REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

INQUIRY INTO THE INEBRIATES ACT 1912

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At Sydney on Wednesday 26 November 2003

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The Committee met at 2.00 p.m.

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PRESENT

The Hon. J. C. Burnswoods (Chair)

The Hon. Dr A. Chesterfield-Evans
The Hon. R. M. Parker
The Hon. I. W. West

DEREK MICHAEL PRICE, Chief Magistrate, Local Courts of New South Wales, Fifth Floor, Downing Centre, Liverpool Street, Sydney, sworn and examined:

CHAIR: Thank you for appearing before the Committee today. Would you like to make some sort of opening statement before we go through the questions that we have sent you?

Judge PRICE: I do not think it is necessary for me to make an opening statement. I think the Committee will probably be assisted by asking questions. You have seen my written submission and also my speech to the Alcohol Summit.

CHAIR: Yes, we have.

Judge PRICE: To clear the air, it might be appropriate if I say that in my submissions to the Alcohol Summit I recommended the repeal of the Inebriates Act. It is my position that the Inebriates Act, because of its antiquated nature, ought to be repealed but be replaced by more modern and appropriate legislation. I think my position will become clearer as we go through your questions.

CHAIR: It is important to put that on the record as it is easy to present this inquiry as an either/or: repeal the Act or keep the Act.

Judge PRICE: It will become clear that my position is that there is a role for the justice system in relation to chronically intoxicated persons but that role should not be the current role, which has, from the experience of magistrates in the Local Courts of New South Wales, difficulties at the present time.

CHAIR: You have received questions from the Committee.

Judge PRICE: It will assist in answering your questions if I provide each of you with a folder—my associate has them—to which I shall refer. It will assist in understanding the workings of the current legislation and provide as much statistical information as we have on the Inebriates Act orders that have been made. It will also provide copies of correspondence by my predecessor Chief Magistrates with the Attorneys General of the day concerning their expressions of concern about the operation of the Inebriates Act and some correspondence from various health agencies that express the difficulties they see with the operation of the Act. You will also see that I have included a copy of the annual report of the Local Courts of New South Wales, not for publicity but in order to provide an understanding of the areas in which the local courts sit. We sit in 151 locations throughout the State. That will give an indication of the difficulties that the court has so far as the limited number of institutions that are gazetted under the Act at present to which persons may be committed when inebriates orders are made.

CHAIR: Are you formally tendering this information as part of your submission?

Judge PRICE: Yes, it is part of my submission and I hope it will be of assistance to you.

CHAIR: Thank you very much, I am sure it will be. That is very useful. My first question relates to the mechanics of the process. Can you explain the role of the Local Court in making inebriates orders as set out in the Act?

Judge PRICE: Do Committee members have a copy of the Act?

CHAIR: Yes, we do.

Judge PRICE: To explain the role of the Local Court in respect of the operation of the Act, I turn in particular to part 2, "Applications to commit inebriates". It is important to note the distinction between part 2 of the Act and part 3, which refers to "Convicted inebriates". Part 2 relates to persons who have not been convicted of a criminal offence. That is an important distinction between parts 2 and 3. Part 3 refers to persons who are convicted of criminal offences. Essentially, part 2 enables the court to make an order, in particular under section 3 (1) (f), committing an inebriate to be placed in a licensed institution established under section 9 for a period not exceeding 12 months. That is probably

the seminal part of the submission relating to that particular order. You will see that subsection (1) provides:

> (1) It shall be lawful for the Supreme Court or a District Court Judge or a Magistrate, on the application of:
>
> (a) an inebriate or any person authorised in writing in that behalf by an inebriate while sober,
>
> (b) the spouse, or a parent, or a brother, sister, son, or daughter of full age, or a partner in business of an inebriate, or
>
> (c) a member of the police force [it refers to a particular rank] … acting on the request of a duly qualified medical practitioner in professional attendance on the inebriate, or on the request of a relative of the inebriate, or at the instance of a justice—

for an order to be made in the terms of subparagraphs (d) through to (g). It further provides that no such order shall be made except:

> (i) on production of the certificate of a legally qualified medical practitioner that the person in respect of whom the application is made is an inebriate together with corroborative evidence by some other person or persons, and
>
> (ii) on personal inspection of the inebriate by the Court or Judge or Magistrate, or by some person appointed by him in that behalf.

In relation to how the process is constituted, there is a form of summons under the Inebriates Act, section 3, and where there is an application for orders for control of inebriates is done by way of a summons under tab one of your folder. The next document under the tab is an affidavit of the applicant and it at that is a certificate under the hand of a legally qualified medical practitioner. The affidavit of the applicant says that the person for whom the order is sought is one who habitually uses intoxicating liquor to excess. Annexed is a medical certificate with names omitted for privacy purposes.

From my understanding it is very rare—I have never heard of one—for applications to be made to the Supreme Court or District Court Judge. Historically, the applications appear to be made to the Local Court to magistrates, and magistrates are those from whom the orders are sought. An application with the medical certificate is filed in Court. The matter is then listed for hearing. It is important to note that no order can be made without the medical certificate and, furthermore, without personal inspection of the inebriate by the court, judge, magistrate or by some person appointed by him in that behalf. The process is a court process, and it is necessary to establish that the person is an inebriate. Section 2 of the Act defines:

> ***Inebriate*** means a person who habitually uses intoxicating liquor or intoxicating or narcotic drugs to excess.

From my knowledge, and from discussions, amongst the judicial officers at the Local Court we have not experienced applications under the Inebriates Act in respect of persons who use narcotic drugs to excess.

CHAIR: The summons, the various affidavits, the provision of a medical certificate, a statement by a relative or a police sergeant is it correct that they are collected behind the scenes in preparation for a formal hearing when they are produced to the court together?

Judge PRICE: Normally, the relatives of the person who is considered to be an inebriate approach the Registrar—formerly Chamber Magistrate—of the Local Court and are provided with advice as to how they are to make such an application. Then the documentation is completed in the registry of the Court. The applicant would normally have obtained the medical certificate in the form as you see the medical certificate is provided under tab 1.

CHAIR: Is it necessary for the person under discussion to be present at the court or can they be inspected somewhere else?

Judge PRICE: The Act does not provide the place of inspection, but inspection is carried out in Court.

CHAIR: So you would expect all the parties to be present?

Judge PRICE: You would expect all the parties to be present. One of my criticisms of the Inebriates Act is that it is a court-based application. I think there are better ways of going about dealing with persons who are chronically intoxicated and people who satisfy the definition of "inebriates". There are more sympathetic ways of dealing with them. Invariably, you must understand that courts are very busy places, with big lists, and these types of matters come into a list and the person in respect of whom an order is declaring that person to be an inebriate comes along to court not having committed any offences. In my view, it is a difficult process both for the inebriate and those who care for and our concerned for the inebriate.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can I pick up on the point about the court being too "busy"? As a casualty doctor who is also "busy", the drunk—or inebriate, whatever you want to call a person who is perpetually drunk, and often abusive—comes in there, the police do not want to know, so they drop him in there, and that is it, and he shambolises the casualty. No doubt they sometimes shambolise the court if they are drunk at that time. Given that the courts, under the current jurisdiction, seem to put hundreds of people in gaol for alcohol-related crime—and the committee on which I served which inquired to the increase in the prisoner population, suggested something like 70 per cent of crime was committed by people who were drug-dependent—it is almost absurd to say, "Well, put everyone in gaol when they commit crimes, but we don't like them clogging up the courts before they have." It is like saying, "We won't do any prevention at all." It seems to me that we now have a situation where the courts are saying, "No, don't bring us your drunks unless they've committed a crime, in which case we would put them away without any treatment in the hospital system," and the hospital system saying, "Well, hang on! If they're not mentally ill, we don't want to know either." So, effectively, we are going to have a misclassification problem here.

Judge PRICE: I am not too sure what your question is. But I will respond to some of the matters which I think you are putting to me. What I am putting to the Committee is that, in my view, there is a more sympathetic way of dealing with people who are inebriates, and their families, rather than through court. Under the provisions of the Mental Health Act, for example, people who are regarded as having a mental illness are committed to hospitals on the production of a certificate from a legally qualified medical practitioner. For that, a court process is not required. It is a process that is more sympathetic to the problems of the inebriate. When the person who is committed on the medical certificate arrives at the hospital, the medical superintendent makes a determination as to whether the is a mentally ill person or a mentally disabled person under the terms of the Mental Health Act.

The Justice system does not abrogate responsibility, because the magistrates of the Local Court attend at the hospital as visiting justices. I have provided for you, under tab 4, how inquiries under the Mental Health Act are held in the hospitals and the orders that may be made by the magistrates—the justice system—and the memorandum of understanding between the magistrates of the local Court of New South Wales and New South Wales Health in relation to persons who come within the definition of in voluntary psychiatric patients under the Mental Health Act. That is my principal submission, that—

CHAIR: Which we get to in the following question, so we have jumped the gun a little bit.

Judge PRICE: That is right. Without responding further, I am not saying the courts are too busy. What I am saying is that there is a better and more sympathetic way for the justice system to deal with people who have what is essentially a medical problem. I hope that is of assistance.

The Hon. ROBYN PARKER: Judge Price, I have a couple of questions arising from your current answers. We have other questions, as you know, that will lead us through this process. I was interested, firstly, that you said—I think I am right—you think there has not been a case of a person who had been under the influence of narcotic drugs going through the system under the Inebriates Act. Is that what you said?

Judge PRICE: That is my understanding. I know of no applications for people to be declared inebriate for the purposes of the Act because of the use of narcotic drugs to excess.

The Hon. ROBYN PARKER: But the Act does provide for that instance, does it not?

Judge PRICE: It does.

The Hon. ROBYN PARKER: Why do you think that has not occurred?

Judge PRICE: I think the treatment of persons who have used narcotic drugs to excess has moved on. There are other means available, in particular in relation to people who might be dealt with under part 3 of the Act. For those who have committed criminal offences, the justice system has all sorts of innovative programs, such as the Drug Court, the Magistrates Early Referral into Treatment—referred to as MERIT—and other innovations, including circle sentencing and also probation and parole, in relation to treatment of persons with drug addictions. Among the number of submissions I made to the Alcohol Summit was one on how I could see extensions to those various programs in relation to alcohol-related offences as distinct from drug-related offences.

CHAIR: A matter we will get to in later questions. I think you have already answered part of our second question, which is: How does someone seek an inebriates order from the court? You have explained most of the process that is followed. In giving us these documents I think you have partly referred to the last part of the question: How does this work in rural areas which may only have the services of a visiting magistrate?

Judge PRICE: I think you will see behind tab 2 a memorandum from my executive officer concerning that particular question. We have 39 country circuits, and there are 128 Local Court locations outside the metropolitan area. Approximately 100 courts do not sit full time. You will see there, for example, that the Tumbarumba Local Court sits only one day every three months, and Wentworth Local Court sits one week of every four. Where applications are made pursuant to the Inebriates Act to the circuit court where a magistrate does not preside full time, there are two options. If the matter is urgent, there remains the option for the person to be transported to the court where the magistrate is presiding; or, if the matter is not urgent, the matter is listed for the next date when the magistrate presides at that location.

The Hon. ROBYN PARKER: Who would determine what is urgent and what is not?

Judge PRICE: It would depend upon, I suppose, the evidence in support of the application, which would be filed with the registrar of the court, and in particular the supporting medical certificate. If the supporting medical certificate indicated it was a matter of life and death, for example, then presumably the application would be transferred as a matter of urgency to the nearest presiding court.

CHAIR: Realistically, how long might it take before someone either in the urgent category or the other category might get to go?

Judge PRICE: A local court sits from Mondays through to Fridays and within a particular circuit the court is always sitting. It is a question of arranging transport for the applicant to that particular court.

CHAIR: It would vary very much, depending on where the court was sitting and how big the circuit was and so on?

Judge PRICE: I would think there would always be the possibility of getting someone straight to a court on a particular circuit, because although the circuit might be quite large one could get in a car and drive to the particular location, presumably.

The Hon. ROBYN PARKER: I assume that your definition of country means the Illawarra and the Hunter?

Judge PRICE: Yes, anything outside the Sydney metropolitan area within our definition.

The Hon. ROBYN PARKER: The Central Coast?

Judge PRICE: The Central Coast is within our definition of country. I have probably used the words inappropriately because I see that my executive officer refers to them as outside the metropolitan area.

CHAIR: Did you have anything else that you prepared in answer to our second question, or have we covered the mechanics of the process?

Judge PRICE: I think I have covered the mechanics of the process. However, perhaps I should say that when an order is made that an inebriate be placed in a licensed institution then the services of the police are sometimes required to take the inebriate to the institution. The police assist in that regard.

The Hon. ROBYN PARKER: You are saying after the orders are made that is how they are transported?

Judge PRICE: Yes.

The Hon. ROBYN PARKER: By police car?

Judge PRICE: That is the normal case.

The Hon. ROBYN PARKER: Ever by paddywagon?

Judge PRICE: I would not know the method of transport.

CHAIR: The order can be for placement for up to 12 months.

Judge PRICE: Yes.

CHAIR: What criteria exist to enable a magistrate to decide for what period an order will be made?

Judge PRICE: Whatever the evidence is that is presented before the court, which is in the form of the evidence of the relatives and the medical practitioner.

CHAIR: It is not an area where there are any guidelines of any kind?

Judge PRICE: There are no guidelines. It is a matter of discretion.

CHAIR: We are getting on to the statistics in the next question. That part of the argument in relation to consistency and guidelines and so on is dependent on how many cases we are talking about.

Judge PRICE: That is right.

CHAIR: I think you said that currently there are nine gazetted hospitals.

Judge PRICE: The current number of gazetted hospitals has not changed since 1928.

CHAIR: And some of those hospitals have vanished.

Judge PRICE: Under tab three is information provided on 9 March 1999, and you will see that the hospitals listed in the terms of the Act under section 9 are Bloomfield at Orange, Cumberland hospital, Rozelle, Morisset and, according to the information, James Fletcher was also listed. However, it uses facilities at Morisset. Kenmore and Goulburn, Gladesville and Macquarie hospitals are also listed, but are now closed. I have some doubt about the accuracy of Macquarie.

CHAIR: Macquarie hospital certainly is still operating.

Judge PRICE: Yes. Macquarie hospital is definitely being used. I think that information provided at that time could well be inaccurate now. But there has been no change, as I understand it,

in hospitals that were gazetted—from recollection, I referred to it in my speech during the Alcohol Summit—in 1928.

The Hon. ROBYN PARKER: Thinking about how we deal with those outside the metropolitan area, there is not a broad span of coverage of the State at all.

Judge PRICE: It is a major difficulty with orders for applicants who are outside the metropolitan area, and that is one of the matters that troubles magistrates. There are not available beds, to put it that way, within a reasonable geographical location. Consider the situation, for example, at Wilcannia or Broken Hill, or somebody going down south to Tumut or Cooma. One does not need a lot of imagination to understand, amongst other things, the difficulties for relatives and the difficulties of access of seeing the person who may have been committed to one of these confined institutions. When I use confined I am referring to confined in the number of places under section 9.

The Hon. ROBYN PARKER: When you said there are not enough available beds, do you mean available beds generally or not available beds only in those listed institutions? Are there beds in other institutions that would be suitable, but they are unable to be used because they are not listed here? Is that the situation, or do they not exist?

Judge PRICE: You would have to ask New South Wales Health about the number of available beds. It is not for me to provide precise information concerning that. However, the fact of the matter is that you will see from the correspondence between chief magistrates and the Attorneys in the past, and other material that was provided under one of the tabs that the lack of beds is a particular problem.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am not defending the hospital system in the sense that I have had endless trouble trying to get them to accept schedule 2 patients, let alone inebriates because they simply do not have enough beds at all. But the inebriates who come along with a reporting person and a medical certificate must be a tiny percentage of the people who come before the courts with alcohol and drug problems. If 70 per cent of the people in gaol have alcohol and drug problems, presumably a considerable percentage of them would not have committed the crime if they did not have an alcohol and drug problem. Under section 3 of the Act under which you are saying they have committed a crime because they are inebriates—

Judge PRICE: Part 3.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Youth could put a huge percentage of all of the people coming into court into that category, could you not? If that were the case you would really need to take half the gaols and make them inebriates hospitals. If you took it to its logical conclusion you would then say we need a completely new way of looking at drugs and crime. Do you think that is the sort of scope that this Committee should start to consider? That would be the maximum scope, if you like, of the Inebriates Act, would it not?

Judge PRICE: Again, I am not precisely sure what your question is.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am trying to define the scope of the changes in the Inebriates Act that this Committee might look at. If you say that an inebriate is a person who a doctor and relatives say is a drunk, more or less, and the court has to see them as a drunk, too, then you send them off to a somewhat dated model of a hospital. If, however, they come before you because they have committed a crime then under part 3, as you say, a lot of people who come to court could, with a medical certificate added, fit that definition of an inebriate, could they not?

Judge PRICE: The definition of an inebriate is set out in the Act. It does not mean a person who is a drunk, it means a person who habitually uses intoxicating liquor or intoxicating or narcotics drugs to excess. It goes beyond mere drunkenness.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am sorry, I am probably being a bit loose there.

Judge PRICE: Probably a good way of looking at it is referring to a chronically intoxicated person.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Or dependent person?

Judge PRICE: I am sorry?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Or dependent person, if you are not talking about alcohol.

Judge PRICE: Probably, rather than getting into discussions about semantics, we should talk about the Inebriates Act. The Inebriates Act provides a definition. It might be of ease for our discussion if we use the definition that is provided in the Act, which is before the consideration of the Committee. It means a person who habitually uses intoxicating liquor to excess.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Sure, but we are trying to get to—

CHAIR: Question three. We are trying to get to question three which we sent to Judge Price last week. Can I suggest that the questions go from the specific to the general. I think the questions asked by the Hon. Dr Arthur Chesterfield-Evans are important questions but I think we would be better placed to tease them out, so far as Judge Price is the person to tease them out with, when we have gone through the suggestions he makes for changes for different things. We deliberately designed the questions using Judge Price as our initial source of a great deal of information in relation to how the system works. I do not think anyone is defending the system. Certainly no submissions are, that we have.

Judge PRICE: Can I make it clear, doctor, that there is no criticism by me of the NSW Health system in these submissions.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, I am not suggesting that.

Judge PRICE: I would like to make that very clear, and I would also like to make it very clear that the Local Courts have a very good working relationship with NSW Health which is extremely valuable. In a number of areas, such as the Magistrates Early Referral into Treatment Program [MERIT] and mental health liaison officers and other areas in which we are working on, we have a very good relationship. This is one area, though as I have said, there is a degree of tension because of the Act, and that would be clear from the correspondence which is under tab three.

The Hon. ROBYN PARKER: I think that is why we are all here, I guess, otherwise we would not be having this inquiry—if there was not that issue, that the Act was put in place in 1912. Regarding question three, I think you have largely provided a great deal of information about how orders are sought, the numbers of orders sought and the circumstances. Do you have anything to add to that in terms of quantitative information about orders that are sought each year? I think I did see that in here somewhere.

Judge PRICE: Yes. It is under tab two, and you will see the limitations of information that the court is able to provide. It is only those courts which are connected to the general Local Courts [GLC] computer system that capture the information, and only 51 are connected to the GLC system. Just to sum up, they capture 85 per cent of the criminal workload across the State. Of course, applications under the Inebriates Act are not criminal matters, and so they may not be reflected in that material. It is difficult to estimate the total number of applications statewide without conducting a manual court-by-court audit. The information that is provided to subject to the caveat that is provided by Mr Mabbutt in his memorandum of 24 November 2003, which is exhibited before this Committee.

The Hon. ROBYN PARKER: We have talked a bit about the circumstances in which orders are made. Do you have anything to add to what we have already discussed about the circumstances surrounding orders being made?

Judge PRICE: Part 3 is not used. It is out of date and it is simply not resorted to by the courts because of all the other methods of dealing with persons for whom alcohol has been an

ingredient of an offence. Section 11 and the sections are rarely go back to the times when there was an offence of drunkenness. That went out in 1979 and there is no longer an offence of public drunkenness. The law has moved on. However, part 3 is still there but it is not resorted to. When I say that the Act ought to be repealed, part 3 is archaic and part 2 is in many of its aspects as well, and it should be replaced by modern legislation.

What I might also just say, to make it clear, is that the orders for control of the inebriates are not confined to those orders made under paragraph (f), that is, that the inebriates be placed in a licensed institution established under section 9. There are other orders under (d), (e) and (g) that are not resorted to all that much—for example, the inebriate entering into a recognisance, in other words, an undertaking—because when someone has a chronic alcohol problem, it is rarely that a court will accept the undertaking that that person will abstain from intoxicating liquor. Some of those orders were relevant prior to the commencement of the apprehended violence provisions of the Crimes Act where, for example, a husband may have been assaulting his wife. It was thought that you could get an inebriates order where alcohol was a reason for the domestic violence. That need is replaced by the apprehended violence legislation which is in the New South Wales Crimes Act.

The Hon. IAN WEST: Are you saying in a qualitative sense that if a person under the Inebriates Act part 2 is put in a particular place, such as the place of abode with a spouse, and that person then commits the offence of domestic violence, it does not go on to part 3 of the Act at all?

Judge PRICE: No. What I am saying is that applications under this section, which may have been made historically because of the lack of appropriate legislation, are no longer made because we now have the legislation, which is the apprehended violence legislation. These days, if there is an apprehended violence problem—if there is a domestic violence problem, I should say, more precisely because somebody has the alcohol problem—an application is made for an apprehended violence order.

The Hon. IAN WEST: Therefore there is no qualitative follow-up as to outcome in regard to part 2 of the Inebriates Act?

Judge PRICE: I do not understand your question, I am afraid.

The Hon. IAN WEST: I am trying to understand. If the police, or a relative, or the inebriates themselves request under part 2 of the Act, which relates to non-offenders as I understand what you are saying, and the person as a non-offender is put in an appropriate place which may well be their place of abode, and they then commit an offence by breaching part 2 of the Inebriates Act, that is not followed up under the Inebriates Act. It goes under the Crimes Act or the domestic violence law.

Judge PRICE: To answer your specific question, if an application was made for control of an inebriate under the Inebriates Act and the person was placed in the home, to use your example, and then assaulted the other partner, the person has committed a criminal offence and would be charged with an assault. One problem with the Act is that there is no provision for the court to enforce the breach of the control order. That is one of the difficulties.

The Hon. IAN WEST: That is the question I was asking.

Judge PRICE: I apologise for not realising that that was what you were asking. Does my answer help you?

The Hon. IAN WEST: Yes.

Judge PRICE: You have highlighted one of the criticisms of the Act, and thank you for doing that.

The Hon. IAN WEST: Question three asked about quantitative and qualitative information in regard to orders under part 2 of the Act. Are you saying that there is no follow-up and no qualitative information as to the outcome?

Judge PRICE: That would be correct. I add that if an inebriate enters into a recognisance, either involuntarily under section 3 (1) (d) or voluntarily under section 5, and breaks that recognisance, other than the forfeiture of the recognisance provisions under section 7 there is no sanction by the court. That is a gap in the legislation; courts can make these orders, but where is the sanction?

The Hon. ROBYN PARKER: The statistics that you have provided are really only when an order has been made. Is there information about orders refused or applications refused by the courts?

Judge PRICE: These are all the applications.

The Hon. ROBYN PARKER: When no order is made?

Judge PRICE: Yes, when you have an opportunity to look at this more precisely, you will see that there are situations in which the applications are withdrawn, or orders are not made. From the information you will see that approximately 10 or 11 applications are made each year, according to these limited statistics. That goes back to 2001 only, but remember the caveat that I expressed; it is only the general Local Court computer system information which is provided.

The Hon. ROBYN PARKER: In some instances detail has been given as to why a matter has been withdrawn; for instance, there is one dealt with by the Guardianship Board, but others state only "withdrawn". Under what circumstances would that occur?

Judge PRICE: I do not know the specific case. Generally, it may be that the applicant may have decided that he or she did not wish to proceed with the order, for personal reasons. It may be that the person who was the subject of the application has voluntarily sought medical assistance, or may have voluntarily entered a private hospital.

The Hon. IAN WEST: Or maybe brought other pressures on the person to withdraw?

Judge PRICE: That could be the case, as well.

CHAIR: For instance, where there is a decision that the defendant is to undertake counselling at Langton Clinic, obviously not one of the nine hospitals gazetted in the Act, would that be part of a voluntary settlement?

Judge PRICE: Not necessarily.

CHAIR: Other places are mentioned, including Corella Lodge, the Salvation Army program, and so on.

Judge PRICE: Under section 3 (1) (e), the court can make an order that an inebriate be placed for any period mentioned in the order, not exceeding 28 days under the care and control of some person or persons to be named in the order, in the house of the inebriate, or in the house of a friend of the inebriate, or in a public or private hospital, or in an institution, or in an admission centre. There is scope, but it should not exceed 28 days. Under section 3 (1) (g) there is also scope that the inebriate may be placed for any period not exceeding 12 months to be mentioned in the order under the care and charge of an attendant or attendants to be named in the order, and who shall be under the control of the court, judge or magistrate making the order, or of a guardian who is willing to act in that capacity.

The Hon. IAN WEST: Judge, have you ever made such an order?

Judge PRICE: No.

CHAIR: In theory, the fact that the list of hospitals has not been changed since 1928 should not matter, because of section 3 (1) (e) and (g), if there were a sufficient number of beds and other services around the State. The section could be used to locate a suitable service for someone.

Judge PRICE: You would need a degree of legal gymnastics to do that. The provision for private or public hospitals expressly refers to 28 days. The other difficulty is, and this is a question of legal argument, there is no ability on the part of a private hospital under the Act to prevent the inebriate leaving, because it is not a prescribed residence. Section 4 (1) (d) refers to prevention of an inebriate from leaving the prescribed residence unless attended by a responsible person. You then get into arguments about whether the private hospital is a prescribed residence. From my understanding it is not. There are all sorts of limitations. What I will add in answer to that, which I always like to put as far as Acts are concerned, is: Why not spell it out clearly? That would be better than having legal gymnastics, which only waste money and court time.

The Hon. ROBYN PARKER: That leads to question five. You have already discussed compulsory rehabilitation. Do you believe there is a role for compulsory treatment of people with severe alcohol or drug dependence if they are non-offenders?

Judge PRICE: Definitely.

The Hon. ROBYN PARKER: In what sort of circumstances do you think that is appropriate?

Judge PRICE: In life and death situations, and where the relatives, for example, are no longer able to cope with a chronically intoxicated person, but particularly in life and death situations.

The Hon. ROBYN PARKER: Is it the same with drug dependent people?

Judge PRICE: Yes, certainly. It is essential that there remains an ability for compulsory treatment of people with severe alcohol or drug dependence.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is a medical opinion. What would you say if the medical people said that it did not work, which I gather is what is being said in their letters to the Committee. One person sent a patient back and said, "We have no beds and we are not set up to do this." You stated in your submission that the magistrate was very cross.

Judge PRICE: I have great sympathy for the hospitals. They are of the opinion—which I respect—that under current legislation people who are inebriates are being committed to mental health wards of hospitals. It is their view that mental health wards are not appropriate places for those who are chronically intoxicated. I have great sympathy for that view. However, it is not within my area of expertise.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Treatment keeps them alive in the short term but the medical people say that it does not solve the problem and that the success rate is poor.

Judge PRICE: In life and death situations I think there is no alternative other than to commit them to an appropriate medical institution. I am not of the view at present that the category of places to which people with that particular medical problem can be committed is sufficiently wide. Section 9, at the very least, needs to be extended by way of increased gazettal. But those in NSW Health are better qualified than I am to inform the Committee as to where they ought appropriately to be treated. But part of the tension at present between NSW Health and the courts because of the application of the Act is that people are being committed to mental health units of hospitals. You have seen from the correspondence the views of medical practitioners, but the courts have no alternative under this legislation. That is why I am here.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I suppose all those who might have come under section 3 are simply going off to gaol. I established, as a member of the Select Committee on the Increase in Prisoner Population, that gaols are at least as inappropriate as mental hospitals, but they not in a position to refuse those who are sent there. In a sense we are looking for something in between a compulsory ward in a hospital and a gaol, are we not?

Judge PRICE: With respect, people under section 3 have not committed any offence. I do not understand how they would come under section 3.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Part 3.

Judge PRICE: The courts do not deal with people under part 3. There are many other methods of dealing with people where alcohol is an ingredient of the offence. I can assure you that people are not gaoled to the extent that might be suggested in your question to me.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I came to that conclusion after hearing certain evidence. I know that you have worked in the area. The number of people who were drug dependent and who were in gaol as a result of having committed crimes was extremely high. If the drug problems were solved there would be fewer people in gaol. This inquiry has taken a broad view of the interrelationship between drugs and crime, so we have a lot of scope to move towards redefining the Act, which is what you are asking for.

Judge PRICE: I am asking for this Act to be repealed, which deals with a specific problem. To answer your general question in relation to drug-dependent people, the justice system is not inert in dealing with that problem. It has been proactive in recent years with the Drug Court, the Youth Drug Court, the magistrate's early referral into treatment, circle sentencing and, so far as alcohol is concerned, the sober driver program. For many years, probation and parole have been doing good work with specific alcohol and drug dependence programs in trying to keep people out of gaol. Magistrates frequently place people on good behaviour bonds conditional on their accepting the supervision and guidance of the New South Wales Probation Service. I can assure you that people are not committed to prison unless that is the last alternative.

CHAIR: As the Hon. Dr Arthur Chesterfield-Evans appears to have asked part of question 8 and you have started to answer it perhaps we should deal with it at this stage. Question 8 relates to offenders as distinct to non-offenders, which is what we have been trying to stick to. You have proposed a number of innovations to deal with alcohol-related crime. I think they are predominantly extensions of programs that exist at the moment that target illicit drug users. We will run through some of those questions. Why have we seen in the past 10 or 20 years innovative ways of dealing with people on illicit drugs but there has been such a lack of innovation in relation to alcohol?

Judge PRICE: I suppose that that is a legislative question. In recent years the Legislature has made considerable strides into the area of drug-related crime. The recommendation by me to the Alcohol Summit was that those innovations should be extended into the area of alcohol-related offences. But that is a matter for the New South Wales Parliament. The courts endeavour to apply the law that is provided to them by the Parliament.

CHAIR: We will ask other people and we will examine our own consciences as to why we, as a society, have been relatively lacking in innovation in those areas. Would you like to run through some of the specific suggestions that you have made? For instance, you suggested extending diversionary programs to people with alcohol problems?

Judge PRICE: Yes.

CHAIR: Can you think of any programs that have been successful and that would work?

Judge PRICE: I refer to apprehended domestic violence orders. A large number of matters that come before the local courts are applications for apprehended domestic violence orders. Frequently they are alcohol-related, as I referred to in my paper. The link between alcohol use and domestic violence is readily apparent. Last year we made 16,046 final domestic violence orders. One of my recommendations is that the court's power to make apprehended domestic violence orders be extended to enable the court to make an order in appropriate cases where an offender undertakes a compulsory program to deal with his or her alcohol use.

At present, apprehended domestic violence orders are preventive. You make an order that, for example, one person must not approach another, go near the home, or assault, molest or interfere in any way with the person who seeks the protection of the order. But nothing positive is being done at that early stage. The legislation does not permit a positive order to be made. I recommend that section 562AE of the Crimes Act be amended so that when an apprehended domestic violence order is made

the court can order the offender to undertake a compulsory program to deal with the alcohol problem, which is the cause of the problem. Very good work is being done along the lines of intensive education, such as the sober driver program, which goes into the causes of alcohol use and the commission of the offence.

That type of intensive education program could well be extended into the compulsory program that the court could make in relation to the apprehended domestic violence situation. I have referred also to the Magistrates Early Referral Into Treatment [MERIT] Program, which is a pre-plea diversion program for offenders with illicit drug problems. That is now in use in more than 50 per cent of courts. It is being gradually rolled out across the State. I suggest that it be extended to offenders with alcohol problems.

The extension of MERIT in such a way would have the advantage of linking offenders at an early stage to services, government or private, that may assist in stabilising their lifestyles, just as with those with drug problems, and address the cause of their alcohol use. As I said at the summit, drug and alcohol problems commonly overlap. The research carried out in relation to MERIT revealed that some 30 per cent of offenders who have participated in the program to date reported alcohol use as a secondary problem. So there is scope to extend MERIT.

There is also scope to provide intensive court supervision, in relation to children in particular, which relevantly identifies high-risk, persistent offenders who abuse alcohol and require comprehensive long-term management. This program is under consideration at present, particularly with older juveniles. Their alcohol use is identified and they are effectively case managed by the judicial officer. They keep coming back before the judicial officer to see whether they are complying. It is not just a question of being put on a bond and being let go; they are case managed effectively and they are under the intensive supervision of the court.

The Hon. IAN WEST: Can the justice system intervene in a preventative manner without finding guilty the people before it? I am thinking specifically of apprehended violence orders [AVOs] and the difficulties involved for the person who takes out the AVO and that person's relationship with the subject of the AVO. Can there be some innovative thinking about who takes out an AVO and whether some preventative measures may be taken without a conviction being recorded?

Judge PRICE: There is no conviction with an AVO. The applicant needs to establish that on the balance of probability he or she has reason to fear certain things. But it is not a criminal conviction. So placing somebody on an AVO does not result in a criminal conviction, but a breach of the order does.

The Hon. IAN WEST: That may be the technical difference but I am thinking of the preventative side of the issue and the difficulties that occur when trying to implement any sort of preventative measures involving the justice system, the police and so on.

Judge PRICE: I do not think there are any programs under consideration that would not involve the commission of a criminal offence. That is necessary. Other than section 3 of the Inebriates Act, which deals with someone who has not committed an offence, there is no provision for bringing somebody before the system that I can think of at present.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said that there is an enlarged number of innovative programs, including MERIT, the Drug Court and so on, through which magistrates are grappling with the problem of drug-dependent offenders. I am looking at the increase in the prisoner population and the surveys that show the number of prisoners who are drug dependent. It is a question of whether the glass is half empty or half full or whether one looks at the doughnut or the hole. In other words, it is a question of whether the innovations are successful and whether they have been sufficient to stop the trend in increasing drug use as a catalyst to crime. Do you think we are looking at a completely new model for the relationship between drug treatment and the courts as part of the outcome?

Judge PRICE: To answer the first part of the question, it is early days as far as the Drug Court and MERIT are concerned. From recollection, MERIT started at Lismore in 2001 and it has been gradually rolled out in the past two years. I understand that an analysis is being carried out of the

MERIT Program at Lismore. I have not seen those findings—they have not been published to date—so it is too early to say how successful the MERIT Program is. As far as the Drug Court is concerned, I believe the non-recidivism rate for people who have gone through the Drug Court is improving. From recollection, it was about 26 per cent. I understand that it may have risen to more than 30 per cent, but I do not have that information with me so please do not hold me to the accuracy of those figures.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But the control group would have been a few per cent.

Judge PRICE: I do not understand your particular question.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you did not have a Drug Court you would say that the recidivism rate would be very high—in other words, they would all do it again.

Judge PRICE: One would think so.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you are putting a lot of money into a Drug Court you obviously want us to know that you are doing 30 per cent better.

Judge PRICE: Yes, one would think so.

CHAIR: We will perhaps be able to ask the Attorney General's Department about that next week.

Judge PRICE: I am sure that accurate figures can be supplied to you.

CHAIR: Returning to question 7, we have talked about the Mental Health Act but we have not yet talked about the Guardianship Act. Some people who have made submissions to the Committee has suggested that those Acts provide a much better model for legislation regarding the involuntary treatment of people at risk of serious harm. What are your views on that and the role of magistrates in relation to those sorts of Acts?

Judge PRICE: I certainly think the Mental Health Act model is a better model for dealing with persons who have not committed offences—the inebriates that we were considering under section 3, part 2 of the Inebriates Act. The benefit of the mental health model is that it is not necessary for the applicants to go to court in the first instance. Under part 2, involuntary admission to a hospital, a medical certificate may be obtained and the person may be taken to or detained in a hospital under section 21 of the Act on the certificate of a medical practitioner. The person is then examined—I am speaking generally—by the medical superintendent at the hospital and usually by a psychiatrist.

If they are then determined to be mentally ill, or are a mentally disabled person within the definition, they are retained at the hospital involuntarily then they must be brought before a magistrate. They have an inquiry at the hospital. I have set out under one of tabs the nature of the inquiry. In other words, by recommending this system it is far more sympathetic to the patient, to put it that way, and it is health which participates in the process in the first instance and the medical superintendent determines whether there are enough beds, whether the person should be admitted and then the justice system is there to review the process to ensure that somebody is not being improperly involuntarily retained.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are you talking about a schedule 2 followed by the tribunal?

Judge PRICE: No, I am not referring to the tribunal, I am referring to a hearing before a magistrate.

The Hon. ROBYN PARKER: If you were applying the Mental Health Act or if we were to design something similar to that for inebriates, would the role of the justice system then come after a medical decision on the equivalent of scheduling a person, but only as a backup, or do you see a sign off through the justice system generally?

Judge PRICE: It is not as a backup. The mental health hearings by magistrates are there to ensure that the person who is involuntarily—I stress involuntarily—detained is properly involuntarily detained. It is a civil liberties protection. I view that it is important to maintain that just in case there are any circumstance where somebody should not be involuntarily detained

CHAIR: What about using the guardianship legislation as a model?

Judge PRICE: I do not think the guardianship legislation is a model for what ought to occur in relation to inebriates as far as treatment is concerned but it may well be in relation to the care of their property.

CHAIR: Does the mental health legislation effectively deal with that?

Judge PRICE: When magistrates deal with a mental health inquiry they can make guardianship orders in relation to the property of the patient. As I understand it, the Guardianship Act then comes into play.

CHAIR: One of the list of cases was withdrawn and dealt with under the Guardianship Act.

Judge PRICE: That may well have been the orders made under that Act.

CHAIR: It says "withdrawn, being dealt with by Guardianship Board".

Judge PRICE: Yes, I do not know the circumstances of that matter.

CHAIR: People have suggested to the Committee that many of the difficulties associated with the Act are really the result of the inadequate system of voluntary treatment services for people with drug and alcohol problems, particularly outside the metropolitan area. What are your comments on that suggestion? What is your opinion as to whether many of the matters that come before the Local Court might have been prevented if better drug and alcohol services were provided throughout the State?

Judge PRICE: I would have little doubt that if people voluntarily sought available treatments then in relation to those persons who are sought to be declared inebriates they would not have become inebriates if they were prepared to go towards those particular programs, but I am not in a position to say whether the voluntary treatment for people with drug and alcohol problems is insufficient: it is outside my scope.

CHAIR: Is there some material that you wanted to present to the committee about which we have not asked you?

Judge PRICE: One of the questions the committee specified was in relation to what I meant by the justice system being an inefficient instrument for dealing with the chronically intoxicated. What I meant by that was that where you get a situation of the court making an order for involuntary admission to a hospital and the hospital and says that it does not have the beds, it is inappropriate or whatever, and you have consumed the resources of the court, the police, the parties involved, in my view—I specified in my speech to the summit one particular example and I hope you have regard to that—the justice system should not be involved in the initial stage but only in the review stage.

CHAIR: You suggested making provision for entering treatment a part of the system of apprehended violence orders with the corollary that a failure to attend would therefore become a breach of the order. One could take the view that that creates a whole new class of offenders. While the compulsory treatment may seem to be a solution in relation to apprehend violence, it may then create a whole new group of people who come into contact with the justice system because they are now in breach of the Crimes Act.

Judge PRICE: In my view it is inappropriate for courts to make orders which it then cannot enforce. It brings the justice system into disrepute. The courts would not lightly make that order. It would only do so on the available material and after all we are talking here about the real problem

which is domestic violence. If the cause of the domestic violence were excessive consumption of intoxicating liquor, it would not be unreasonable in my view for the court to require the person who was the person for whom the order had been made against the protection of the other party to comply with an order that they undertake the compulsory treatment.

CHAIR: Would that operate at the more extreme end of the whole apprehend violence orders system?

Judge PRICE: I would see it operating where the evidence was that it was a significant cause of the necessity for the apprehended violence order, particularly in a situation where there was violence. I would not think it unreasonable for a court to expect somebody who was perpetrating domestic violence to attend an intensive rehabilitation program, and if they breach that order that they be back before the court for breach of that order.

The Hon. ROBYN PARKER: You mentioned a role for the justice system in the protection of civil liberties. I wonder how you see the role of the justice system under the Inebriates Act where persons consume excessive alcohol, and others around them think they are a problem for both themselves and others in their lives. Do you think the justice system has a role in making determinations for that person? What if those persons feel quite comfortable with being inebriates, and are quite happy to consume copious quantities of alcohol, even if that means they die as a result?

Judge PRICE: If you had a procedure similar to that under the Mental Health Act, that would enable you to get a certificate from a medical practitioner and the person could be committed to hospital for the purpose of treatment. Then, just as under the Mental Health Act, that would be an involuntary admission, notwithstanding the fact that the person the subject of the order had little insight into the problems that he or she might have had.

The Hon. ROBYN PARKER: So you do see a role for the justice system, as there is under the Mental Health Act, in saving people from themselves?

Judge PRICE: Absolutely—but at the review stage, not at the initial stage. Quite frankly, under the mental health legislation all that is needed for committal to an institution of somebody with a mental illness is a report from a medical practitioner. Why discriminate? Why should there be a difference with inebriates, who not only require a report from a medical practitioner but also have to go to court and get a court order before they can go to a hospital?

The Hon. ROBYN PARKER: If we are making an order for a person under the Mental Health Act, that is because the person is incapable, mentally, of making that decision. An inebriate, we would assume, is making conscious decisions and is of a different mental state. Would you agree with that?

CHAIR: Is the distinction between a person of sound and unsound mind?

Judge PRICE: But a person who has reached the stage of being an inebriate—that is, a chronically intoxicated person—often lacks the ability to make those decisions.

CHAIR: Would you see that person as then being at the stage of being of unsound mind?

Judge PRICE: No, I do not say that. There is a big distinction between being of unsound mind and being a person who does not have insight into the difficulties that he or she might have because of being chronically intoxicated.

The Hon. IAN WEST: Judge, do you see any future for part 2, section 3 (1) (e) of the Inebriates Act? As I understand it, you are telling the Committee that you have no ability to enforce a breach of an order for an inebriate to be put into the house of a friend, or under the care and control of a person, so that if the inebriate decides to shoot through the breach is not enforced. Is there any future for trying, in a preventative sense, to make that section more user friendly, if you like?

Judge PRICE: To which section are you specifically referring, Mr West?

CHAIR: Part 2, section 3 (1) (e).

Judge PRICE: That is the provision relating to placement in the house of a friend for a period not exceeding 28 days. It is my view that the Act ought to be repealed, and we should start again, rather than trying to patch it up. But it is my view as well, just speaking generally, that if courts make orders they ought to have the ability to follow up those orders, and if people do not obey the orders they should be able to be brought back before the court so that the court can reconsider it. That is the difficulty with this Act. So, yes, Mr West, I agree that there ought to be some ability to make the orders capable of proper implementation if they are not complied with.

The Hon. IAN WEST: I asked that question in the light of a number of the recommendations of the Alcohol Summit that went to the issue, in particular, of the integrated domestic violence intervention model being developed by NSW Police and the courts, and how we can develop those in some sort of preventative way. Has any further discussion taken place between yourselves and the police?

Judge PRICE: There is an Attorney General's Department working party, on which the Local Court is a working participant, as is NSW Police, and that working party is progressing towards developing this integrated model.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are we likely to get that model as part of this Committee's outcomes?

CHAIR: We have NSW Police coming to talk to us tomorrow, and the Attorney General's Department is coming to talk to us in a couple of weeks, and we will be able to take up these matters with them.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is this Committee working in parallel here? If so, we need reasonable cross-fertilisation, presumably.

CHAIR: We can ask them.

Judge PRICE: That integrated model is specifically in respect of domestic violence situations. The Committee's brief concerns the Inebriates Act and goes well beyond that matter, which is one of the recommendations that we would like to see in relation to domestic violence.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Domestic violence is a pretty good benchmark or litmus test for the whole issue, though, is it not? I mean, it is not in every case, but if you solved that problem you would probably solve a lot of the problems of drug and alcohol abuse.

Judge PRICE: Persons who are inebriates may not of course be involved in domestic violence situations. The major concern with the Inebriates Act which I wish to bring to the attention of the Committee is the involuntary detention of persons committed to the relevant institutions under section 3 of the Act when they have not committed any offences.

CHAIR: Judge Price, what would you like to see come out of this inquiry?

Judge PRICE: As I hope I have made very clear, I would like to see the Act repealed and replaced by appropriate legislation. Appropriate legislation would be, more sympathetically, along the lines of the Mental Health Act, with a role for compulsory treatment for inebriates and an oversighting or review role by the justice system.

CHAIR: That says it in a sentence. I hope, if there are issues that strike us—particularly from examining the material that you have kindly given us today—we will be able to follow those up with you by telephone or by letter.

Judge PRICE: Certainly. I will welcome any further matters that you wish to raise with me. I thank you for your courtesy and the opportunity to speak to you all this afternoon.

(The Committee adjourned at 3.40 p.m.)