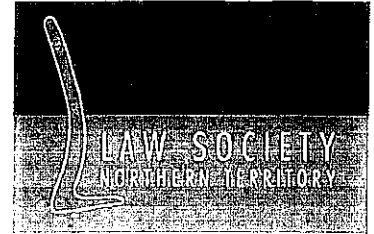


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7 June 2013

Penny Fielding
Executive Director
Strategy and Reform
Department of Health
PO Box 40596
Casuarina, NT, 0811

Via email: penny.fielding@nt.gov.au

Dear Ms Fielding,

Review of the Alcohol Mandatory Treatment Bill

The Law Society Northern Territory (the Society) represents approximately 550 lawyers in the Northern Territory including Government and private lawyers.

The mission of the Society is to enhance access to justice, improve the law and maintain individual rights. Importantly the Society is charged with considering proposed changes in the law and aiding such amendments and reforms thereof that are likely to benefit the public. In doing this the Society focuses on evidence based interventions and ensuring legal needs are addressed.

The Society welcomes the opportunity to comment on the Alcohol Mandatory Treatment Bill 2013 ("AMT scheme").

In developing this response the Society has conducted consultations with its Social Justice Committee which includes legal practitioners from Aboriginal and Torres Strait Islander Legal Services, Northern Territory Legal Aid Commission and the Criminal Lawyers Association of the Northern Territory.

The Society acknowledges the joint submission of the North Australian Aboriginal Justice Agency (NAAJA), Central Australian Aboriginal Legal Aid Service (CAALAS) and the NT Legal Aid Commission on the proposed Bill. The Society has considered these submissions and support them.

Summary

The stated objects of the Bill include assisting and protecting persons affected by alcohol misuse problems through therapeutic intervention. The Society supports the use of therapeutic approaches to assist in addressing this important community health problem in line with the National Drug Strategy 2010-2015. The Society however has significant concerns with some features of the treatment regime

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proposed. The Society is concerned the Bill provides for considerable infringements on individual's rights to personal liberty and freedom of movement and exceeds what is necessary in the interests of health.¹ Similarly the safeguards to protect against arbitrariness or excessive abuse of those rights and freedoms are inadequate or non-existent. Further the Society remains concerned that the treatment regime is likely to disproportionately impact on Aboriginal and Torres Strait Islander people in the community and further burden the criminal justice and correctional services systems.

The Society has identified the most important concerns which are outlined in this letter. These can be summarised as follows:

- **Prolonged detention:** The Society is concerned about the regime's use of prolonged involuntary detention;
- **No release mechanism:** In the assessment phase of up to 13 days, there is no mechanism to facilitate release of wrongfully detained persons;
- **Criminal Justice System:** The creation of criminal offences and their impact on the criminal justice system and the overcrowded correctional services system;
- **Impact on ATSI people:** The disproportionate impact on Aboriginal and Torres Strait Islander (ATSI) people in the community;
- **Limited legal protections:** Inadequate legal protections for individuals involuntarily detained;
- **Legal representation:** A lack of resources for the legal representation needs of affected individuals;
- **Residential treatment as a last resort:** Adoption of a novel treatment regime in the absence of evidence;
- **Evidentiary requirements absent:** No transparent evaluation or data collation to build an evidence basis to support and inform the regime; and
- **National Drug Strategy 2010-2015:** Most significantly the regime does not align with the National Drug Strategy 2010-2015 most notably because it is not a part of a comprehensive strategy.

Prolonged detention

The Society is concerned by the lengthy timeframe in which assessment are to be made and the equivalently lengthy timeframe in which the Tribunal decides whether an individual will be issued with a Mandatory Treatment Order (MTO), or alternatively released from the assessment facility.

The Bill provides a time frame of 144 hours (6 days) for an assessment and then a further 7 days for a Tribunal decision. The Society considers the prolonged

timeframes for each of these two stages to be a significant infringement on an individual's rights and equate to unnecessary or arbitrary detention.

No release mechanism

An individual may be detained in an assessment facility, against their will for up to 13 days in total prior to a decision under the AMT scheme. After this time an individual may then be released, on the basis they are not suitable or do not meet the criteria for a MTO.

The Society is concerned that there are no mechanisms in the Bill for the release of an individual from an assessment facility on the basis of a view formed by the assessing clinician. The Society considers the inflexibility around release of an individual from such a facility to be a significant infringement on an individual's rights. This is especially exemplified where an individual has been detained for a total of 13 days in a facility, in order for the Tribunal to merely confirm that individual does not meet or is unsuitable for a MTO, resulting in their release.

Furthermore the Society notes the broad powers of the 'senior assessment clinician' and submits that it is essential that those powers only be exercised by a medical practitioner with specialist expertise in addiction medicine. Further the Society submits that the functions must not be delegable.

Criminal Justice System

The Society is concerned that the Bill unnecessarily extends the reach of the criminal justice system into what is a community health problem. The Society questions the appropriateness of any criminal penalties at all in the context of delivering a therapeutic intervention for alcohol misuse. The Society considers the possibility that an individual may be required to serve a term of imprisonment for non-compliance to be misplaced and excessive. The Society is further concerned the creation of such offences may cause treatment that has been commenced to cease and redirect the individual into the criminal justice system upon that act of non-compliance.

The treatment regime is therefore likely to further burden the criminal justice system and the already overburdened correctional services systems. While most Australian jurisdictions are recording decreases in prisoner numbers, the Northern Territory has increased by 14%. The Northern Territory has the largest proportional increase in imprisonment rates in Australia with 772 prisoners per 100,000 head of adult population.ⁱⁱ

Impact on ASTI people

The Society is furthermore concerned that aspects of the Bill which bring the criminal justice systems into play, will disproportionately impact on ATSI people within the community. The Society is concerned this will exacerbate the over representation of ATSI people at all stages of the criminal justice system.

More than half (54%) of guilty Northern Territory Aboriginal and Torres Strait Islander defendants were sentenced to custodial orders compared to 28% of guilty non-Indigenous defendants. In December 2011 nearly 84% of NT adult prisoners (1095 out of 1309) were Aboriginal or Torres Strait Islander.ⁱⁱⁱ

Limited legal protections

The Society is concerned those individuals assessed as being a candidate for a Mandatory Treatment Order are persons who may require protection under the *Adult Guardianship Act*. An individual who has lost the capacity to make appropriate decisions about his or her own personal welfare and who is detained involuntarily in an assessment facility for up to a total of 13 days is inadequately protected by the mere ability to contact their primary contact person, who may or may not be of assistance, if it is so required. The Society would seek greater safeguards to ensure that an individual's interests and wishes are properly represented while they are detained in an assessment facility or under a MTO. In this regard the Society notes, acts done or omitted to be done by a person in good faith under the Bill are protected from liability.

These concerns are underscored by the broad qualifications of 'senior assessment clinicians' and the Society further emphasizes the importance of a medical practitioner being responsible for the individual's care during the assessment phase.

Given that it is likely that many people who become subject to the AMT scheme will be "suffering from an illness, injury, congenital disorder or organic deterioration... by reason of which the person appears to be unable to make reasonable judgments or informed decisions relevant to daily living" (see s3 *Adult Guardianship Act*), the AMT scheme should include provision for referral where considered appropriate by an assessment clinician or the Tribunal, to the Local Court for the making of an order under the *Adult Guardianship Act*.

The Society is concerned by the requirement that an individual admitted to an assessment facility or admitted to a treatment center, who is unable to communicate in English will only be provided with a statement of rights, in their own language, *if it is practicable*. The Society's view is that the Bill should require an individual be provided with a statement of rights in their own language (or an audio of their rights), if they are unable to communicate adequately in English in accordance with Article 9 (2) of the International Covenant on Civil and Political Rights.

Legal representation

The Society is concerned about the absence of resources directed towards ensuring individuals who will be subject to the regime will be able to access legal representation, in particular indigenous people. The Society is concerned the Bill will place even greater pressure on already scarce resources within the legal aid agencies, particularly NAAJA who have already indicated they will not have capacity to assist with matters arising from the proposed Act.

These concerns in relation to lack of representation and denial of procedural fairness are exacerbated by the highly restricted appeal rights (question of law only, to the Local Court). The Society is further concerned that the Bill does not provide for suspension of the usual provisions in relation to costs of such proceeding.

Residential treatment as a last resort

The Society is concerned the Bill does not require the Tribunal to consider the issuing of a Mandatory Residential Treatment Order only as a last resort, merely where there is an absence of alternatives. Involuntarily detaining an individual who

has not committed an offence in a treatment facility, is a significant interference with an individual's rights and dignity, and should only be utilised as an option after all others have been exhausted.

This concern that detention is extraordinary and harsh is compounded by clause 70 which purports to allow treatment providers to charge detainees for consumables, including food and medicine. In the Society's view these provisions are inconsistent with a purported health regimen. The provision is also potentially inconsistent with the *Social Security (Administration) Act 1999* (Cth) which provides that welfare payments are inalienable.

Evidentiary requirements absent

The Society notes alcohol and other substance misuse problems are a well-researched field of study, and interventions are supported by an extensive body of literature. A significant amount of this literature concerns the efficacy of alcohol misuse strategies. The National Drug Strategy 2010-2015, as published by the Ministerial Council for Drug Strategy endeavored to encapsulate much of the research, and is the primary framework for policy and decision makers seeking to reduce the effects of alcohol in the community. The National Strategy emphasises effective alcohol misuse strategies are those which coordinate across the three pillars of demand, supply and harm reduction and integrate with existing service providers and initiatives.

National Drug Strategy 2010-2015

The Society, as does the National Strategy, recognises the role of innovation and trialing new approaches in the continued development of effective alcohol misuse strategies. Consistent with the fundamental principle of evidence based and informed practices, the Society is concerned the Bill does not provide for the ongoing evaluation of the treatment regime. The Bill does not provide for the dissemination of research and data collected from the treatment regime. The Society is concerned with this lack of attention to developing an evidence basis and the inability of the public to access relevant data concerning the efficacy of the treatment regime.

The Society is concerned the treatment regime provided for under the Bill is not consistent with this National Strategy, rather the Bill proposes a strategy for alcohol misuse which is unsubstantiated by evidence. The Society is particularly concerned by this lack of evidence in light of those aspects of the Bill which attempt to legally coerce individuals into treatment, mandate a period of detention in an assessment and or treatment facility and furthermore imposes criminal penalties on individuals for non-compliance with the treatment imposed on them.

In the absence of evidence, this Society and other stakeholders will continue to question whether the treatment regime proposed in the Bill is capable of delivering any therapeutic benefit to individuals suffering alcohol misuse problems.

We look forward to contributing further to this process if required.

Yours sincerely



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cc: Minister John Elferink
Minister Robyn Lambley

ⁱ Articles 9 and 12 International Covenant on Civil and Political Rights

ⁱⁱ 'Corrective Services Australia' report for the December 2011 Quarter, released on 15 March 2012

ⁱⁱⁱ 'Corrective Services Australia' report for the December 2011 Quarter, released on 15 March 2012