

**INQUIRY INTO DRUG AND ALCOHOL TREATMENT**

**Legal Aid NSW submission**

**to the**

**LEGISLATIVE COUNCIL – GENERAL PURPOSE STANDING COMMITTEE NO. 2**

**MARCH 2013**

**About Legal Aid NSW**

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 36 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

The Legal Aid NSW criminal law practice provides legal assistance and representation in criminal courts at each jurisdictional level throughout the State, including proceedings in the Local Court and Children's Court, committals, indictable sentences and trials, and appeals. Our specialist criminal law services include the Children's Legal Service, Prisoners' Legal Service and the Drug Court. Legal Aid NSW has recognised through this practice area that there is a strong correlation between addiction to drugs and/or alcohol and the commission of crime generally.

The Legal Aid NSW Mental Health Advocacy Service provides and coordinates duty representation in metropolitan and regional NSW for people who are subject to involuntary treatment or detention under the *Mental Health Act 2007* and represents forensic patients under the *Mental Health (Forensic Provisions) Act 1990* (MHFPA). This service is uniquely placed to provide observations in relation to the practical issues that can arise when people are involuntarily detained by order within a therapeutic setting.

Legal Aid NSW welcomes the opportunity to make a submission to the Legislative Council General Purpose Standing Committee No. 2 in relation to the proposed reforms of the *Drug and Alcohol Treatment Act 2007* by the *Drug and Alcohol Treatment Amendment (Rehabilitation of Persons with Severe Substance Dependence) Bill 2012*.

Should you require any further information, please contact Anmarie Lumsden, Executive Director, Strategic Policy and Planning at [anmarie.lumsden@legalaid.nsw.gov.au](mailto:anmarie.lumsden@legalaid.nsw.gov.au).

## Introduction

Legal Aid NSW recognises that there are individuals within the community with severe substance dependence issues who may require intensive treatment in order to be rehabilitated. From experience, the successful treatment of these people requires not only addressing the addiction directly but also the complicated multi-faceted social, cultural, medical and psychological/psychiatric difficulties that a person faces.

Providing treatment to individuals on an involuntary or coercive basis should only be used as a measure of last resort and in circumstances where there are no other less restrictive means available. As such, any amendments to legislation with the power to deprive an individual of their liberty must be carefully scrutinised and cautiously considered.

This submission only responds to Item 7 of the Terms of Reference, namely the proposed reforms identified in the *Drug and Alcohol Treatment Amendment (Rehabilitation of Persons with Severe Substance Dependence) Bill 2012*. It does not seek to cover any other points in the Inquiry's Terms of Reference.

## Proposed reforms identified in the Amendment Bill

Legal Aid NSW does not support the proposed reforms of the *Drug and Alcohol Treatment Amendment (Rehabilitation of Persons with Severe Substance Dependence) Bill 2012*.

Some of the key areas of concern include;

- The compulsory implantation of naltrexone as a first line treatment.

Legal Aid NSW does not consider it appropriate that legislation mandates any particular form of treatment. This is a clinical issue and should be left to the treating clinician in accordance with the latest practice standards and the needs of the individual.

While Legal Aid NSW does not claim any expertise in the area of clinical medical management of addiction it notes that as recently as February 2012 the Australian Government National Health and Medical Research Council website stated that "*Naltrexone implants have not been approved for human use in Australia due to a lack of results from clinical trials demonstrating their pharmaceutical quality, safety and efficacy*".

In circumstances where naltrexone implants are considered experimental and controversial by the appropriate governing body, Legal Aid NSW would not support their use.

- Broadening of the test used to determine circumstances in which a dependency certificate may be issued to include the situation where a person is "*unable*" to participate in treatment voluntarily (section 9A(3)(c)).

This introduces the issue of a person being subject to an order because they do not have the capacity to decide whether or not to receive treatment on a voluntary basis. In this situation, the appropriate mechanism is substitute decision making. This can be gained via the *Guardianship Act* or the *parens patriae* powers of the *Supreme Court*. Legal Aid NSW is of the view that these protective processes should not be circumvented by these amendments.

- The extension of the reasons for which care, treatment or control may be necessary to protect others (section 9A(3)(b)(ii)) or to remove the risk of offending (section 9A(3)(b)(iii)) exceeds what should reasonably be considered in beneficial legislation and extends to protections already in law.
- The apparent inconsistency between issuing a certificate in circumstances where a person is "*unable or unwilling to participate in treatment voluntarily*" (section 9A(3)(c)) and yet requiring the accredited medical practitioner to have sought the "*involvement of the person in the process of planning and developing a personalised plan for the person's rehabilitation and treatment*" (section 9A(4)).
- Legal Aid NSW does not support the extension of the period of a treatment certificate to 90 days in the absence of clinical evidence to support this from an appropriate body, such as the Australian Government National Health and Medical Research Council, as a necessary period for adequate clinical treatment of substance dependence.
- Lack of review of Category B dependence certificates.

Category B certificates impinge on a person's liberty, by requiring an individual to be at specified places at particular times, and autonomy, by requiring an individual to accept services and treatment and, as such, should be the subject of review by a Magistrate. Simply because care and treatment is provided in the community rather than a facility should not remove a person's right to independent review and scrutiny of the order.

- Agreeing to "*undergo weekly urine test*" (section 15A(1)(c)) without stating the purpose of this requirement. This section should specify a purpose, for example, to determine whether a person has consumed substances listed in Schedule 1 of the Act or other purpose.
- The amendments refer to a "*punishable breach*". This would appear to be at odds with legislation that is primarily intended to be beneficial for individuals with severe substance dependence issues.

### **Concluding remarks**

Legal Aid NSW welcomes the opportunity to provide these comments and would be prepared to provide further comment if this would be of assistance to the Inquiry.