SOCIAL POLICY AND PARLIAMENTARY UNIT

Working for the eradication of poverty in NZ

Te Ope Whakaora

Substance Addiction (Compulsory Assessment and Treatment) Bill
Health Committee

The Salvation Army New Zealand Fiji and Tonga Territory Submission

BACKGROUND

1. The Salvation Army is an international Christian and social services organisation that has worked in New Zealand for over one hundred and thirty years. The Army provides a wide-range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.

2. We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society through God in Christ by the Holy Spirit's power[1].

3. This submission has been prepared by the Social Policy and Parliamentary Unit of The Salvation Army. This Unit works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand.

4. The Social Policy and Parliamentary Unit have prepared this submission in consultation with The Salvation Army Bridge Programme. The Bridge seeks to offer an evidence-based, best practice treatment for people moderately to severely affected by their harmful use of, or dependency on alcohol and / or drugs as a practical expression of its Christian based love and concern for all people in the community. The Salvation Army Bridge Programme is one of two organisations in the country that receives persons under Section 9 of the Alcohol and Drug Addiction Act 1966 ("1966 Act").

5. Salvation Army Bridge centres have been involved in Ministry of Health consultations as the regime underwent several reviews in the past. The three centres that currently have persons in their care under the 1966 Act are currently engaging with District Health Boards in each area around submissions addressing concerns about processes and volumes under the proposed future regime.

[1] http://www.salvationarmy.org.nz/our-community/mission/

6. This submission includes some feedback from three Bridge clients who are currently under the 1966 Act, particularly relating to their experiences under the current regime, and their thoughts on the future regime as proposed by the Bill.

7. This submission has been approved by Commissioner Robert Donaldson of The Salvation Army's New Zealand, Fiji and Tonga Territory.

THE SALVATION ARMY PERSPECTIVE

8. The Salvation Army **supports** this Bill in principle. It is a milestone for the addiction sector following 30 years' of advocating for change, more than three official reviews and a Law Commission report.

9. The Salvation Army agrees with the Law Commission that in the case of a small group of people who are severely dependent on alcohol or drugs there is an important public interest that is served by intervening to protect them where they have as a result of severe substance dependence.[2] Such persons have a substantially impaired capacity to care for themselves or make treatment decisions and are therefore at risk of serious harm. In our view protecting such people from immediate harm by restoring their capacity to make treatment decisions is a sufficiently important objective to justify intervention as a last resort.

10. However it is The Salvation Army's view that the 1966 Act currently administers this intervention in a way that is at times unworkable, does not enhance the dignity and rights of the person concerned, and is not in line with modern-day good practice. Feedback from current clients included the following comments on their experience under the 1966 Act:

    [the law] should have changed years ago. The stigma [is] wrong. Alcoholics and Drug addicts should not be institutionalised.

    I felt I had lost my rights but was willing to do what was required.

11. The Salvation Army believes that this Bill has the potential to significantly transform the current regime, and that it is long overdue.

12. The Salvation Army however does have some reservations and questions relating to specific resourcing, the need for more support of the whanau of those under the proposed regime, and multiple comments on specific clauses in the Bill, which are given in more detail below.

GENERAL COMMENTS

Resourcing

[2] Law Commission *Compulsory Treatment for Substance Dependence: A review of the Alcoholism and Drug Addiction Act 1966* (NZLC R118, 2010) at 4.

13. The Ministry of Health has tentatively estimated that approximately 200 people per year could become subject to the proposed new compulsory treatment regime. This is an increase from the current 70-80 people per year subject to the ADA Act 1966.

14. Whilst it is acknowledged that it is very difficult to estimate numbers, some of our Directors have expressed a concern that with other agencies applying to be 'Act Institutions' and with a shorter time frame of treatment introduced there will be an marked increase under the new regime if it is seen as an alternative and faster route for people on waiting lists to enter into treatment programmes.

15. A further concern from our Directors is that the new Act will be used to place more challenging persons with mental health issues, who also happen to have Addiction issues. Centres with an Addiction focus may not be adequately resourced to manage persons with significant mental health issues.

16. An increase in numbers creates challenges for Bridge Centres particularly in terms of completing assessments, as assessments are time consuming. There are also significant reporting requirements under the Bill, and this would add significant time pressure to existing staff. Increased person numbers may require increased staffing due to needing additional case management and reporting needs.

17. The Salvation Army understands that additional resources were or will be made available to DHBs for medically managed withdrawal beds and for long term rehabilitation,[3] but that no additional funding will be available specifically in relation to the new regime. As indicated above, increased funding may be required to meet the new requirements and manage increased numbers under the new regime.

The importance of involving and supporting whanau

18. The Salvation Army notes that there are several provisions that emphasise the importance of the person's ties to their whanau, and that whanau can be kept informed of events affecting the person, and consulted in certain circumstances. This is a very positive development. Whilst some persons have lost contact with whanau due to their addiction, they can also be crucial to recovery, and whanau are often the Applicants for a compulsory order.

19. However The Salvation Army submits that there needs to be more specification about how whanau can be involved and supported through the process.

20. A Bridge client noted that when he/she was placed under the ADA Act, they and their children (who made the application) did not receive correct information about what the process would involve.

[3] Ministry of Health Regulatory Impact Statement: Substance Addiction (Compulsory Assessment and Treatment) Bill at 18 .

21. Another client suggested the following with regards to whanau involvement in the new regime:

    Being sectioned, or the threat of being sectioned, is a traumatic experience for persons and whanau. I believe that there could be benefit from family involvement/counselling being a compulsory component of sectioning, as it is generally the family's request for help that leads to this. The family, I feel, needs to take a role in the recovery process if they want to utilise the Act.

22. The Salvation Army submits that there could be real benefit in increasing the involvement by, and support of whanau in the Bill. For example, the Bill could include a provision that the Court directs appropriate counselling when a compulsory treatment order is made and family have been involved. The Salvation Army also suggests that the person, family and whanau (such as the principle caregiver) are offered information on advocacy and support, i.e. a consumer advocate/ peer support worker, to help navigate the compulsory assessment and treatment pathway.

SEPCIFIC RESPONSES TO AMENDMENT

23. **Clause 3 - Purpose**

24. In the past, a purpose of treatment for a person under the Act at the Bridge has sometimes also been because the person has put others at risk, and so admitting a person has sometimes been for the safety of whanau and society at large, in addition to their own.

25. To reflect this purpose The Salvation Army suggests amending clause 3(a) to state "protect them *and others* from harm".

26. **Clause 10 - Compulsory treatment to be option of last resort**

27. Clause 10 states that for the purposes of clause 7(c), compulsory treatment is necessary only if voluntary treatment is unlikely to be effective in addressing the severe substance addiction.

28. The Salvation Army submits that there needs to be clarification of whether there is there an expectation that the person must have previously had an opportunity to engage in treatment voluntarily.

29. **Clause 11(2)(g) – Immediate release on being sentenced to prison.**

30. This clause requires that the compulsory status of a person ends on the close of the day when a person is sentenced by a court to be detained in a prison.

31. Whilst The Salvation Army can see that the order is not necessarily practical to continue in its current form if a person is sentenced to prison, the beginning of the prison sentence does not mean that a person no longer needs specialist treatment for their severe substance addiction

that justified the order being made in the first instance. If their sentencing date occurs in the middle of their compulsory treatment period, it is particularly concerning that the person may not be able to finish their period of treatment, and be required to enter into a prison environment where treatment is not guaranteed, particularly if they are serving a short sentence. Addiction treatment is significantly more nuanced than a person only being restricted from accessing the addictive substance.

32. The Salvation Army is concerned that this proposed section does not allow for any follow up of a potentially very vulnerable person whose order suddenly ends when they are sentenced to prison. This may produce more harm to their health in the short-term as they enter prison, and in the long-term if they are released from prison having had their previous treatment interrupted and potentially without any provision of future treatment.

33. The Salvation Army believes that it is vital that there is at least some safeguard included to facilitate co-ordination between the responsible clinician/treatment centre, probation, and the forensic court nurse, particularly so that the Sentencing Judge is fully aware of the status of the person being sentenced and their specific health needs, so that an appropriate sentence (potentially at a treatment centre) may be given.

34. **Clause 16 - Assistance in arranging medical examination for application**

35. The Salvation Army submits that this clause should include a requirement to inform the person subject to the medical examination of their rights under the Health and Disability Commissioner (Code of Health and Disability Consumer Rights) Regulations 1996. This is also an opportunity for the person to identify their principle caregiver/ welfare guardian/ nominated person.

36. **Clause 19 - Arrangements for specialist assessment**

37. The Salvation Army submits that this is a key part of the process where a person may lose their freedom and be detained, thus access to support and advocacy is timely and may need to be specifically facilitated and specified at this stage under the Bill. This could also be a timely opportunity to offer family and whanau (such as the principle caregiver) information on advocacy and support.

38. **Clause 22 - Specialist assessment requirements**

39. The Salvation Army submits that it is important that the all disclosed information provided in clause 22(4)(a) is consistent with what is generally provided to people seeking alcohol and other drug treatment.

40. The Salvation Army also submits that clause 22(4)(d) should also include that the person has a reasonable opportunity to discuss the treatment with the person's "nominated person" if they have nominated one, in addition to their principle caregiver and welfare guardian.

41. **Clause 25 (1) b - Approved specialist to notify Area Director**

42. This clause requires that an approved specialist, after consultation with the Area Director, arranges for the person to be detained in an appropriate facility until the person is admitted to a treatment centre when the relevant certificate is signed and dated.

43. The Salvation Army is aware that suitable places for the person to stay can be very limited if there are no beds at a social or medical detox. Access to medically managed withdrawal currently varies across the country, such as general adult psychiatry units, general adult medical units and medical withdrawal units. This also results in a range of managed withdrawal approaches. Treatment centres and medically managed withdrawal units generally don't restrict people from leaving and are usually unlocked facilities, which is inconsistent with the Bill's intention to detain.

44. There is also a concern that police cells would be used as a last resort if there are no beds available. This can be very dangerous in that it could lead to "enforced detox" without medical attention. In the past Bridge centres have attempted to time the signing of compulsory certificates so that they happen on a day that a bed becomes available in detox, in order for the person to be safe medically. Access to a range of managed withdrawal approaches such as medically managed community and home withdrawal placements may also need to be considered.

45. The Salvation Army recommends that adequate safeguards and resources are put in place to ensure that inappropriate detention facilities are not used, for example properly defining "appropriate detox facility" under Clause 4: Interpretation.

46. **Clause 26 - Information to be given to person and others**

47. The Salvation Army suggests that the explanation to the person of their rights and entitlements in another language includes sign language under subclauses 26(4) and (5).

48. **Clause 27 - If compulsory treatment certificate is not signed, advice must be given**

49. The Salvation Army submits that advice on alternative options for treatment is also given to the person's nominated person (if they have nominated one).

50. **Clauses 31, 32 - Person must be released if review not determined within prescribed period; Court may make compulsory treatment order.**

51. Whilst The Salvation Army supports the significantly improved process and review rights under the new regime, there are concerns about the practicality and logistics of increased paperwork and regular reviews through the already stretched Court system. In the past in some parts of the country it has been very difficult to have a Judge actively engaged in review, such as visiting a person personally, which can be the best and least onerous option

for the person. Sometimes Judges have simply signed off recommended paperwork. It has also sometimes taken months for a person to have their appeal processed.

52. This future judicial oversight process appears to require more active engagement from Judges and the Courts within a tight timeframe, therefore The Salvation Army strongly recommends that it is resourced and managed well.

53. **Clause 32(3) - Compulsory treatment order expiry**

54. In the past experience of Bridge centres, there are times where it has been impossible to assess someone who cannot remain sober. This has meant that Bridge centres have had to assess the person within 2 weeks of admission, once they are in care, as the clinician cannot gain a thorough and useful history from a person who is highly intoxicated or agitated by being detained. The person may not be in a position to be cooperative or in a fit state to engage in intense dialogue that can accompany the assessment process.

55. In order for this to occur, a reasonable period of time to stabilise health and regain sufficient capacity to engage is required. Functionality is restored for each person differently and there is no clear guideline as to what the average timeframe for this to occur could be. The timeframe of 56 days (8 weeks) is the 'best guess' based on consultation with experts who believe this is likely to meet the requirements.[4] Whilst The Salvation Army acknowledges that there are differing views on the required timeframe within the sector, data from Auckland Bridge shows no person has been discharged from the institution in anything less than 12 weeks.

56. The purpose of this Bill also aims to provide better opportunity for the person to engage in treatment voluntarily, in addition to an initial medical stabilisation period. Therefore in order to fulfil the purposes of this process, due consideration needs to be given to a sufficient amount of time for functionality to return so that the person can participate in the robust assessment process in some cases. This may have implications for the proposed minimum period of compulsory treatment that is currently very fixed under the Bill, given that it currently only allows for extension in the case of a brain injury.

57. **Clause 38 - Requirement to stay in treatment centre**

58. Is clear that the person 'must not leave the treatment centre' except in accordance with clause 39.

59. However The Salvation Army has questions relating to where a person can be detained if they are so intoxicated that they are a threat to others in the treatment centre. One of our Bridge centres had an incident where a person who was very intoxicated made a serious threat to others' physical safety. Because the person had not specified whom they wished to harm,

[4] Ministry of Health Regulatory Impact Statement: Substance Addiction (Compulsory Assessment and Treatment) Bill at 10.

and it was just a general threat, Police were very reluctant to detain the person. It is Salvation Army Bridge Programme policy that physical restraint and locked isolation are not used as part of treatment so if an Act client becomes violent the support of the Police is essential.

60. The Salvation Army submits that consideration needs to be given around the design and support for treatment centres to safely manage people under this Bill who become unsafe and a risk to themselves or staff or clients on site.

61. **Clause 39 - Leave of absence on compassionate, medical, or other grounds**

62. The Salvation Army is in support of the introduction of leave of absence, given that it better recognises the rights and agency of the person undergoing treatment.

63. However The Salvation Army submits that the safeguards in the Bill surrounding this leave of absence by the clinician may also need to include preventing the person from causing harm to others and themselves on release. Presently, one of our Directors allows persons once they have completed at least one complete round of the programme and following a clinical case assessment to go on overnight (then later weekend) leave to `test the waters` as a gradual reintroduction back into their normal lives. This can have mixed results given the complexity of a serious addiction. On one occasion, Police needed to collect a client who had been drinking excessively and who had to be admitted to hospital as they were threatening suicide. At the point of hospital discharge (late evening) the treatment centre had the police collect and hold the client safely until they could be returned to the centre the following day.

64. It is thus vital that the Bill ensures that other support people are involved in this leave and that it is done with caution and with risk management for the individual's and others' safety. This may for example involve working with family members or support people in the community to ensure that the person doesn't need to drive themselves on their leave of absence if they have a history of drink-driving.

65. **Clause 42 – Condition of person to be kept under review**

66. The Salvation Army suggests that this provision should potentially specify what regular in 'regular intervals' means under clause 42(1).

67. **Clause 44 – Plan for future treatment and care**

68. The Salvation Army supports the inclusion of clause 44, which requires that the responsible clinician prepares a plan for future treatment and care when the person is released from compulsory treatment, to ensure that they are not just released "on to the street" without support or direction towards long-term voluntary treatment.

69. However, The Salvation Army believes that it is not clear in the Bill whether this also has to be done in the event of section 31, where a Judge has not been able to have a review a

person's compulsory status within the required period. Clause 31 requires that the person must be released “immediately” and the application dismissed.

70. The Salvation Army is concerned that an administrative/judicial delay could result in a vulnerable person having to be released immediately without a requirement for the responsible clinician to prepare a plan.

71. The Salvation Army suggests that it is clarified whether some form of a release plan/consultation with whanau is required at this point.

72. **Clause 58 - Right to company**

73. The Salvation Army affirms the importance of a treatment community in a person’s recovery. However there are times when it has been necessary to ask Bridge clients to “sleep it off” or stay away from other clients if they are intoxicated, as they can have a detrimental effect on the community if they are interacting whilst under the influence.

74. The Salvation Army submits that there needs to be to the opportunity to decline the company of some persons who may be too vulnerable themselves to be suitable company. The term ‘others’ is ambiguous and needs to be further defined, with noted limitations in regards to clause 59.

75. **Clause 100 - Reports on visits:**

76. The Salvation Army submits that in the interests of transparency and quality improvement, treatment centres visited are also given a copy of the report made by the District Inspector to the Area Director.

Workforce and service Implications

77. The Salvation Army supports the submission and recommendations of Matua Raki which will articulate the workforce and service implications in regards to the implementation of this legislation.

CONCLUSION

78. The Salvation Army is in full support of the 1966 Act being replaced so that the mana, rights and wellbeing of vulnerable persons in need of such intervention are better realised. We believe that this reform is also an opportunity to make this legislation workable and to best reflect good practice. As such we encourage the Health Committee to consider the robust feedback of expert practitioners and the clients themselves who have contributed to this submission.