) any other related matter.

As observed in Parliamentary Background Paper 5/2003 *Alcohol Abuse* prepared by Talina Drabsch to inform the Alcohol Summit, commentators have labelled the Act "outdated, patriarchal, ineffective and an invasion of civil liberties"[1].

Ms Drabsch's Background Paper correctly notes that both the Law Society of NSW and the Legal Aid Commission are numbered among the critics of the *Inebriates Act.* The Society submitted to the NSW Law Reform Commission's 1995/96 inquiry into the laws relating to sentencing[2] that the *Inebriates Act* should be repealed, both because it allows for the administrative detention of a person without criminal conviction and because an "inebriate" offender can be detained and the periods of detention can be extended.

Overview of the *Inebriates Act*

The *Inebriates Act* empowers a magistrate or judge to make orders as to the care and control of a person on application by the person, or relative or business partner of the person, or a police officer at the request of a medical practitioner or relative of the person. It is open to the court to make various orders, including that the person be placed in a State institution for up to 12 months, or that the person be placed under the care and charge of an attendant who will be under the control of the judge or magistrate or a guardian, for up to 12 months.

The Act also permits a magistrate or judge, when a person is before them on a criminal charge of which drunkenness is an element, and the person is an "inebriate", to order that the person be detained for up to 12 months in a State institution. The District Court or Supreme Court may extend the period of detention for up to 12 months at a time.

If a convicted offender, who has been dealt with under the Act and discharged or released, reoffends within twelve months, the court may impose a further period of detention of up to three years.

Indicative of the outmoded and inflexible legislation is the requirement that the term of any recognizance imposed should be at least 12 months (section 3(1)(d)). Further, the recognizance can be forfeited, and the offender can be placed in a State institution for the remainder of the term, if the offender:

- is charged by a member of the police force with getting his livelihood by dishonest means, and being brought before any Magistrate, it appears to such Magistrate that there are reasonable grounds for believing that he is getting his livelihood by dishonest means, or

- on being charged with an offence punishable on indictment or summary conviction, and on being required by the Magistrate before whom he is charged to give his name and address, refuses to do so, or gives a false name or a false address, or

---

1 McKey J, "NSW Inebriates Act: out of date and out of place?", *Connexions*, 17(1), December 1996/January 97, p 10.

2 New South Wales Law Reform Commission Report 79 *Sentencing* December 1996 – (pp 231-235)

- is convicted of any offence against the *Vagrancy Act 1902.*

In addition to the outmoded reference to offences against the *Vagrancy Act,* the Act also refers to "release on licence" and powers and provisions contained in the *Lunacy Act 1898.*

Also worthy of note are the actual provisions of section 11(1)(c): on conviction for an offence of which drunkenness is an ingredient or assaulting women, cruelty to children, attempted suicide, or wilful damage to property where it appears drunkenness contributed to the offence, the court may order the offender to be placed for a period of 12 months in a State institution established under section 13. As far as the Law Society's Criminal Law Committee is aware, there are no State institutions established under section 13 of the Act. If institutions were to be established, they should be under the control of the Department of Health, not that of the Commissioner for Corrective Services.

Compulsory Treatment provisions

The *Inebriates Act* is draconian legislation, with a stigmatising impact. Yet, for people who are not receiving appropriate care and services, or who have exhausted all other care and service options, it is legislation of last resort. A recent overseas study[3] suggests that residential civil commitment not only may save the lives of endangered patients but could also be a health-promoting measure that may sometimes allow for recovery from dependence. An unexpected finding was that this measure was retrospectively well accepted by many patients, who considered the commitment decision as having been justified and useful.

However, the Chief Magistrate of Local Courts, Judge Derek Price, highlighted to the Alcohol Summit that the Act has caused tension between the courts and the health system. Gazetted hospitals argue that they do not have the appropriate facilities for detoxification or treatment of people dealt with under the Act. Clearly, the government is not meeting its responsibilities for the ongoing treatment and accommodation of people in need of care. The failure of the health service to comply with the court's orders brings the justice system into disrepute and causes further distress to the people affected and their families.

Recommendations

1. The Law Society confirms its view that the *Inebriates Act 1912* is unworkable and it should be repealed.

2. Provisions relating to sentencing of offenders should not be re-enacted.

3. All legislation that allows for the compulsory detention and treatment of people in need of care should be reviewed and consolidated. Clear standards need to be set for determining whether or not a person can be involuntarily detained and/or ordered into treatment.

---

3 Bourquin-Tieche D; Besson J; Lambert H; Yersin B. Involuntary treatment of alcohol-dependent patients: A study of 17 consecutive cases of civil commitment. European Addiction Research 7(2): 48-55, 2001.

4. Funding for and availability of medical treatment, accommodation facilities and ongoing supports should be expanded to meet need.

Conclusion

Some mechanisms for compulsory treatment for offenders who are drug dependent or require mental health treatment are already in place in New South Wales, including the Magistrates Early Referral Into Treatment scheme, Mental Health Court Liaison Service, the Drug Courts and prison treatment programs. The Government has also announced that its proposed Compulsory Drug Treatment Correctional Centre will open in 2005 and the proposed Forensic Mental Health Unit is scheduled for completion in 2007.

Separate programs and facilities should be available for offenders with alcohol dependence.

With respect to people who are not involved in the criminal justice system, compelling people to accept treatment can remove them from dangerous and possibly fatal situations, protect families and the public from violence and the possibility of legal repercussions, and provide the opportunity to apply motivational interventions and treatment.

Holistic legislation, supported by sufficient services and supports, is required to protect the rights of and address the needs of all people who are living an "at risk" lifestyle and require long-term ongoing care resulting from, for example, alcohol or drug addiction, mental illness or intellectual or other disability.

In the Law Society's view, the situation should not be permitted to continue where the absence of proper accommodation and care becomes a criminal issue by default.

Yours sincerely

Robert Benjamin
President