

Dear Committee Members,

Re: Submission to the inquiry into severe substance dependence: a model for involuntary detoxification and rehabilitation.

Please find enclosed the submission of the Amnesty International Human Rights in the Law Group concerning the inquiry, *Severe Substance Dependence: a model for involuntary detoxification and rehabilitation* conducted by the Health and Disabilities Committee of the Queensland Parliament. We thank you for this opportunity.

Our group is part of the structure of Amnesty International members and supporters who are committed to promoting and advocating for human rights throughout the world. The Amnesty International Human Rights in the Law Group comprises voluntary members whose objective is to promote the legislative protection of human rights in Queensland. Our group membership base is predominantly drawn from Queensland legal professionals and students.

We hope our submission will bring to light the potential Human Rights abuses of the model which require further consideration by the Queensland Parliament. Our aim is to help foster the necessary change that will minimise the potential abuses of individuals' human rights by systemic practices.

We thank you for taking the time to consider our submission.

Joshua Sproule and Ailsa McKeon
Co-Convenors
Amnesty International
Queensland-Northern NSW Branch
Human Rights in the Law Group

Submission to the Inquiry into Severe Substance Dependence: a Model for Involuntary Detoxification and Rehabilitation.

The Amnesty Human Rights in the Law group would firstly like to make clear our fundamental objection to the idea of a system of involuntary detention, even for the purposes of medical treatment, where such system is not rigorously proven to have any benefits which would outweigh the negative impacts of the removal of personal liberty. As the information paper suggests, there is a paucity of research into the effects of involuntary substance detoxification treatment, and what research exists has not been consistent in demonstrating positive results. We would submit that, if fundamental derogations from the right to liberty are to be countenanced, they must be fully justified on the basis of sound evidence of their benefit to the individuals concerned. That is not the case with the present schema.

However, beyond these complex questions concerning the principle of individual autonomy and the role of the state, if the proposal should go ahead it obviously must balance the need for treatment with the inherent dignity and rights of the patient. Mindful that severe substance dependence can leave people at their most vulnerable, there must be adequate legal safeguards to ensure that both their human rights are respected, and also (as the model purports) that their best interests are served.

To this end, the Amnesty International Human Rights in the Law group strongly recommends that the following proposals be incorporated in order to mitigate the potential for the abuses of individuals' basic rights:

Definition

The Amnesty International Human Rights in the Law group finds it incredibly problematic that the scheme as it stands aims to target persons with 'severe' substance dependence, when this term has not yet been clinically defined. While some cases may seem clear-cut, we are concerned that the lack of definitional certainty will lead to the targeting of certain individuals who are more likely to come to the attention of authorities and therefore discrimination may occur. Furthermore, the net is left open to potentially catch a large number of people, although such stringent limitations on fundamental individual liberties should be limited to the most serious cases if used at

all. Such restrictions may not be adequately justified where there are no minimum requirements for their imposition.

Period of Detention

Granting the authorised person (whether magistrate or medical practitioner) a wide discretion, limited only by an uncertain definition, to determine the initial period of treatment appears akin to indefinite or arbitrary detention. There must at the very least be an upper limitation on the period of detention, such as 28 days or (preferably) less. This may be open to review after the initial period, however as noted above, there must be firm justification for detention. Further, there must also be an overall maximum treatment period if renewals are permitted to prevent indefinite detention, which can of itself be deleterious to an individual's health, and this is particularly required where no benefits are being demonstrably experienced by the patient.

Decision Makers

We submit that the broad identification of 'medical practitioners' as the persons who will assess an individual's need for treatment and also apply to the court for an order of involuntary treatment is insufficient. Issues of substance abuse are often interlinked with mental health issues and so it is necessary that mental health experts, such as psychologists or psychiatrists, are involved in the process to ensure that a holistic approach is taken to the treatment of individuals. This would work towards a sustainable, long-term solution to the issue of drug dependence and prevent people returning to the system.

Further, we are of the view that the general Magistrates Court is not the appropriate arena in which to address these issues. We would recommend the use of the Special Circumstances Court or similar. With its flexible procedures, experienced magistracy and expert assistance, it would be better-suited to establishing whether the best needs of the individual would be served by involuntary treatment, or whether there were other means which might be used first. Further, the dependency certificate cannot automatically apply, but must be confirmed by the court in order to have effect, even where the treatment is voluntary.

Legal Representation

We find it quite disturbing that there is no mention of access to legal representation. We implore the adoption of the policy of the Victorian model where the person who is subject to the application has a right to appear and is entitled to legal representation. A significant amount of funding specifically for this purpose should be provided to Legal Aid and other relevant agencies if they are expected to fill the gaps where private advocacy is unavailable.

Access to Assistance or Advocacy

It is inappropriate that persons with substance dependence, who may therefore be vulnerable to an abuse of power, should be placed in the position where their life is entirely removed from their control, without adequate means of representation on their behalf. The proposed safeguard of having a discretionary 'allied person' as an advocate for the patient is insufficient; in every case, an independent advocate must be assigned. It is preferable that this person is nominated by the patient, however if such an individual is unable to be found, welfare organisations should be funded to provide this service. Additionally, the Victorian Public Advocate, with its mandatory visits, and the New South Wales official visitors programme, may both be important measures in ensuring the accountability of the service-providers and of ensuring that potentially vulnerable individuals are given a voice where they are deemed to have none of their own.

Other Protections

It is imperative that other forms of protection be put in place, beyond the process of appeal to the Queensland Civil and Administrative Tribunal. We strongly suggest including the measures contained in both the Victoria and New South Wales legislation. To wit:

- The applicant must check whether a guardian has been appointed and inform that person of the application for the order;

- The patient must be examined by senior clinician within 24 hours of admission to review whether the criteria for detention apply;
- An accredited medical practitioner must arrange an interpreter for the assessment if required; and
- An accredited medical practitioner must give the patient an oral and written explanation of her/his legal rights and entitlements, including that of appeal, within 24 hours.

Furthermore, there should be a public independent review of the programme's efficacy and problems at least annually.

Generally, if this programme is to go ahead, it should take up the challenge it has set itself of putting the individual's best interests first and encouraging self-determination. At present this scheme is overly paternalistic and removes individuals' agency, rather than helping them to help themselves.