THE UNION FOR QNU NURSES AND MIDWIVES

QUEENSLAND NURSES' UNION

Submission to the Legal Affairs and Community Safety Committee

Safe Night Out Legislation Amendment Bill 2014

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Introduction

The Queensland Nurses' Union (QNU) welcomes the opportunity to provide a submission to the Legal Affairs and Community Safety Committee (the Committee) regarding the *Safe Night Out Legislation Amendment Bill 2014* (the Bill). Our submission addresses the proposed amendments to the *Police Powers and Responsibilities Act 2000* highlighting our particular concerns for members who are prominent amongst the health workers in the front line of alcohol and drug-related violence.

The QNU is the principal health union operating in Queensland and is the largest representative body of women in this state with over 50,000 members. The QNU covers all categories of workers that make up the nursing workforce in Queensland including registered nurses, midwives, enrolled nurses and assistants in nursing employed in the public sector or the private and not-for-profit health sectors[1]. Our members work across a variety of settings and in a full range of classifications from entry level trainees to senior management.

In this submission, we focus on the proposal to establish the 'Sober Safe Centre' trial that will apparently be staffed by 'nurses' or a 'health care professional'. We have a number of concerns about the role of nurses in these centres that arise not only from matters related to safety, but the assumption that their scope of practice entails the responsibilities outlined in the Bill.

Consultation Process

The *Safe Night Out Explanatory Notes* (Explanatory Notes) state that 'broad community consultation has occurred on a range of initiatives to address alcohol and drug-related violence' (p.8). As the major industrial and professional organisation representing nurses, the reading of the Bill in the Parliament and referral to the Committee is the first we have seen of these proposals.

We do know, however, that in 2013 the New South Wales parliament passed similar legislation to trial sobering-up centres commonly known as 'drunk tanks'.[2] As of 30 June,

[1] Throughout this submission the terms 'nurse' and 'nursing' are inclusive of 'midwife' and 'midwifery' and all nursing designations such as 'nurse practitioner'.

[2] See the *Intoxicated Persons (Sobering up Centres) Trial Act 2013.*

2014, two of these centres in Randwick and Wollongong run by the non-government sector have closed saving taxpayers $2 million. The centre at Randwick admitted just 10 people during the period 5 July, 2013 – 17 April, 2014. The remaining drunk tank in the Sydney CBD will continue on a two-year trial basis from July, 2014. Since opening in July, 2013 it has admitted 345 people (Wood, 2014).

Before the 2011 election, the O'Farrell government promoted 'drunk tanks' as a means of addressing alcohol-related violence, particularly following serious assaults in King's Cross and the CBD. Police and health workers staffed these centres and at the time, the government met with similar objections to ours from the NSW Police Association and the NSW Nurses' Association (amongst others). The NSW Police Association warned the government before it introduced the centres that there were 'significant' duty of care issues with the proposal and much-needed police resources should not be used to supervise drunks (Wood, 2014).

In light of the NSW experience and the range of issues that we have identified, the QNU expresses strong concerns that the Queensland LNP government intends to proceed along similar lines.

We therefore state at the outset, that we will not support the involvement of our members in this trial unless the government addresses the matters we have identified below and we are assured that members will not be exposed to physical harm or situations that compromise their professional registration.

Alcohol-related Violence

The QNU has a significant interest in measures to prevent alcohol and drug-related violence in Queensland. We note that the Bill seeks to address this matter by ensuring bad behavior is not tolerated, providing safe and supportive entertainment precincts and making it clear everyone is responsible (Explanatory Notes, p.1).

Nurses are exposed to alcohol and drug-related violence in two ways. They treat those who are affected by excessive alcohol consumption or who are the victims of alcohol-related violence and abuse. In turn, nurses can themselves become the target of the intoxicated or drug-affected individuals they seek to help. It is important to note that their treatment of these individuals occurs within a clinical setting that enables nurses to address all aspects of the individual's condition.

The International Council of Nurses (ICN) (2006) strongly condemns all forms of abuse and violence against nurses ranging from passive aggression to homicide and sexual harassment. Such actions violate the nurse's right to personal dignity, integrity and freedom from harm.

Unfortunately, violence is widespread in Australian Emergency Departments (ED) and is most prevalent at triage (Morphet, Griffiths, Plummer, Innes, Fairhall & Beattie, 2014). ED nurses are at the intersection of caring for a patient with violent and aggressive behavior and their right to a safe workplace. Individual nurses may not only sustain a physical injury, but there are potential long term risks including psychological trauma and symptoms of post-traumatic stress disorder.

Morphet et. al. (2014) found in their study of Australian EDs that violent incidents are under-reported and although this may be due to difficulties with reporting systems, they also found that many nurses accept this as an aspect of their workplace. This is of real concern because violence in EDs is different from other forms of violence – the aggressor has no overt dominance or power status – and in a setting of care, victims may excuse the behaviour (Kennedy, 2005).

There are several reasons why nurses do not report many incidents of abuse or violence including workloads and a view that this type of behaviour is 'normal'. It is not 'normal' and certainly not 'part of the job'. The treatment of intoxicated individuals is high risk and should not be normalized by delineating it as a responsibility that can be thrown to nurses because dealing with such behaviours is 'what they do'.

In Queensland, there has been an alarming increase in alcohol and drug-related injuries. In 2012, there were 91,783 alcohol-related ED presentations in Queensland, representing an increase of 31% from 70,170 in 2007 (Queensland Health, 2013a). Between 2002-3 and 2011-2102, alcohol-related hospitalisations increased by 57% from 22, 460 to 35,159 (Queensland Health, 2013b).

A recent study using ED injury surveillance data collated by the Queensland Injury Surveillance Unit (QISU) between 1999 and 2011 identified injury due to alcohol-related violence (Sendall, Laing & Barker, 2013). Of the 4629 cases studied, the population was predominantly male (72%) and aged between 18-24 (36%). This means statistically that young, intoxicated males will most likely be the major offenders to attend a Sober Safe Centre.

We accept that the Bill is attempting to address some of the adverse outcomes that arise when individuals engage in excessive drinking or drug-taking. However, in deflecting presentations from EDs to the Sober Safe Centre, the Bill will isolate nurses from their professional environment and peers, both of which are necessary to practice effectively and safely. This is not an acceptable alternative.

We have previously advocated for safety for nurses in EDs[3], however the new legislation seems to assume that the Sober Safe Centre will take the place of EDs by isolating individuals thought to be intoxicated and empowering nurses to assess and engage physically with these individuals if necessary. This is a false assumption. Not only may the proposed amendments to the *Police Powers and Responsibilities Act 2000* breach the rights and liberties of individuals (a fact noted several times in the Explanatory Notes in respect to various aspects of the Bill) it will also impinge on the workplace rights of nurses who are employed there.

Every worker has the right to a safe and healthy working environment. Employers must minimise exposure to health hazards and take all steps to prevent injuries in the workplace through a systematic, proactive and comprehensive risk management process. The Bill fails to mention any such process beyond enabling a nurse to refer an individual they believe should receive urgent medical attention on to an appropriate medical facility. There is no mention of professional practice guidelines, workloads, ratios or other matters that may put the nurse's registration and safety at risk. Nor is there reference to any criteria or measures to evaluate the trial of the Sober Safe Centre.

The nightclubs and venues that continue to sell alcohol to individuals who are already intoxicated must curb their activities and we welcome the Bill's attempts to strengthen legislation in this area.

In the end however, it is the people who drink to excess or take drugs who must take responsibility for their actions. The QNU believes that the government must continue to work with communities, schools and the media to ensure that intoxicated individuals do not wake up in hospital and that injuries to nurses do not become the emergency.

We support the *Five Point Plan to Reduce Alcohol-related Harms in Queensland* proposed by the Queensland Coalition for Action on Alcohol (QCAA). This organisation has identified measures to achieve a cultural change that will reduce alcohol harms and improve the health and wellbeing of Queenslanders. This does not include taking nurses out of their practice environment and directly exposing them to alcohol or drug-related violence as an alternate method of control. Nurses are clinicians, not police.

Overall intent of the Bill

Whilst we commend legislative measures designed to improve the health and safety of persons in police custody, there are serious concerns about the use of Health Care

[3] See for example our submission to the Law, Justice and Safety Committee *Inquiry into Alcohol Related Violence* in 2009.

Professionals (HCP) to provide health assessment in a quasi-custodial role. Of prime concern is the fact that the legislation appears to have one HCP working as the sole health practitioner at the sober safe centre. This transgresses every unwritten rule about the safety of nurses working alone in the practice setting. The QNU does not support 'single nurse posts'. It is our position that minimum safe staffing is two nurses e.g. in rural and remote settings. Even with a minimum number of nurses, it can commonly result in unsafe workloads – the demand versus supply. One nurse can rapidly be engaged with an influx of clients and potential complications /deterioration of existing clients.

This is even more important in an environment where the threshold for entry is being intoxicated and posing a risk to others. That threshold alone is sufficient evidence for there to be always two HCP's on duty at any one time.

Response to the proposed amendments to the *Police Powers and Responsibilities Act 2000* (Qld).

The QNU cannot support the *Safe Night Out Legislation Amendment Bill 2014* without the following changes to the *Police Powers and Responsibilities Act 2000 (Qld)* (the Act), specifically:

Division 2 – Sober Safe Centre Trial.

390A Definitions

health care professional – means a person who is
(a) a nurse -

The nurse cannot be an enrolled nurse, for two reasons:

1. the interpretation of assessment/examination data is outside the scope of enrolled nursing practice; and
2. an enrolled nurse is not permitted to practice nursing unless under the supervision of a registered nurse.

(b) has a qualification prescribed by regulation.

This needs further clarification other than 'by regulation'. The *Health Practitioner Regulation National Law 2009*, as in force in each state and territory (the National Law) came into effect on 1 July, 2010. This law provides nationally consistent regulation of 14 health professions under the National Registration and Accreditation Scheme. If the Sober Safe Centre envisages other HCPs will be involved, the profession should be stated in the legislation in the same manner as nurses.

Recommendation 1:

- That the word “registered” is inserted between the words “a” and “nurse”;
- That the legislation identifies any other HCPs by title.

390G Assessment

Intoxication – There is no definition of this term in the Bill, or within the Act. This is a problem for a HCP’s assessment, for the following reasons:

a. Without any definition or descriptors measuring the degree of intoxication, this can have various meanings, ranging from mild inebriation to critical poisoning;
b. Intoxicated persons who are a nuisance or pose a risk of harm (the thresholds for being in the sober safe centre), when otherwise presenting to a health care setting, are usually denied examination, assessment and treatment (unless deemed a clinical emergency) until he/she has settled and/or become sober;
c. Various organic conditions can mimic alcohol or drug intoxication, requiring further testing to distinguish;
d. The only way to form a confident clinical opinion on the intoxicated state of a person is to conduct tests using blood, breath or saliva.

We note that the Bill applies the same procedures used under the *Transport Operations (Road Use Management) Act 1995* (the Road Use Management Act) to enable police to test persons who have committed a relevant assault offence for drug and alcohol.

This would seem to negate the need for a HCP to make a clinical assessment of intoxication in circumstances where there is little capacity to measure or differentiate it from other conditions.

Recommendation 2:

- That police continue to exercise their powers to assess intoxication under the Road Use Management Act, not the HCP.

390I Assessment after 4 Hours

The duty of care of a HCP who has conducted an assessment upon a person who remains in custody (and needs further assessment under the Act at 4 hours) does not end at the

completion of the initial assessment. This duty of care extends to the entire time the person is in their care (in custody). As such, there will be circumstances arise for some persons in custody where the person will require re-assessment or examination before the four hours has elapsed.

Unless the Act specifically prescribes that the HCP has no duty of care to persons after the initial assessment, there needs to be an additional subsection permitting the HCP to conduct an examination of the person in custody when their clinical opinion deems it to be necessary.

Here, the HCP is also making an assessment of intoxication. The same arguments apply as in s.390G above.

With regard to the options of the HCP after conducting the second assessment, they are too limiting. There may be circumstances where the HCP identifies clinical signs requiring urgent medical treatment. This should be one of the options in the Act.

Recommendation 3:

- Insert the following in s.390I:
  (4) At any time while a person is in custody at the sober safe centre, the health care professional may conduct further additional assessment of the person when the clinical opinion of that health care professional is that such assessment is required;

  (The above clause could instead be inserted as a new clause (3) at s.390K);

- With regard to 'intoxication', see recommendation 2 above.

- Insert the following in s.390I(2):

  After (b), insert "*or*", then
  "*(c) the person should receive urgent medical treatment at an appropriate medical facility*."

<u>390K – Monitoring</u>

The arrangement of transport (often requiring escort) and release from custody should be the duty of the Officer enforcing the custody, not the HCP who, in a practical scenario, will be engaged in providing emergency care.

While the single HCP who will be otherwise engaged in emergent intervention, we question who will be attending to other clients' requiring "assessment or re-assessment" if there are not at least two HCPs on duty?

Recommendation 4:

- In s.390K(2), omit the words "*professional or*" on line 15;
- A minimum of two HCP should be on duty at any given time.

390L – Release

Subsection (2) gives the HCP quasi-police powers to detain further or release an individual from custody. Such powers run counter to the health care philosophy of providing care.

The QNU has previously defended our members' professional and ethical codes of practice when similar provisions were proposed in Mental Health Services and EDs.

In those cases, the QNU insisted on protocols to preserve the member's therapeutic rapport with the patient/client by clarifying that the pivotal role of the clinician is one of oversight of the process to limit potential for adverse affects on the patient. The QNU only supports participation by nurses where appropriate training, competence and authority has been established for nurses to restrain an individual and where there is no less restrictive manner in which to effect the intervention/care.

Recommendation 5:

- Under s.390L(2) delete the words "*health care professional or*" in line 1.

390O – Reasonable force

The Nursing and Midwifery Board Australia (NMBA) (2010)[4] makes it clear that 'nurses must always obtain informed consent from persons in their care prior to undertaking any

[4] The NMBA is responsible for registering nursing and midwifery practitioners and students and developing standards, codes and guidelines for the nursing and midwifery profession.

therapeutic, professional interaction'. Further, 'nurses recognise and respect the rights of people to engage in shared decision-making when consenting to care and treatment. Nurses also value the contribution made by persons whose decision-making may be restricted because of incapacity, disability or other factors, including legal constraints' (NMBA,2008).

In light of these standards, participating in a situation that may require the use of force could compromise a nurse's registration.

The use of restraint is a significant infringement on a person's human rights. It is also potentially unlawful and may give rise to criminal or civil liability (Office of the Public Advocate, 2013) (recognising here that S390P gives qualified protection against civil liability). When persons are in custody, it is appropriate that where restraint is required to perform clinical procedures, such restraint is applied by the police officers present, who have been extensively trained in performing such procedures safely.

The *Mental Health Act 2000* does allow nurses to use 'reasonable force' as necessary ONLY under strict provisions and regulations and in circumstances of imminent risk.[5] There are other legislative provisions that may be enlivened when persons lack capacity. However, the nexus between capacity and intoxication remains a highly contentious area. Nurses do not exercise restraint simply to perform an examination on an unco-operative patient. Nurses are required to develop services and undertake care on the basis that it will improve health outcomes and not simply for the convenience of others (NMBA, 2013, p.6).

If this section is to remain, then it needs to indicate that professional practice for any HCP requires them to at least <u>seek</u> the consent of the person. If consent is not required under the legislation, then the clause should indicate this by saying it is not necessary to <u>obtain</u> consent.

We note that while s.390P of the bill provides qualified protection for the HCP from civil liability, there are no explicit provisions stating the consequences for a person in care if they harass, assault or otherwise violate the HCP.

Recommendation 6:

- Under subs.390O(a), delete "seek" and insert "obtain";
- Delete subs.390O(b);
- The bill applies strict penalties to any individual who harasses, threatens or assaults any HCP in the course of their duties in a Sober Safe Centre.

[5] See s.162U Use of Reasonable Force.

Further Recommendations

The QNU further recommends that:

1. The committee gives serious consideration to the impact on individual rights and liberties identified on a number of occasions in the Explanatory Notes;
2. The government indicates how it intends to evaluate the trial of the Sober Safe Centre and includes the QNU, Qld Police Union and other stakeholders in the process;
3. Public venues and areas enhance security measures, particularly on public transport and taxi ranks;
4. The emphasis on public education continues targeting patrons and drinkers, parents, security providers and venue operators.

Operational Matters

The QNU has many concerns about the proposed amendments to the legislation. We consider the employment of nurses in a sober safe centre is professionally inappropriate because these situations will lack opportunity for collaboration with peers and colleagues to foster the best possible health outcomes and access clinical support to manage challenging behaviours or complications.

We must therefore insist that the government consults further with relevant stakeholders including clinicians and their unions prior to progressing this legislation. At the very least there must be consideration of appropriate protocols and operational matters that preserve the professional practice of the nurse and the safety of both the client and the nurse. Such matters include, but are not limited to:

- Risk assessments documented in the planning phase of the trial;
- Safe Operating Procedures in relation to emergency access and egress, duress response arrangements and first aid, particularly transport of nurses should they be injured at work;
- Aspects relevant to the safety of nurses contained in any Memorandum of Understanding with Queensland Police;
- Monitoring criteria in relation to work systems and problems identified at the outset of the trial. This should include development of an instrument for in-house data collection as a short term measure until formal evaluation criteria are developed;
- Patient assessment proforma;
- Nurse's position description.

We will be advising our members of their professional responsibilities and our ethical and medico-legal concerns should this legislation proceed without further consultation and amendment.

Conclusion

The QNU would welcome the opportunity to discuss our position at the public hearing scheduled for 24 July.

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