NEW SOUTH WALES

The Chief Magistrate of the Local Court

7 October 2003

The Director
Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir/Madam

I write in response to an invitation from the Chair to make submissions to the Inquiry into the Inebriates Act 1912 and enclose my submission together with an attachment.

Yours faithfully

Judge D Price
CHIEF MAGISTRATE

Encl:

DP:ss

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SUBMISSION TO THE INQUIRY

INTO THE INEBRIATES ACT 1912

On 27th August 2003, I delivered a presentation to the New South Wales Summit on Alcohol Abuse entitled "Alcohol and the Justice System". An invitation has been subsequently received from Jan Burnswoods MLC, Chair, The Standing Committee on Social Issues, to make a submission to the Committee on the Inquiry into the Inebriates Act 1912. As the submission I propose to make is founded on those parts of the presentation to the New South Wales Summit, I attach a copy of the presentation, pages 6 to 10 inclusive being of relevance to the present Inquiry.

I ask that my presentation (pages 6 to 10 inclusive) be treated as part of the present submission to the Inquiry. The following matters I emphasise:

(1) Orders made for compulsory detention under the Inebriates Act 1912 (hereinafter referred to as "the Act") produce unnecessary tension between the Justice System and New South Wales Health Department.

(2) Orders made by Magistrates for compulsory detention are on occasions not complied with by Medical Superintendents on various grounds. For examples of those grounds, see page 9 of the attached presentation.

(3) Failure to comply with Court Orders for compulsory treatment does nothing to assist the inebriate. Furthermore the justice system is brought into disrepute, the order made by the Magistrate being ineffectual. Police resources are consumed without the aims of the Court orders being fulfilled.

(4) The justice system is an inefficient instrument for dealing with the chronically intoxicated.

(5) Bonds (under the Act) are infrequently used as Courts are rarely inclined to accept undertakings of chronically intoxicated persons to abstain.

(6) The Act should be repealed.

(7) The specific needs the Act addresses should be taken up by modern legislation.

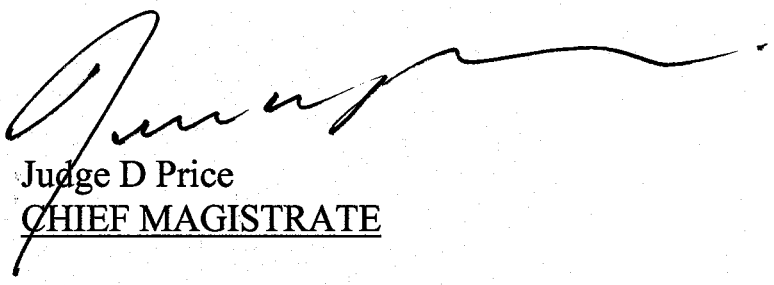
(8) There appears to be no good reason why an inebriate could not be involuntarily detained by procedures similar to those found in Part 2 Division 1 Mental Health Act 1990 (see in particular s21 – s24 inclusive of that Act) and the detention subsequently reviewed.

(9) Appropriate beds would need to be made available, not beds in a mental health ward. Psychiatric facilities may be considered to be inappropriate for the treatment of an inebriate.

(10) Should the Act not be repealed, the Act ought be significantly amended. At the very least, the list of places where inebriates may be admitted for treatment requires revision. The list of eight psychiatric hospitals gazetted in 1929 must be updated to provide greater access to hospitals beds throughout the State.

(11) Should the Act not be repealed, the availability of a bed and acceptance of the inebriate by a gazetted hospital might be an essential condition for the making of a compulsory treatment order.

(12) A Memorandum of Understanding for the making of compulsory treatments orders might be developed between the Chief Magistrate and the New South Wales Department of Health to ensure that those essential conditions are readily fulfilled before those orders are made.



Judge D Price
CHIEF MAGISTRATE

7 October 2003

SPEECH TO THE NSW SUMMIT ON DRUG & ALCOHOL

BY HIS HONOUR JUDGE DEREK PRICE

CHIEF MAGISTRATE OF THE LOCAL COURT OF NSW

ON WEDNESDAY, 27 AUGUST 2003

"ALCOHOL AND THE JUSTICE SYSTEM"

In the New South Wales Justice System there have been in recent years important developments in alternative sentencing and diversionary programs for offenders with illicit drug dependence. These developments which include the Drug Court, the Youth Drug Court and the Magistrates Early Referral into Treatment (MERIT) have resulted from partnerships between the Courts, Police, Attorney General's Department, Department of Juvenile Justice, New South Wales Health Department and the Probation and Parole Service. These initiatives with the exception of the Youth Drug Court which targets alcohol misuse as well as drug abuse have not been extended into the area of alcohol-related crime.

The excessive consumption of alcohol however is a substantial factor in bringing persons into contact with the Justice System. A cursory perusal of the pre-sentence reports prepared by the Probation and

Parole Service for matters listed recently for sentence on an average Friday at the Downing Centre Local Court revealed:

- **A twenty four year old male to be sentenced for the offences of assault occasioning actual bodily harm, common assault and contravening an apprehended domestic violence order had "abused alcohol from his mid-adolescence".**

- **A forty one year old male to be sentenced for breach of an apprehended violence order had reported "drinking alcohol since he was approximately 12 years old when he was placed in a boy's home. He reported drinking often until he passes out".**

- **An eighteen year old male to be sentenced for the offences of resisting a police officer in the execution of his duty, affray and assault occasioning actual bodily harm was a young offender who, "despite having participated in counselling in the past, continues to have an on-going problem with alcohol, which appears to have some impact on his ability to control his anger".**

- **A forty seven year old male facing sentence for larceny had been "detoxified in Rozelle Hospital in 1998 from alcohol". The offender's diagnoses included "alcohol abuse (now in remission)".**

The single most common offence for persons sentenced in the Local Court in 2002 was the offence of mid range Prescribed Concentration of Alcohol (PCA). The second most common offence was common assault[1]. Analyses of this offence has repeatedly shown it to be associated with alcohol use.

The offence of "knowingly contravene apprehended violence order (AVO)" was the 9th most common offence and accounted for 3,214 offenders[1]. The Local Court in 2002 made 16,046 final domestic violence orders (ADVO's). The link between alcohol use and domestic violence is apparent from two of the matters to which I have referred in the Friday sentence list. Almost 98% of all criminal prosecutions in the State are heard by Local Court Magistrates.

The use of alcohol does not provide an excuse for the commission of a criminal offence. Very broadly stated, the use of alcohol may be relevant in the sentencing of an offender in understanding the origin

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[1] Keane and Poletti "Common Offences in the Local Court 2002"

or extent of the alcohol abuse or in determining the degree of deliberation involved by an offender in committing the crime.

In those cases in which alcohol use has played some part, where the Court considers a full time custodial sentence is not warranted, offenders may inter alia, be placed on a good behaviour bond subject to supervision by the Probation and Parole Service which is to include individual counselling for alcohol addiction. The Court by directing the intervention of the Service seeks to rehabilitate the offender. The Department of Juvenile Justice offers the specialist Alcohol and Other Drug (AOD) program to juveniles on court orders for alcohol related offences.

The Justice System however when dealing with alcohol use should continue to be innovative. It is by the process of innovation and subsequent evaluation that the Justice System avoids inertia.

Innovations might include:

- **An integrated court system to deal with domestic violence. Such a system which is presently under consideration might be adapted to identify and address alcohol use by a perpetrator of domestic violence at an early stage.**

- **The powers of the Court to make apprehended domestic violence orders (s562AE Crimes Act 1900 [NSW]) might be extended to enable the Court to make an order in appropriate cases that an offender undertakes a compulsory program to deal with his/her alcohol use. Failure to attend the program will amount to a contravention of the order. Section 562I Crimes Act 1900 will require amendment to make non-attendance a breach of that section.**

- **Intensive education programs along the lines of the Sober Driver Program might be developed for alcohol use and crime (including domestic violence).**

- **A program of Intensive Court Supervision (ICS) in the Children's Court of New South Wales (presently under consideration) which relevantly identifies High Risk Persistent Offenders who abuse alcohol and require comprehensive long term management.**

- **The Magistrates Early Referral into Treatment (MERIT) program which presently is a pre plea diversion program for offenders with illicit drug problems might be extended to**

offenders with alcohol problems. The Court at the present time does not have the option to direct offenders into supervised treatment for alcohol use whilst on bail and prior to sentence. The extension of MERIT in such a way would have the advantage of linking offenders at an early stage to services, government or private, which may assist in stabilising their life styles and address the causation of their alcohol abuse. Drug and alcohol problems commonly overlap. Some 30% of offenders who have participated in MERIT to date have reported alcohol use as a secondary problem. The MERIT model could be adapted for use in the Children's Court.

There are other innovations such as community justice conferencing for young adult offenders (presently under consideration) and the use of warning and cautions for adults which warrant further evaluation. The use of adult warnings and cautions in appropriate cases and the extension of Circle Sentencing could have a significant impact on reducing alcohol-related offending by Aboriginal people.

The reach of the Justice System is not confined to those instances where the consumption of alcohol is an element of the offence or those offences where alcohol consumption was a factor in the commission of the offence. The Inebriates Act 1912 allows a Judicial Officer to

commit "an inebriate" into a "licensed institution or a State institution established under section 9" for up to twelve months even though a criminal offence may not have been committed (section 3(f)). The Act defines "an inebriate" as a "person who habitually uses intoxicating liquor or intoxicating or narcotic drugs to excess" (section 2).

This Act which was introduced as a result of pressure from families of alcoholics for appropriate treatment facilities early last century is rarely used in relation to persons abusing drugs. The Court may inter alia order an inebriate to enter into a good behaviour bond to abstain from intoxicating liquor for a period of twelve months or more. Bonds are infrequently used as Courts are rarely inclined to accept the undertakings of chronically intoxicated persons to abstain.

Whilst the numbers of applications made under the Act are limited, orders made for compulsory detention are productive of unnecessary tension between the Justice System and New South Wales Health Department.

The following application made in a metropolitan Local Court last year demonstrates the difficulties experienced by the use of such orders.

The parents of B brought an application under the Inebriates Act 1912 in respect of their thirty nine year old son seeking an order that he be detained as an "inebriate because of the imminent and fatal danger to his life and health". B had been affected by alcohol since the age of 18 years and had numerous admissions to private clinics without success. B's parents sought longer-term rehabilitation to provide "a breathing space". The application was accompanied by a medical report that B had severe alcoholic liver disease and unless he was detained as an inebriate his health would be seriously endangered.

The Magistrate made a three months order committing B to a gazetted hospital. Having made the order, police were contacted and attended the Court to convey B to the hospital. B was refused admission into the Hospital. The Police, B and his parents returned to the Court. The Magistrate acting in the belief that a Court order had been made and should be complied with directed the police to return B to the Hospital. The Police, B and B's parents returned to the Hospital and once again were told to return to the Court as the Medical Superintendent refused to admit him. B's parents were unable to understand how the hospital could refuse to comply with the Court's order and were very frustrated.

The Medical Superintendent had refused to comply with the Court order on the grounds:

- **There were no available beds.**

- **There was no suitable treatment program at the Hospital.**

- **When a bed was available, it would be in an acute admission ward from which B would be able to abscond.**

- **B would be accommodated among persons with acute psychotic disturbance which he may find distressing.**

The Court order was eventually varied to place B in the care and control of his parents, which clearly was not satisfactory to either party.

The Justice System was brought into disrepute, the order made by the Magistrate being ineffectual. Police resources were consumed. The gazetted hospital, a mental health unit, had neither the beds nor it would argue the appropriate facilities for the detoxification or treatment of an inebriate.

These difficulties are not of recent origin. Court orders have not been complied with by gazetted hospitals over the years for the reasons described. The Justice System in my opinion is an inefficient instrument for dealing with the chronically intoxicated.

The Act in my view should be repealed or at the very least significantly amended. Should it be considered that some form of compulsory treatment remain available, at the very least, the list of places where chronically intoxicated people may be admitted for treatment requires revision. The list of eight psychiatric hospitals gazetted in 1929 has never been updated. It should be, so as to provide greater access to hospital beds throughout the State. The availability of such a bed and acceptance by the hospital of the inebriate might be an essential condition for the making of a compulsory treatment order so as to avoid the frustrations experienced in the case of B.

In conclusion, the important developments in the area of drug related crime are indicative of the innovations, evaluations and modifications taking place within the Justice System. This innovative approach is to be encouraged with alcohol use and the Justice System.