



Australian Government
Aboriginal and Torres Strait Islander Services

State Office – New South Wales

Secretariat
Social Issues (Legislative Council Committee)
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Sir/Madam,

Thank you for the opportunity to comment on the Inebriates Act 1912 Inquiry.

In providing the attached submission, please note that the timing of the invitation to comment was such that my Office was not able to undertake consultation with the elected arm of ATSIC or the wider Aboriginal and Torres Strait Islander community.

ATSIS is particularly concerned to ensure that the review takes account of the history of Indigenous Australians experiences with the coercive powers of the State. Both the Royal Commission into Aboriginal Deaths in Custody and the 'Bringing Them Home' reports draw out some of these consequences for generations of Aboriginal and Torres Strait Islander People. The Indigenous population would be vulnerable given existing levels of disadvantage, and its demographic profile, where youth are now the significant majority of the age distribution.

The impact of past government policies and the long-term effects of dispossession, have led to major social consequences such as substance abuse, high levels of incarceration, suicide, domestic violence and sexual abuse. Combined with limited economic opportunity and minimal access to employment, these social consequences have worked effectively to ensure that Aboriginal and Torres Strait Islander peoples constantly interface with the criminal justice system.

Initiatives that seek to provide alternatives to coercive treatment and indeed custodial sentences for Aboriginal and Torres Strait Islander people are essential. In reviewing this legislation, a high priority should be given to consideration of:

- The role of community elders and other traditional sources of social control, such as Aboriginal and Torres Strait Islander customary law and practices.

- The role of ATSIC elected representatives as outlined in the submission.
- The lack of authoritative research into the effectiveness of treatment under coercion;
- The lack of culturally appropriate rehabilitation services for Aboriginal and Torres Strait Islander people; and
- The ethical issues raised about infringement of civil liberties and the need for a careful weighting of this loss of liberty against the potential benefits to the community and to the individual themselves.

Coercive solutions should be avoided as a matter of principle. In any case, such measures do not provide any solution to unacceptable living conditions, poor health, low education standards and high unemployment. The focus for reform has to be on tackling underlying causes, on prevention and rehabilitation. The recently released Productivity Commission report "Overcoming Indigenous Disadvantage – Key Indicators 2003" benchmarks the glaring facts of Indigenous disadvantage. The resources and efforts of all Governments must be directed towards this end.

Yours faithfully,

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14 November 2003

Aboriginal and Torres Strait Islander Services (ATSIS)
Submission to the Standing Committee on Social Issues
Inebriates Act 1912

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1. Introduction

There are chronic inequities facing Aboriginal and Torres Strait Islander people in Australia. The ongoing high need areas include health, housing, education, land access, employment and economic development. In addressing these issues, we cannot ignore the impact of history and the long-term effects of dispossession, which have served to create the fundamental inter-generational social disadvantage. These factors have led to major social consequences such as substance abuse, high levels of incarceration, suicide, family violence and sexual abuse. Combined with limited economic opportunity and minimal access to employment these social consequences have worked effectively to further disenfranchise and disempower Aboriginal and Torres Strait Islander people. The recently released Productivity Commission report "*Overcoming Indigenous Disadvantage – Key Indicators 2003*" released to the Council of Australian Governments on 13 November 2003, lays the foundation for a concerted local, state and national effort to redress these inequities.

2. The ATSIC/ATSIS Structure and Role

Aboriginal and Torres Strait Islander Services (ATSIS)

ATSIS was established as an agency of the Federal Government to provide services to ATSIC as a result of a Ministerial direction. It is responsible for delivering Commonwealth funded programs under the policy direction and guidelines established by ATSIC and the Government.

Aboriginal and Torres Strait Islander Commission (ATSIC)

As the elected representative body for Aboriginal and Torres Strait Islander people, ATSIC has the authority and standing to effectively represent needs of Indigenous communities. In addition, it has formed significant partnerships with other agencies and governments, such as the NSW Service Delivery Partnership Agreement signed by the NSW Premier, NSW Aboriginal Land Council and ATSIC in 2002. ATSIC is well placed to assist the NSW Government, its agencies, other organisations and the Indigenous community in developing and implementing solutions to the problems of alcohol and substance misuse.

A brief overview of the ATSIC roles and functions is at Attachment A. The NSW ATSIC State Council is the state policy making body in NSW and takes its lead from the policy and program direction of the six NSW Regional Councils on the basis that local solutions are often more sustainable.

3. The NSW Aboriginal and Torres Strait Islander community

Demographic profile

There are approximately 120,000 Aboriginal and Torres Strait Islander people in NSW, constituting 1.9% of the total NSW population and 29.2% of the Australia Indigenous population. The Indigenous population differs from the rest of the population by its rapid growth, and its comparative youth (60% under 24 years). Official data contained in the table below clearly illustrates the level of disadvantage amongst Aboriginal and Torres Strait Islander people.

Factor	Indigenous Population	Non-Indigenous Population
Life expectancy male	57	76
Life expectancy female	62	82
Unemployment rate	23%	7%
Median family income	\$646	\$990
Tertiary education	18%	38%
Household overcrowding	7.5%	2.5%
Own or purchasing own home	34%	69%
Male court appearance per 1,000	643	89
Male imprisonment per 1,000	45	3

Alcohol and related issues

Although alcohol consumption amongst Indigenous Australian people is lower than the general community, the proportion of Indigenous people who drink at *harmful levels* is over five times higher (28% compared with 19% of all alcohol consumers).

Alcohol and tobacco use are strongly linked to the four main causes of death in the Indigenous population; cardiovascular diseases, respiratory problems, cancer, and external causes (accidents/poisoning/violence). The contribution of alcohol to deaths in Aboriginal communities is five times higher than within the non-Indigenous community.

The abuse of alcohol is intrinsically linked to a number of the major challenges facing the Indigenous population, including the epidemic proportions of family violence within the community and the over-representation of Indigenous people in the criminal justice system.

The Indigenous population continues to be grossly overrepresented in the criminal justice system. "Aboriginal people constitute 16% of all prisoners in NSW. Aboriginal men constitute 18% of all male prisoners and Aboriginal women constitute 31% of all female prisoners"¹. *Alcohol has been found to be a major contributing factor to these incarceration rates.* This is supported by the findings of the Royal Commission into Aboriginal Deaths in Custody which highlighted the connection between incarceration and drug and alcohol abuse.

The "Speak Out Speak Strong" project conducted by the Aboriginal Justice Advisory Council found that out of 50 female Aboriginal prisoners surveyed 86% were under the influence of alcohol and/or drugs at the time of their last offence.

Aboriginal and Torres Strait Islander people who drink alcohol are much more likely to be arrested by police compared with other Indigenous Australians who do not drink alcohol. The NSW Bureau of Crime Statistics and Research found that alcohol consumption is a particularly important risk factor, with the risk of arrest being about 13 percentage points higher for Aboriginal and Torres Strait Islander drinkers compared with non-drinkers.

Family violence is widespread within Indigenous communities with alcohol and drug abuse being a significant contributing factor to this violence. Indigenous women are 45 times more likely to experience violence than non-Indigenous women, and ten times more likely to die as a result. Violence is believed to directly affect up to 90% of families living in some Indigenous communities.

4. Issues surrounding compulsory drug and alcohol treatment

The Royal Commission into Aboriginal Deaths in Custody recommended that imprisonment should be utilised only as a sanction of last resort. This recommendation has clearly not been implemented in NSW as demonstrated by the continuing rates of overrepresentation of Indigenous people in this state's prison system.

The recommendations of the Royal Commission into Aboriginal Deaths in Custody still provide a blueprint for reforming key aspects of criminal justice system. The Royal Commission advocated a series of measures including:

- Indigenous self-determination (recommendation 188)
- Community policing (recommendations 88, 214, 215, and 220);
- Arrest as a last resort (recommendation 87)
- Non-arrest for trivial offences (recommendation 86)
- Alternatives to arrest for juveniles (recommendations 62, 239-242)

¹ "Speak Out Speak Strong", Aboriginal Justice Advisory Council, NSW Attorney General's Department 2003

- Diversion from police custody for public drunkenness (recommendations 79-85).

These recommendations should still be used to provide guidance for matters relating to Indigenous people.

Initiatives that seek to provide alternatives to custodial sentences for Aboriginal and Torres Strait Islander people are essential to address their overrepresentation in the NSW prison system. There is a desperate need to expand existing alternative programs, explore new initiatives, and ensure that programs are both culturally appropriate and more accessible to Indigenous people.

A survey conducted by the Speak Out Speak Strong project found that many Indigenous women were excluded from alternative sentencing arrangements and diversion programs due to not meeting strict eligibility criteria.² Further, "from a process evaluation of the NSW Drug Court, Taplin reported that Aboriginal offenders tended to be disproportionately excluded from entry into the program because of their 'antecedents' or having committed a 'violent' offence in the past"³

Given the extent to which alcohol and substance misuse impacts on Indigenous offending behaviour, ATSI believes there is an obvious need to better link Indigenous people to alcohol and substance abuse treatment programs/facilities. There is a significant opportunity here for the courts to consider drug and alcohol rehabilitation as an alternative to custodial sentences. Anecdotal evidence suggests that Indigenous people are missing out on treatment for their addictions due to a lack of culturally appropriate facilities and limited opportunities afforded by the courts.

In order to facilitate the involvement of Indigenous people in treatment, more culturally appropriate treatment services need to be established and linkages with these services need to be made with the courts.

The overrepresentation of Indigenous people in the criminal justice system clearly indicates that the mainstream court system is failing them. Indigenous people are simply not responding to sentences administered by the mainstream courts as evidenced by the level of recidivism amongst Indigenous offenders.

An evaluation of the circle sentencing initiative by the NSW Aboriginal Justice Advisory Council found that culturally appropriate programs involving Indigenous people have had much more positive outcomes. Alcohol played a part in many of

² *Speak Out Speak Strong*, Aboriginal Justice Advisory Committee, NSW Attorney General's Department 2003.

³ *MERIT Magistrates Early Referral Into Treatment*, Bruce Flaherty and Joanne Jousif, Attorney General's Department New South Wales, 2002.

the offences dealt with by this initiative and offenders are encouraged if not forced to enter drug and alcohol treatment programs. A survey conducted by the evaluation "reported positive changes in behaviour in all but one of the offenders and a reduction of alcohol abuse by many of the defendants sentenced by the circle".⁴

The compulsory treatment of persons with severe alcohol and/or drug dependence does however raise concerns about infringements of civil liberties. "A World Health Organisation consensus view on the ethics of treatment under coercion is that compulsory treatment is legal and ethically justified only if the rights of the individual are protected by 'due process', and if effective and humane treatment is provided. To this end it has been argued that offenders be allowed at least two types of 'constrained choice'. That is, the choice between the treatment diversion option and the usual criminal justice process, and some choice as to the type of treatment(s) they receive".⁵

There is conflicting evidence as to the effectiveness of treatment under coercion. It is widely believed by the medical community that motivation is a key factor contributing to a patient's success.

Careful analysis of existing compulsory treatment programs, such as in Victoria and Sweden, need to be conducted to determine their effectiveness and impact on the offender before any such program is implemented in NSW. There needs to be a careful weighting of the individual's loss of liberty against 'what is best' for the individual and the community.

5. Recommended Indigenous bodies for further consultation

In addition to the Aboriginal Justice Advisory Council, there are other structures which exist in NSW with the capacity to advise on matters impacting on Aboriginal and Torres Strait Islander people.

ATSIS funds a total of six Aboriginal and Torres Strait Islander Legal Services (ATSILS) and 3 Family Violence Prevention Legal Services in NSW to deliver culturally appropriate legal services to Indigenous people. Given that these bodies deal solely with Indigenous people and the justice system, I would suggest that your Office approach the relevant services (Contacts are listed at Attachment B) to provide comment.

⁴ *Circle Sentencing in New South Wales – A review and evaluation*, Judicial Commission of New South Wales and NSW Aboriginal Justice Council, 2003.

⁵ *MERIT Magistrates Early Referral Into Treatment*, Bruce Flaherty and Joanne Jousif, Attorney General's Department New South Wales, 2002.

The peak representative body for NSW ATSILS is the Coalition of Aboriginal Legal Services (Listed in Attachment B). The primary role of the Coalition is to undertake advocacy, research and policy development. Again, I encourage you to seek their advice.

The Office for Aboriginal and Torres Strait Islander Health, located within the Commonwealth Department of Health and Ageing, is responsible for providing funding to Aboriginal community controlled health and substance misuse services.

The Aboriginal Health & Medical Research Council of NSW (AH&MRC) is a state affiliate of the National Aboriginal Community Controlled Health Organisation (NACCHO). The AH&MRC are the recognised peak body of Aboriginal community controlled health and health related services in NSW.

Both of these agencies are well placed to provide comment on this matter.

6. Conclusion

ATSIS is deeply concerned with the level of alcohol and substance misuse within the Indigenous Australian community and is committed to supporting initiatives that aim to address this in a culturally appropriate manner. However, coercive measures should be avoided as a matter of principle.

The impact that any reforms to the Inebriates Act 1912 may have on Indigenous people need to be carefully considered in light of issues raised in this submission. Reforms that may impact on individual civil liberties, impinge on cultural integrity or increase the coercive powers of the State over Aboriginal people and Torres Strait Islanders must be avoided. Reforms that seek to galvanise efforts to tackle underlying disadvantage, to revise policies and target resources where the needs are greatest; to commit to rigorous evaluation of programs and replace what is failing with what works best, will be welcome.

References

- Australian Bureau of Statistics, 2001 Census Information
- Social Justice Report 2001, Aboriginal and Torres Strait Islander Social Justice Commissioner, Report no. 2/2002
- Alcohol and Other Drugs Council of Australia, www.adca.org.au
- Australian Indigenous Health infonet (2003) Summary of Indigenous Health June 2000, www.healthinfonet.ecu.edu.au/html/html_keyfacts_summary.htm
- Family Violence information paper, National Centre for Legal and Preventative, ATSIIC 2002.
- Media Release: Factors underlying indigenous arrest rates, Bureau of Crime Statistics and Research, 10 December 2001, www.lawlink.nsw.gov.au/bocsar1.nsf/pages/media101201
- Circle Sentencing in New South Wales: A review and evaluation, Judicial Commission of New South Wales and NSW Aboriginal Justice Advisory Council, 2003.
- Magistrates Early Referral Into Treatment Paper, Attorney General's Department with the assistance of Catherine Spooner Consulting, 2002.
- "Speak Out Speak Strong", Aboriginal Justice Advisory Council, 2003.
- Helping those Imprisoned for Alcohol Related Crimes Paper, Australian Institute for Criminology, 1990.

The Aboriginal and Torres Strait Islander Commission (ATSIC)

ATSIC is the peak democratically elected body representing the wider interests of Indigenous peoples. Under the *Aboriginal and Torres Strait Islander Commission Act 1989*, ATSIC is charged with policy development, advocacy and monitoring responsibilities at national, state and local levels.

ATSIC seeks to forge strategic alliances with Commonwealth, State and Local government agencies and the non-government sector to pursue Indigenous interests.

Structures

Nationally, the ATSIC Board of Commissioners has established Portfolio Committees to advise it on a range of social, economic and cultural issues. The Social and Physical Wellbeing Portfolio Committee, which has responsibility for health matters is chaired by NSW Metro Zone Commissioner Cliff Foley.

In NSW, a key policy agent is the NSW ATSIC State Council (NASC), comprising the three NSW ATSIC Commissioners and the six Chairs of the NSW Regional Councils. The NASC has a State-wide policy development and strategic planning role, and has established Portfolio Committees as the focal point of its state-wide policy approaches.

The six Regional Councils in NSW are elected by their respective Indigenous populations. Three NSW Zone Commissioners are also elected by the Regional Councils to represent the Indigenous people of NSW at the national level.

Each Regional Council is required under the ATSIC Act to develop its Regional Plan that identifies issues of concern within the local community and strategies to address these. The Regional Plans are intended to facilitate better coordination between ATSIC and government and non-government agencies to address priority issues raised in the plans.

ATTACHMENT B

Aboriginal and Torres Strait Islander Legal Services

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