HEALTH CARE
COMPLAINTS
COMMISSION

Ms Jan Burnswoods MLC
Chairperson
Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY NSW 2000

Ref IM:1603

Dear Ms Burnswoods

RE: INQUIRY INTO THE INEBRIATES ACT 1912

Thank you for your invitation to make a submission on the important issues raised by the inquiry into the efficacy of the *Inebriates Act 1912* ("the Act") as it relates to the compulsory treatment of people with severe alcohol and/or drug dependence. Please accept my apologies for the delay in replying.

This submission is based on the experience of the Health Care Complaints Commission ("the Commission") in dealing with complaints relating to drug and alcohol dependence issues, and in particular complaints relating to health practitioners who abuse and/or are drug/alcohol dependent.

The Commission is responsible (among other things) for investigating and prosecuting the professional conduct of health practitioners. "Health practitioners" include those practitioners registered under registration acts (such as doctors, registered under the *Medical Practice Act 1992,* nurses under the *Nurses Act 199* and so on). The Commission also has jurisdiction over unregistered practitioners such as those providing alternative health care such as naturopathy and traditional Chinese medicine.

Each registration authority (the Medical Board, Nurses Registration Board, Dental Board and so on) now provides an "impaired registrant's program". Where appropriate in the public interest, practitioners suffering from drug/alcohol addiction may continue to practice, subject to conditions, treatment and monitoring.

The Commission and its predecessor, the Department of Health's Complaints Unit, has no records of health practitioners being charged and dealt with under the Act. There is no requirement for the Commission to be notified when this takes place.

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In the Commission's experience, the Courts are more likely to deal with inebriated health practitioners when they are charged with offences such as possessing illicit drugs or drink driving. There is an obligation under the various registration Acts for a Court to notify the Registrar of the appropriate registration authority where a registered health practitioner is convicted of an offence (for instance, section 71 of the *Medical Practice Act 1992* and clause 12 of the *Medical Practice Regulation 2003*).

There is also an obligation for specified individuals to notify the registration authority's registrar where a registered health practitioner becomes mentally incapacitated (for example, section 70, *Medical Practice Act 1992* and clause 11 of the *Medical Practice Regulation 2003*). In this regard, it should be noted that current thinking is that drug and/or alcohol dependence is considered a physical or mental impairment and is defined in health professional registration legislation, such as the clause 3 of the dictionary of the *Medical Practice Act 1992* which states (emphasis added):

"A person is considered to suffer from an impairment if the person suffers from any physical or mental impairment, disability, and condition or disorder which detrimentally affects of is likely to detrimentally affect the person's physical or mental capacity to practice medicine. Habitual drunkenness or addiction to a deleterious drug is considered to be a physical or mental disorder."

The Commission's concern with the *Inebriates Act 1912* is therefore twofold:

1. It does not accord with current thinking regarding drug and/or alcohol dependence as a physical or mental disorder.

2. There is no provision within the Act for the Commission or registration boards to be notified where a person is committed under the Act.

The Commission also provides the following comments on the Committee's terms of reference.

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

   Compulsory assessment is only relevant and effective if there are the necessary resource and/or treatment options to act on the findings and recommendations arising from the assessment. Where a person has come to the attention of police and the judiciary (with some amendments to provide for the apprehension and detainment for assessment) provisions are available in currently relevant legislation to effect an assessment of an individual. For example: the *Crimes Act 1900*, *Mental Health Act 1990*, and the various health professional registration Acts.

The *Mental Health Act 1990* provides for treatment and counselling orders that are appropriately linked with Community Mental Health Centres. By default the Community Mental Health and Mental Health Services have serviced the orders made under the *Inebriates Act*. Although provided for in the *Inebriates Act*, gazetted health facilities and services for inebriates did not eventuate.

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.*

   (a) *Dealing with persons who have not committed an offence.*
   Such persons may be dealt with under the provision of the *Mental Health Act*. The relevant legislation should be amended to require time specified mandatory notice of orders made under the Act, concerning the mental condition of a health practitioner, to the relevant professional registration board and the Health Care Complaints Commission.

   (b) *Dealing with persons who have committed an offence.*
   Such persons may be dealt with under the provision of the *Mental Health Act* or *Mental Health (Criminal Procedure) Act* and/or the *Guardianship Act*. The relevant legislation should be amended to require time specified mandatory notice of any offence, charge, or order to professional registration boards.

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

   The Act is ineffective in linking persons with serious drug and/or alcohol dependence to suitable treatment facilities. The *Inebriates Act* provides for such persons to be contained in gazetted health facilities and to have access to treatment. Psychiatric hospitals were/are, by default, used to accommodate persons deemed to be inebriates. However since the 1970s the number of psychiatric hospitals has reduced and long term accommodation wards, in which inebriates were contained, have been closed. Facilities such as Callan Park, Bloomfield, Gladesville, Stockton, Parramatta, and Watt Street (Newcastle) are no longer available. There are limited containment wards in existing psychiatric hospitals and these beds are in great demand for acutely psychotic persons, mainly forensic patients.

4. *Options for improving or replacing the Act with a focus on saving the lives of people with severe alcohol and/or drug dependence and those close to them.*

   As stated above, the Act is obsolete and contrary to current terminology and language, and practice in dealing with person with a serious drug and/or alcohol dependence.

In the Commission's opinion the *Inebriates Act* needs to either be modernised or repealed and relevant provisions placed into the *Mental Health Act*, *Mental Health (Criminal Procedure) Act*, and/or *Guardianship Act*. It should also include provisions whereby the Commission and the relevant registration authority are notified of any health practitioners who come within its ambit.

Please contact Mr David Swain, Manager, Legal Services, on 02 9219 7413 if there are any questions.

Yours sincerely

W Grant
Acting Commissioner

16 December 2003