Inquiry into the Inebriates Act, 1912

Submission to the Standing Committee on Social Issues

On behalf of the North Coast Regional Coordination Management Group, Human Services Sub-committee

1. Preamble

The *Inebriates Act 1912*, is outdated, used only rarely, and is not supported by associated resources and human rights frameworks. There will continue to be a small number of cases where the capacity for involuntary detention and treatment will be needed, but this can be provided for through other means. Following consultation with the Human Service agency managers on the North Coast and key local government personnel, this submission:

- identifies key issues associated with the application of the Inebriates Act;
- recommends the *Inebriates Act* be repealed and other legislation (the *Mental Health Act* and the *Guardianship Act*) be amended to provide for the compulsory treatment of people with severe alcohol and/or drug dependency where their behaviour poses a risk of harm to themselves or others; and
- recommends a review of the resource implications of proposed changes.

2. Contemporary drug and alcohol treatment considerations

There have been substantial improvements in, and expansion of, treatments available for people with drug and alcohol problems over the last three decades, as well as changing social perceptions of the use of drugs and people who use them. The term "inebriate" is no longer meaningful, and its use is inappropriate in the modern context. The definition in the Act is open to abuse, maliciously or by well-meaning misinformed people. For many people who might have once fitted this description, appropriate treatment is now available, implemented and successful on a voluntary basis.

There are still, however, a small number of people who:

- drink alcohol or use drugs excessively to the point of harming themselves or others; and who
- actively or passively, avoid assistance and treatment.

This group can be further distinguished in three groups:

a) those people disabled by brain injury or psychiatric illness which is a contributory factor in their excessive drinking and avoidance of assistance;
b) those people whose excessive drinking is involved in the commission of an offence; and
c) those who aren't disabled or offending, but whose behaviour poses a risk of harm to self or others.

> ***Case examples***: *Typical examples of the third category are (1) individuals who are literally "drinking themselves to death", and (2) continually intoxicated individuals who are so rowdy, unruly and disruptive that they are terrorising other family members who are at their wits end. These are the type of cases that compulsory treatment could be beneficial to both the individual, family and other community members.*

The people in group "a" often require compulsory intervention of the sort intended by the *Inebriates Act*, as their inability to voluntarily address their problems by participating in treatment is mediated by the disability or illness. There are now better options for the treatment of people in group "b", and these are discussed in section 4 below. For the people in group "c", the issue is more complex, and requires careful consideration of their rights to behave in manner of their choosing if they are harming only themselves, bearing in mind the distress caused to their families. People in this group may be found to be suffering from a temporary drug-induced

psychosis or mania, in which case recourse to diagnosis as a mentally disordered person under mental health legislation is open.

Clinicians generally find the Act unhelpful, because they see patients regularly relapse following discharge from hospital. New treatments emerging in the drug and alcohol field point to opportunities to use involuntary community treatment in a way similar to Community Treatment Orders under the *Mental Health Act*. Drugs such as acamprosate and naltrexone can now be used to treat alcohol dependency by counteracting the effects of alcohol, and thereby discouraging its use. People under involuntary community treatment orders could be coerced into attending a clinic daily for their daily dosage of such a drug and general monitoring of their progress.

3. Contemporary human rights issues

The modern approach to compulsory treatment for people with diminished capacity to make their own decisions is through mental health and guardianship legislation, and this is recognised at the level of the United Nations with the adoption of the *Principles for the Protection and Care of People with Mental Illness*, under its Human Rights agenda, to which Australia is a signatory. These two modern legislative avenues already exist in NSW. They ensure that involuntary detention or treatment is carried out only in cases that satisfy strict criteria. One of the basic tenets of human rights is the freedom from arbitrary detention. The Inebriates Act, 1912, would appear to contravene basic principles of human rights in its arbitrary criteria for involuntary detention and treatment.

If NSW were to continue the use of, or introduce new legislation, to allow for compulsory treatment of excessive drug or alcohol use, it would need to ensure that it is done within the bounds of these human rights principals and conventions. There is a significant proportion of the population who regularly drink heavily, who don't suffer from a contributory disability or commit offences, and who may harm themselves acutely, or might be harming themselves gradually over time. The question has to be asked where and how do we draw the line, if at all, in these cases?

Dependence on alcohol or drugs is an accepted diagnostic category within psychiatry, but it is not normally used under mental health legislation to treat or detain a person against their will, other than for short periods as a "mentally disordered" person. However, modern mental health legislation already provides the sorts of human rights checks and balances that would be required if a person were to be deprived of their liberty because of their habitual, excessive use of alcohol or other intoxicating drugs. These include complex review mechanisms, including resource-intensive review tribunals and official visitor systems. To establish these under separate legislation may not be the most rational approach, when amendments to the *Mental Health Act* could be made along the lines of a separate section dealing with severe drug and alcohol dependency. The Premier has recently announced a review of the *Mental Health Act*, thereby providing an opportunity to consider such amendment.

The use of mental health and guardianship legislation has the capacity to ensure the proper use of involuntary treatment from a human rights perspective, because of the existing framework for the protection of those rights. The *Inebriates Act* is grossly inadequate to this requirement, and the introduction of new, replacing legislation would appear unnecessary.

4. People convicted of offences in which intoxication is a factor

In Part 3, section 11, the *Inebriates Act* provides for the compulsory detention and treatment of "Inebriates convicted of certain offences", and the use of "gazetted" beds in State Institutions for this purpose. A number of developments over the years suggest that this approach is out-dated:

- the use of State Institutions and gazetted beds has been rationalised;
- the number of residential rehabilitation service beds for alcohol and drug users has increased; and

- in relation to illicit drug offenders, the recent introduction in NSW of the Magistrates Early Referral into Treatment (MERIT) program provides a useful model to emulate for use in cases of offences where alcohol is a secondary factor. While the NSW MERIT program does not currently accept offenders whose crimes are directly alcohol related an important and useful pilot project is being established in western NSW.

5. Recognisance and Contemporary Availability of Alcohol

The *Inebriates Act* provides for recognisance where a person is required not to access alcohol for a prescribed period. It also includes the offence of supplying alcohol to an Inebriate. The wide availability of alcohol in the 21st Century, and the changed social and community conditions, make these provisions practically unworkable. Where the person concerned is not detained, it is arguably more effective now to require the person to participate in some form of out-patient treatment.

6. Resource issues

When the Inebriates Act is invoked, it raises a number of resource issues. Firstly, if a person is to be detained in a treatment centre, there is a need to transport him or her to a "gazetted" bed. Mental Health personnel consider that acute mental health units are not the proper place to care for these people, and the person is invariably transported many miles in rural areas to the nearest "State Institution". Secondly, the number of beds in State Institutions has decreased, and there is an increasing reluctance to use the available beds for this purpose. Such beds would need to be in a secured facility that has gazetted beds for compulsory treatment. Detoxification units would not be suitable as they are voluntary units and not designed for restraining patients. The likely bedusage for this purpose is not known because there has been a reported reluctance to use the Inebriates Act in recent years due to its unhelpful and out-dated approach.

The role of transporting people under the Act usually falls to police or ambulance. In rural areas where long distances have to be covered, this has a large impact on the policing and ambulance resources available for their core activities. Similarly, if drug and alcohol and mental health staff become involved in escorting patients in rural areas, it invariably involves a sudden drain on resources, causing a gap that often cannot easily be filled.

7. Recommendations:

a) That the *Inebriates Act 1912*, be repealed.

b) That the recently announced review of the *Mental Health Act* consider the inclusion of a new section in the Act to provide for the involuntary treatment of people with severe alcohol and drug dependency.

c) That the *Guardianship Act* be reviewed to ensure that it can used in cases where a person's capacity to make decisions about their affairs and treatment is compromised by alcohol and drug dependency

d) That an audit or statewide consultation be undertaken of the likely use of involuntary treatment for alcohol and drug dependent people, to determine the best deployment of resources to support the future treatment of people detained and treated involuntarily for these problems.

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