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28 November 2003

Hon Jam Burnswood MLC
Chair
Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY 2003

Dear Ms. Burnswood

I refer to your Committee's enquiry into the Inebriates Act 1912, about which I received a letter from you dated 30th September 2003.

This matter has been discussed at the Chaplaincy Committee of our Board and as a result one of our chaplains, Rev. Rennie Schmid, has prepared a submission on behalf of Uniting*Care*.

I trust that it is helpful to your committee in considering this matter, and I regret that circumstances have meant that it could not have been forwarded earlier.

Yours sincerely

REV. HARRY J. HERBERT
Executive Director

Att.

Rev Rennie Schmid
BA.,BTheol, BAppPsych.(Hons), MAPS
Northern Sydney Area
UnitingCare NSW.ACT

The Director
Standing Committee on Social Issues
Parliament House
Macquarie Street
Sydney, 2000

11 November, 2003

Re: Inquiry into Inebriates ACT 1912

Dear Madam,

I write in my capacity and experience as a mental health chaplain working within the Northern Sydney Heath Area. I have held this position for over five years and have had first hand experience on where the Inebriates Act has been used by magistrates to place people in Macquarie Hospital. This submission will cover Terms of Reference 1, 2, 3 and 5 of the inquiry.

1. The Inebriates Act 1912 and the provision on compulsory assessment and treatment under the Act.

While the Inebriates Act 1912 Part 2 3.1 (c) allows for assessment by a "duly qualified medical practitioner in professional attendance on the inebriate", it is possible for the family or business partners of a vulnerable person to influence legal system without regard to the human rights of the person involved. Unlike the Mental Health Act, assessment is not clearly defined within the Inebriates Act 1912 and it does not make provisions for an inebriate to be independently represented and assessed. A person may face a court while inebriated or while suffering physical and emotional trauma. This can lead to a person being placed in an institution for twelve months (and possibly longer) without a chance to defend him/herself when sober or restored to health.

> Barry[1] was placed in Macquarie Hospital for 12 months under the Inebriates Act 1912. He was presented to a magistrate by his sister and brother and an authorised member of the police force. Barry had been taken from a general hospital to the court after recovering from intensive care where he was treated while in a coma that had resulted from his abuse of alcohol. Medical authorities had not expected him to recover from the coma. His alcoholism

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1 Not his real name

was well-documented and he admitted he was an alcoholic and would drink anything when he was on a binge. He had no history of violence and had no criminal charges against him. He was not mentally ill. Barry felt he had been disadvantaged by his family bringing him before the magistrate while he was physically and emotionally weak, and disorientated from his near-death experience. He didn't feel his case was adequately represented.

After some time at Macquarie Hospital, Barry was given leave and allowed to make day trips as his condition improved and as is normal practice within the mental health system. During one of these excursion he was devastated to learn of the death of good friend. He again turned to alcohol. Under pressure from Barry's sister and brother, the threat of legal action, and as a response to Barry's renewed drinking, the hospital placed him in Tarban House; a locked ward for severely mentally ill people. He remained here for the remainder of his sentence (over 250 days). During this time he was unable to find a way for his circumstances to be reviewed within the legal system. The hospital felt constrained by the law to keep him in the confined locked ward.

When courts enact the Inebriates Act and place people in mental health institutions it causes confusion and ambiguity when it cuts across the Mental Health Act. It creates injustices for both the inebriate and the mental health systems involved. The lack of clarity about legal responsibilities and human rights should be reason enough to overhaul the Inebriates Act to bring it line with ground breaking reforms represented within the current Mental Heath Act that was introduced in the 1980's.

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

The Inebriates Act allows for the courts to place people in mental health institutions for an extended period time without regard to a rehabilitation plan. The Mental Health Act, on the other hand, allows for courts to place people in the care of mental health institutions with a legal and practical expectation that these people will be released or rehabilitated back into the community. The Mental Health Act recognises that mental illness can be treated and managed and provides for the rights of the individual to be represented and reviewed at determined times. The whole ethos of the mental health institutions is towards wellness and to identify and offer support for patients as they take charge of their lives. Staff use containment only when the patient are at risk of self harm, harming other people, or that a persons reputation is at risk as result of their illness. Consequently Mental health institutions are NOT run like prisons. The emphasis is on promoting freedom and self responsibility as soon as a patient recovers from their illness or is appropriately managed through a rehabilitation plan. Community support is defined and enacted as a duty of care and as a natural outcome of the rehabilitation process.

A key issue we have with the Inebriates Act is that is primarily concerned with alcoholism and addiction while our mental health institutions are not organised nor do they have the resources to adequately provide for this group of people. If an inebriated person has also committed an offence then in some circumstances mental health patients and staff could be at

risk. Hospitals are not gaols. The staff is not trained and the facilities are not designed to respond to criminal containment. Patients are vulnerable.

Although drug and alcohol issues are prominent issues within mental health, the accommodation provisions and rehabilitation programs are not suitable for alcoholics and addicts. Presenting alcoholics and addicts are referred to community programs and accommodation especially set up for these people. When a magistrate or judge uses the Inebriates Act to place a person in a mental health institution, the mental health system is forced to accept a patient into a facility where there is no opportunity for appropriate and needs specific rehabilitation.

When an inebriate is sentenced to a mental institution under the Inebriates Act, the system, the staff, the mentally ill patients and the inebriate are placed in a very difficult situation. The inebriate may not have a mental illness, but he/she is exposed to the unique characteristics of a psychiatric ward.

> Barry found himself in Tarban House. This was a locked ward for treatment resistant mentally ill patients who could be unpredictable in the expression of their anger and violence. Some patients move from this ward to open wards as they respond to treatment and progress through rehabilitation. Others are long term patients who regularly demonstrate violence. Barry often expressed his concern at the level of violence he experienced on the ward and felt he had to be always on guard. He also found it difficult to communicate and have conversations with patients who were constantly disordered, delusional or hallucinating. Barry became lonely and had to develop his own ways of protecting himself and his belongings.
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> The rehabilitation programs on the ward are geared for the severely mentally ill. Barry was a high-functioning person and found these programs inappropriate and not useful. He retreated into reading books. As time went on Barry became frustrated as he saw people move into open wards with behaviours that were well below his level of functioning. He felt trapped by the ward and the lack of rehabilitation opportunities he had open to him. The ward had become his prison. His situation had added anxiety and depression to an otherwise model patient.

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

Under the current situation it is difficult and perhaps illegal to release an inebriate into the community to access the appropriate resources for his or her rehabilitation. Mental health institutions are connected to an area mental health network of workers, accommodation, medical and professional support. There is no standard protocol of care and support for people who are incarcerated under the Inebriates Act.

> With support from the Social Worker and other staff members (including myself), Barry tried to initiate his own rehabilitation program. At the time Drug and Alcohol would not come and visit him in hospital as they required

clients to attend their offices. The hospital administration had difficulty in allowing Barry to attend Alcoholics Anonymous (AA) because of the ambiguities presented because Barry was placed in the hospital under the Inebriates Act and they were unsure if they were under a legal obligation to keep him within the hospital. They also had a concern that they did not have the staffing levels to allow them to escort Barry to AA. Barry was concerned about the anonymity of AA meetings and that it was not acceptable for staff to sit in on meetings. Attempts were made to try and get Barry into a training program, but that was also frustrated by the legal ambiguity of letting him attend classes in the community. The Department of Housing had concerns about providing accommodation because Barry would be not be under a mental health community order or rehabilitation plan after his 12 month sentence was completed.

As the time approached for Barry's release, it became clear that Macquarie Hospital would not be able to offer any support after he left the care of the hospital. The Department of Housing did provide resources for some trial accommodation. Different staff gathered furniture and other equipment to help support Barry. Once free of the hospital Barry could attend counselling with Drug and Alcohol and pursue educational opportunities through the Commonwealth Rehabilitation Server. As a hospital chaplain, I was the only staff member who could continue support in the community.

In the end, Barry was imprisoned in Macquarie Hospital without a formal rehabilitation plan that could be sustained into the community. While sober for the best part of a year, Barry re-entered the community with some human support, shelter and food support, but with the same vulnerabilities that he had when he was first placed in Macquarie Hospital.

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.

It is clear that it is inappropriate for inebriates to be sent to mental health institutions where there are not the appropriate human and physical resources to offer life preserving interventions and care. However the destructive reality of addiction to alcohol and/or drugs cannot be ignored by either the health or legal system. Individuals need protection against the aggressive sides to alcoholism and addiction of others. Some people need protection from self harm or from killing themselves through the use of alcohol or drugs.

Barry struggled for about three months to establish himself in the community. He slipped once, but recovered quickly with support. He seemed to cope through AA, Drug and Alcohol Counselling and regular pastoral support. Yet within himself he admitted his own internal fragility. One weekend his addiction again took hold. He consumed 4 bottles of Methylated Spirits and died in the loneliness of his flat.

The issue is not to take away a mechanism that could offer protection or save lives, but rather

to provide a mechanism that can protect the rights of individuals, realistically place inebriates into facilities that keep them away from alcohol and drugs and at the same time offer a high standard of assessment, intervention, rehabilitation and support. The mental health system may be the logical place to provide this support, but it has to be done through modern laws that protect the rights of the individual, the community at large and that do not crash into hospitals and institutions that are not equipped for the unique needs of these people.

The Inebriate Act 1912 should be improved or replaced:

- To ensure that an independent and panel review of a person is carried out according to legal criteria defining chronic alcoholism and drug addiction. This could be modelled on the mental health model and allow for voluntary and involuntary situations.
- To ensue that regular reviews of inebriates/addicts take place with an independent panel and with legal and personal representation from the inebriate/addict.
- By defining the minimum criteria for institutions equipped with world best practice in the treatment of alcoholism/addiction and limit the commitment of inebriate/addicts to appropriate institutions.
- To remove the ambiguity between the Inebriates Act and the Mental Health Act. At minimum allow institutions to treat committed individuals within the legal guidelines appropriate to their situation.
- By defining and requiring a duty and continuity of care to extend beyond the sentence to the initiation through a management and or rehabilitation plan.

The replacement or improvements to the Inebriates Act would benefit from the Government identifying, developing, providing of resources and support for purpose specific programs and facilities.

Yours Sincerely

Rennie Schmid