Northern Territory Legal Aid Commission

CAALAS

North Australian Aboriginal Justice Agency

27th May 2013

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

Dear Penny

Re: Alcohol Mandatory Treatment Bill

Thank you for meeting with us on the 14th May 2013 to brief us on the Alcohol Mandatory Treatment Bill.

Please find attached a joint submission from NAAJA, CAALAS and NTLAC.

I would like to highlight that we oppose the bill and we believe the Bill will indirectly criminalise public drunkenness and arguably discriminates against Aboriginal people. We do not believe the Bill is based on the best evidence. The measures contained in the Bill will not be cost-effective and will not work.

Concerning provisions in the current bill are:

- Mandatory detention for up to 14 days of all adults who are admitted to an assessment facility
- De facto denial of legal representation before the Tribunal
- Restrictively ineffective appeal provisions
- Additional pressure on the court and criminal justice systems in dealing with the substantial increase in minor offending which we anticipate will arise directly and indirectly from the AMT scheme
- Unjustifiably high cost of implementing a non-evidence-based scheme, diverting scarce resources away from effective prevention and early intervention measures

We urge your department to consider our comments and we look forward to continuing working with you on making significant amendments to the bill.

Regards

Priscilla Collins
CEO

Northern Territory Legal Aid Commission

CAALAS

North Australian Aboriginal Justice Agency

Alcohol Mandatory Treatment Bill 2013

Summary

We oppose the introduction of the Alcohol Mandatory Treatment Bill (**the Bill**). The Bill is counter therapeutic, criminalises vulnerable individuals, and is an affront to the principles of individual liberty and freedom from arbitrary detention. The Bill also creates a new pathway to prison in the Northern Territory, where the average daily imprisonment rate is already among the highest in the world.

The Northern Territory Government has stated its commitment to the Bill, and we appreciate the opportunity to consult with the Department of Health (**the Department**) on the draft Bill. On this basis, we provide the following comments for the attention of the Department.

Clause	Comments	Notes
Part 1 – Preliminary Matters		
1 – Short title		
2 – Commencement		
3 – Objects		
4 – Application of Act		
5 – Definitions		
6 – Principles		
7 – Application of Criminal Code		
Part 2 – Assessment of Assessable Persons		
Division 1 – Key Concepts		

8 – Assessable person

This is a key provision which sets out when a person must be made subject to assessment under the Act. When clause 8 is read together with relevant provisions of the *Police Administration Act* (including the amendments contemplated in clause 165 below), we are concerned that any form of police custody will be sufficient to trigger the requirement of an assessment, and consequent period of detention.

On plain reading of the new s 128A of the *Police Administration Act*, being taken by police to a sobering up shelter will constitute being "taken into custody" for the purposes of the Act. While the Department has stated that being taken to a sobering up shelter will not trigger an assessment, this statement appears to contradict the Act.

There is no definition of "custody" contained in the draft Bill or the *Police Administration Act*. Arguably, a person is in police custody once they are placed in the back of a police vehicle following their apprehension.

Accordingly, the Bill as currently drafted would *require* police to take *everyone* apprehended and brought into protective custody for a third time in to the assessment facility (provided there are no criminal charges, the person is an adult, the assessment facility has capacity and a couple of other not relevant for this discussion conditions are met): see clause 165, which inserts s128A into the *Police Administration Act*.

This aspect of the Bill is unclear at best, and leaves open the possibility that it will have significantly broader scope than is intended.

We recommend that clause 8 and/or related amendment provisions of the *Police Administration Act* be amended to include a definition of "custody". Such definition should expressly confine the operation of the Act to persons who are apprehended, taken to a police station, kept in custody at a watch house, and not released into the community.

9 – When mandatory treatment order may be made

Subclause (2)(a): we are concerned that this provision creates a perverse incentive by making it possible for an individual to avoid mandatory rehabilitation by committing a minor offence.

Subclauses (2)(b) and (c): the Department has stated that the exclusions in these provisions are intended to support risk management within treatment centres. We are concerned that there is potential for individuals who would otherwise be excluded under this clause to be detained when their identity has not been correctly ascertained; or, once it is determined that a person would otherwise be excluded under this Clause 9, that the person may continue to be detained pending a decision by the Tribunal.

10 – Criteria for a mandatory treatment order	Subclause (e): the use of the word "could" implies that the decision maker is required to assess, on the balance of probabilities (see clause 33 below), an uncertain future outcome. **We recommend that the word "will" or "would" be substituted for the word "could" in subclause (e).** We note that clause 9(1) and the Explanatory Statement both make clear that all criteria must be met for a mandatory treatment order to be made. For consistency, **we recommend that the word "and" be inserted at the end of each subclause, or at least at the end of subclause (e).**
11 – Mandatory residential treatment order	Subclause (b): it is unclear whether the "requirement" that treatment be received under this provision is directed at the treatment provider or recipient. The Department has stated that the requirement to receive treatment is intended to be directed to the person subject to an order. The Department anticipates that a person who is incapable or unwilling to receive treatment would not be assessed as meeting the criteria for

mandatory treatment and would therefore not be captured by this provision.

We recommend that the Explanatory Statement for Clause 10 should be amended to make clear that a person will be considered to benefit from a mandatory treatment order only if they are capable of receiving treatment in accordance with Clause 11.

12 – Mandatory community treatment order	Consistent with the less restrictive principle articulated in clause 6, **we recommend that clause 12 be amended to make clear that a community treatment order must be considered by the Tribunal as the first option, and a decision made that a community treatment order would not be appropriate, before a mandatory residential treatment order may be made.**
13 – Income management order	The Department has noted that Commonwealth approval is required for the implementation of this clause. We understand this is yet to be finalised. We do not consider that it is necessary or desirable for the Tribunal to have the power to income manage a person who comes before it.

The Department of Human Services has the ability to apply income management to vulnerable people under section 123UGA of the *Social Security (Administration) Act 1999 (Cth)* (**SSA Act**). We consider that persons coming before the Tribunal could be considered to be 'vulnerable welfare payment recipients' and income managed under that Act.

It appears that this clause 13 would allow the Tribunal to make a stand alone income management order; that is, without a mandatory treatment order or mandatory community treatment order being made.

We recommend that the income management provisions of the Bill be removed.

In the alternative, the Tribunal could be equipped with the power to refer the person to the Department of Human services for assessment under the vulnerable welfare payment recipient provisions of the *Social Security (Administration) Act 1999 (Cth).*

We recommend that if the income management provisions of the Bill

	are not removed, the Bill be amended to only allow the Tribunal to make an income management order if and only if, a mandatory treatment order is made and if an assessment is made of the suitability of an income management order is made. For further detail, see commentary regarding clause 34.
Division 2 – Admission to assessment facility and assessment	
14 – Admission and detention	When read together with clause 17, this clause *requires* the detention of a person for assessment for up to 144 hours. The inflexibility of this provision is a matter of grave concern. We noted that this clause has the potential to have a severe detrimental impact on individuals who may have needs to attend to family, work or personal matters, obtain personal items (including medication) or who would otherwise have a legitimate need to be absent during the period prior to assessment. We also note that the inflexibility of this clause potentially places a greater imposition on the liberty of assessable persons than on individuals who are charged with criminal offences, who may be bailed from police custody.

We are also gravely concerned that Health Department documentation[1] suggests that a person may be held in police custody if there is no space available for assessment at an Assessment and Treatment Centre. The Government has not defined any limit for the term of such police custody.

15 – Information to be given to person

The rights statement is of critical importance to the scheme. We call on the Government to make the contemplated rights statement available to the public to allow comment on its contents.

The rights statement has the potential to serve as a safeguard for vulnerable people. Given that many Aboriginal people who may be detained for assessment do not speak English as a first language, it is vital that the rights statement be made available in other languages in every case. As noted below in relation to clause 19, interpreters tend to be underutilised by service providers.

Accordingly, it is critical that the provision of interpreters be enshrined as a requirement in this clause.

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[1] http://www.health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/82/63.pdf&siteID=1&str_title=Mandatory Treatment Service Arrangements and Pathways.pdf

We recommend that the words "if practicable" be deleted from clause 15(3).

16 – Notifying primary contact and others

Subclause (b)(ii): we acknowledge comments from the Department that the right to contact "at least one other person" chosen by an assessable person is intended to facilitate the person making contact with a lawyer. However, it is not clear that this provision necessarily permits the right to contact a lawyer if the primary contact and at least one other person have been contacted.

We recommend that clause 16(b) be amended to read:

"(b) the assessable person is given the opportunity to speak to:

(i) his or her primary contact and guardian (if any); and

(ii) a legal representative; and

(iii) at least one other person of his or her choice."

17 – Timing of assessment

See comments above in relation to clause 14, and below in relation to clause 31.

18 – Release if assessment not conducted within time allowed

19 – Assessment

Subclause (6): The requirement that the intent of the assessment be explained "to the extent reasonably practicable" is inadequate.

We believe it is critically important to ensure clear communication in order to conduct an appropriate assessment. In many cases, it will be essential that interpreters are used during this process. In our experience, interpreters are underutilised by service providers and communication is often hampered by undetected misunderstandings.

We would also note the prevalence of hearing impairment among Aboriginal people in the Northern Territory.

It is imperative that these issues are addressed to give effect to the intention of this provision.

We acknowledge the Department's statement that these matters are intended to be addressed through practice guidelines. In our view, this measure would be insufficient given the potential for unjust deprivation of liberty in the event of an improper assessment.

We recommend that the Bill should enshrine the requirement that an interpreter and/or any other necessary communication aids be appropriately utilised during the assessment.

In addition, if the income management provisions are retained, **we recommend that this clause 19 be amended to require an assessment of the benefit and suitability of income management by the senior assessment clinician, in line with the recommendations below regarding clause 34.**

20 – Action following assessment

Subclause (b): The requirement that the senior assessment clinician make an application for an order (unless subclause (a) applies) is poorly worded. We acknowledge the Department's position that this provision is intended to ensure that the Tribunal, rather than the clinician, is the ultimate decision maker, and that this is considered necessary to preserve the therapeutic relationship between the clinician and potential recipient of treatment.

However, when read together with clauses 24 and 31, this provision is deeply concerning. If an assessing clinician forms a view that an individual does not meet the criteria for a mandatory treatment order, the person may nonetheless be detained for up to 7 further days while awaiting a decision by the Tribunal. In our view, the preservation of a

potential therapeutic relationship should not take precedence over the fundamental principles of individual liberty. n person who is assessed as unsuitable for treatment therefore has no therapeutic relationship with the assessing clinician, and it is perverse that the person may be stripped of their liberty in order to protect a relationship that does not in fact exist.

We recommend that the Bill require that a person be released immediately if they are assessed by the senior assessment clinician as not meeting criteria under section (b) or (e) for a mandatory treatment order.

We note that immediate release of a person who is not an adult is contemplated in clause 25, and similar wording may be used to give effect to a provision reflecting this recommendation. For example, a new clause could be inserted in the following terms:

> **XX Release if senior assessment clinician forms an opinion that certain criteria for a mandatory treatment order are not met**
>
> (1) If, while at an assessment facility, the senior assessment clinician forms the opinion that a person is not misusing alcohol or will would not benefit from a

mandatory treatment order, a senior assessment clinician must, as soon as practicable, release the person from the facility.

(2) To avoid doubt, subsection (1) applies whether or not an application has been made in relation to the person under section 22.

In the alternative, if the Government is not minded to adopt such a provision,

we recommend that provisions be made for urgent applications to the Tribunal in cases where a person is assessed as not meeting the criteria, and the timeframe in clause 31 should be shortened.

21 – Request under Mental Health Act

22 – Application to Tribunal

Subclause (3)(b): we note that an assessment report is required to contain information relating to the individual's cultural background but not, among other relevant matters, the individual's health, finances or family obligations. While demographic data collection may be useful for the assessment of the scheme, it anomalous for this to be enshrined in the legislation when other matters relating to an individual's well being are not. The Department has acknowledged this inconsistency and

stated that data collection would be undertaken in any event.

In considering matters that should be included in this clause 22,

We recommend that the assessment report contain an assessment of the benefit or detriment that is likely to be experienced by the person if made subject to an income management order, the criteria for an income management order (see commentary regarding clause 34) and the basis for that opinion.

23 – Notice of action taken

Subclause (1)(b): The requirement that the clinician provide a copy of any assessment report to the primary contact (who will frequently be a family member) potentially breaches privacy and confidentiality obligations. This is a matter of concern.

The Department has stated that confidentiality matters are intended to be covered by clause 141. However, we note that clause 141 expressly permits disclosure of information in relation to the administration of the Act, and would not protect individuals from the disclosure of sensitive personal information under clause 23.

While we acknowledge that an individual has the right not to nominate a primary contact, this is an unsatisfactory option if the person

otherwise wishes to obtain the support of family (or another nominated primary contact).

We recommend that subclause (1)(b) be amended to require the consent of the person before a report is released to his or her primary contact.

Division 3 – Other matters	
24 – Continued detention of person after assessment	See comments above in relation to clause 20.
25 – Release if person not adult	In our view, there is a real risk that some children may be detained before it is ascertained that they are children. This is particularly so given that children caught drinking are likely to tell police that they are adults in order to avoid trouble. It is important that the proposed scheme include sufficient safeguards to protect the wellbeing of children who may be brought into custody, incorrectly, under the Bill. We note that clause 164 inserts a new s 128(2A) in the *Police Administration Act* requiring the police to establish the identity of a person brought into custody. In our view, this measure is inadequate to protect against the risk that children may be incorrectly detained for assessment, particularly in remote communities where police have limited resources, and in the case of children who do not have (or

cannot provide) identification.

We recommend that this clause be revised to make clear that a person cannot be accepted into assessment unless the senior assessment clinician is satisfied that the person is an adult.

See also comments below in relation to clause 29.

26 – Release if person subject to order under Mental Health Act

We recommend this clause be amended to include a requirement that any income management order made be revoked if the person is subject to an order under the Mental Health Act.

27 – Release if treatment needed under Mental Health Act

28 – Release on order of Tribunal

29 – Transport on Release

We note that this clause does not require the provision of transport, even in the case of children released under clause 25.

Transport is provided in other situations when a person is released from custody (such as following court or on release from prison), and it is

concerning that there is no positive obligation for repatriation assistance to be provided.

We recommend that the clause be revised to make clear that transport must be provided unless it is refused by the person. In the alternative, and at a minimum, transport should be provided where a young person is released pursuant to section 25.

30 – Nomination of Primary Contact

Part 3 – Mandatory treatment orders	
Division 1 – Hearing of application made following assessment	
Subdivision 1 – General Matters	
31 – Timing and notice of hearing	It is a matter of real concern that the Tribunal may take up to 7 days to make an order from the time an application has been received. Read together with clauses 14 and 17, this clause has the potential to extend the time a person spends in detention to 13 days, or 312 hours. As noted above, the absence of any mechanism for a person to be granted leave during this period is deeply troubling, and makes the provisions of the Bill more restrictive than provisions relating to the detention of people charged with criminal offences. As discussed in connection with clause 20 above, it is of great concern

that a person may be detained for up to a further week even if the assessing clinician forms a view that the individual does not meet the criteria for a mandatory treatment order and that he or she should be released.

While acknowledging that the timeframe of 7 days was lengthy, the Department stated that it was not intended for decisions to take the full 7 days. It is anticipated that decisions would be made more swiftly in the majority of cases.

We recommend that the timeframe be revised. An individual should be released if a mandatory treatment order is not made by the Tribunal within 24 hours of an assessment report being received.

Subdivision 2 – Application in relation to person to whom mandatory community treatment order does not apply

32 – Application

33 – Orders that can be made by Tribunal

See comments above in relation to clause 10.

34 – Income management order must be made for eligible welfare payment recipient

We oppose the requirement in this clause 34 that an income management order be made if a mandatory treatment order is made. This requirement is contrary to the principals of the legislation detailed in clause 6, which requires that 'the least restrictive interventions are to

be used when a person is being treated or dealt with under this Act ... [and] any interference with the rights and dignity of a person are to be kept to the minimum necessary'.

In order to ensure that these principals are upheld, the Tribunal should have discretion as to whether to make an income management order and be required to make an assessment of the suitability of income management or otherwise. The decision making principles which inform this decision should be clearly articulated in the legislation.

We recommend that clause 34 be amended to require:

a) **An assessment of whether the person is applying appropriate resources to meet some or all of the person's relevant priority needs (as defined part 3B in the *Social Security (Administration) Act 1999* (Cth));**

b) **An assessment of whether income management under section 123UCA of the SSA Act is an appropriate response to their alcohol misuse;**

c) **An assessment of whether income management will assist the person to address their alcohol misuse; and**

d) **An assessment of the required duration of the order.**

35 – Exemption from further assessment	Noting that this provision is intended to cover, for example, people with cognitive impairment and intellectual disabilities, we highlight for the attention of the Government that there is no provision in the Bill to refer people to the Adult Guardian.
36 – Order for release taken to be made after 7 days	
37 – Notice of order and information notice	In line with the principle of natural justice, **we recommend that this section be amended to include a requirement that the notice provide details of how the person is able to apply to have the order varied, revoked or replaced under clause 44 of the Bill.** If an income management order is made, the notice should include details of how to contact Department of Human Services – Centrelink regarding income management.

Subdivision 3 – Application in relation to person to whom mandatory community treatment order applies

38 – Application

39 – Orders that can be made by

Tribunal

40 – Additional power to vary or revoke income management order

Subclause (1): we note that if a person is found not to require a mandatory treatment order, it is not appropriate for the income management order to continue.

We recommend that clause 40(1) be amended to require the Tribunal to vary or revoke an income management order in line with the variation or revocation of the mandatory treatment order.

If this recommendation is not followed, we recommend that the Tribunal be required to make an assessment of ongoing suitability of the income management order in line with our recommendations regarding clause 34.

Subclause (2): this provisions should be amended to ensure consistency with the principles articulated in clause 6.

We recommend that clause 40(2) be amended to restrict the total period that income management remains in force to 6 months.

41 – Exemption from further assessment		
42 – Order for release taken to be made after 7 days		
43 – Notice of order and information notice		
Division 2 – Variation, revocation or replacement of order		
44 – Application for variation, revocation or replacement of order	We are concerned that the Tribunal will not be accessible, particularly for remote Indigenous clients with low literacy and this will impact on the number of applications for variation, revocation or replacement of orders. Affected persons are likely to require legal representation to put their case to the Tribunal, given their vulnerabilities. Subclause (3): the expression "no new grounds" is vague. We note that the Department indicated that this subclause is intended to provide a mechanism for the Tribunal to refuse to consider repeat vexatious applications from affected persons.	By contrast a person subject to income management as a result of the operation of the *Social Security (Administration) Act 1999* (Cth), has access to Department of Human Services – Centrelink's internal review process, which is free and does not require the person to make written submissions.
45 – Timing and notice of hearing		
46 – Orders that can be made by Tribunal	Subclause 46(2)(b): there is no guidance as to the circumstances in which the Tribunal will vary or revoke an income management order.	

	We recommend that this section be amended to require the Tribunal to make an assessment of the ongoing suitability of the income management order with reference to our recommendations regarding clause 34.
47 – Additional power to vary or revoke income management order	Subclause 47(2): we consider that the Tribunal should be required make an assessment of the ongoing suitability of the income management order when it varies or revokes an income management order, in line with reference our recommendations regarding clause 34.
48 – Notice of order and information notice	
Division 3 – Content of orders	
49 – Mandatory treatment orders	
50 – Income management orders	**We recommend that clause 50(2) be amended to require the Tribunal:** a) **to allow the income management orders to take affect 28 days after the mandatory treatment order, to allow the person time to contact Department of Human Services – Centrelink and make arrangements as to the payment of their priority needs and be issued with a BasicsCard. If this is not**

accepted, the person will be left with a very small amount of cash, and be subject to hardship or deprivation which is contrary to the aims of income management as detailed in Part 3B of the *SS(A) Act.*

b) **to specify the deductible portion of the person's Centrelink payment; and**

c) **to specify the person's right to apply to vary, revoke or replace the order under section 44 of the Act.**

Division 4 – Appeals		
51 – Appeals to Local Court	When read together with clause 113, the provision for appeals is concerning. We anticipate that most people appearing before the Tribunal will not be represented by a lawyer, although sometimes they may have a (Departmental) advocate. Given appeals are restricted to questions of law, the opportunity for persons subject to mandatory treatment orders to get legal advice about their position, or to appeal a decision, are severely restricted. A lay advocate cannot give legal advice, let alone legal advice on whether there is a point of law. It is also unlikely that a lay advocate will have the capacity raise a point of law at the Tribunal hearing.	*Mental Health and Related Services Act 2012* s 142: **142 Appeal to Supreme Court** (1) A person aggrieved by a decision of the Tribunal, or the refusal of the Tribunal within a reasonable time to make a decision, may appeal to the Supreme Court against the decision or refusal.

It is also unclear whether costs will be awarded. This is an important factor for resourcing, particularly given that some legal services (such as NAAJA) have already identified that they will not have capacity to assist with matters arising from the proposed Act. It is unclear whether the Government intends to make resources available for legal representation.

We are also concerned about the requirement that appeals refer to a 'question of law only'. It is unclear whether this is intended to extend to questions administrative review, including procedural fairness and reasonableness. This clause is much less clear than the equivalent provisions, for example, in the *Mental Health and Related Services Act*.

In consequence, this clause 51 is unduly and unfairly restrictive, and may have the effect of precluding appellants from agitating a challenge to an adverse decision where they complain that they were denied procedural fairness, and require them to seek relief instead in the Supreme Court (by way of an application for orders in the nature of prerogative relief). Such an appeal would be even more expensive and technical, and less accessible and convenient, than the Local Court.

Given these concerns, and the short time frame that is available for

(2) A person who, in the opinion of the Supreme Court, has a sufficient interest in a matter the subject of a decision or refusal of the Tribunal may, with the leave of the Court, appeal to the Court against the decision or refusal.

(3) An appeal is to be by way of a rehearing.

(4) The Supreme Court may suspend the operation or effect of a decision being appealed against pending the determination of the appeal.

(5) The Supreme Court may refuse to hear an appeal where it is satisfied that it is frivolous, vexatious or has not been made in good faith.

making an appeal under subclause (3),

we recommend that clause 51 be amended to allow de novo appeals to the Local Court, and that the Court be prohibited from making an order for costs in an appeal, other than in matters where the Court is satisfied that the appeal is frivolous, vexatious or has not been made in good faith.

Division 5 – Suspension of mandatory treatment order

52 – Mandatory treatment order suspended while person subject to order under Mental Health Act

Part 4 – Mandatory treatment

Division 1 – Treatment under mandatory residential treatment order

53 – Transfer to treatment centre

54 – Admission and detention

55 – Information to be given to person

56 – Treatment

57 – Alcohol testing

58 – Release from treatment centre	
Division 2 – Treatment under mandatory community treatment order	
59 Information to be given to community treatment provider	
60 – Information to be given to person	
61 – Treatment	
62 – Notice to be given if person no longer meets criteria	
63 – Notice to be given of contravention	
64 – Person need not comply with mandatory community treatment order while detained	
Division 3 – Aftercare plans	
65 – Preparation of aftercare plan	The Department has confirmed that the requirement to receive aftercare is not enforceable, and that aftercare is considered critical to the effectiveness of rehabilitative efforts. The Department understands that the Government is committed to funding this service. However, ongoing participation is not intended to be compulsory once the term of a mandatory treatment order is completed. The Department has stated that they will continue to consult with stakeholders concerning

arrangements for aftercare.

To ensure the effective operation of this provision,

we recommend that this clause 65 be amended to define "aftercare", to identify matters that should be covered in an aftercare plan, and to establish what assistance will be provided post-release.

66 – Lodgment with Tribunal

Division 4 – Administrative matters

67 – Records to be maintained at treatment centre

68 – Records to be maintained by community treatment provider

69 – Access to records

We recommend that section 69 be amended to allow access to records to a person authorised by the affected person, including their legal representative or advocate.

We recommend that subclause (3) be amended to ensure that if access to records is refused, reasons be given for that refusal.

70 – Charge for consumables

This clause contemplates that an individual detained against their will may be required to pay for their own food and medication. This is an extraordinary provision. We strongly oppose the inclusion of food and medication in this clause.

We recommend that this clause 70 be revised to make clear that it does not apply to essential items such as medication and food.

It is unclear how the Department would seek to recover the cost of consumables from affected persons. In the absence of consent, the Department would need to recover the amount as a debt. We draw your attention to regulation 48.01 of the Local Court Rules, which excludes social security payments from the definition of earnings and therefore prevents recovery of debts from social security payments.

In addition, requiring social security recipients to pay consumables from their payments undermines the inalienability of social security payments as explicitly recognised by s 60 of the *Social Security (Administration) Act 1999*, which states 'Protection of social security payment: A social security payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.'

71 – Nomination of primary contact		
Division 5 – Offences		
72 – Offence to be absent from treatment centre	We note that this clause (and clause 73) may not meet the requirements of Part IIAA of the Criminal Code, which require a physical element and an element of fault. This is a strict provision, with no scope for extenuating circumstances to be taken into account. The contemplated offence may be contrasted with provisions in other Acts (such as the *Parole of Prisoners Act*) which require the Court to consider whether the person had a reasonable excuse for their action. Our experience working with individuals in voluntary treatment shows that policies concerning absences are very strictly enforced, and that this provision may lead to the criminalisation of minor absences such as visiting the shops while on leave for another purpose. We acknowledge that the intention of this provision is to deter people from absconding, and to provide an incentive to complete treatment. However, in our experience, it is unlikely that the threat of prison time would serve as a deterrent. This is particularly so given that the	See also s 73 and s 122

	contemplated strictures surrounding mandatory residential rehabilitation already resemble prison in many respects. While we continue to strongly oppose the introduction of criminal sanctions into what should be a therapeutic area, if there is to be a criminal penalty, **we recommend that this clause be revised to include a provision that the offence can only be made out if the decision maker is satisfied there was no "reasonable excuse" for an absence.**	
73 – Offence to permit contravention of mandatory treatment order		See also s 72 and s 122
Part 5 – Provisions relating to persons detained at assessment facilities and treatment centres		
Division 1 – General matters		
74 – Administration of medication	The Department stated that this clause was intended to apply in line with existing guidelines for medical treatment. The clause is not intended to permit restraint, but rather to ensure that treatment providers are able to take steps to prevent harm, such as by administering treatment to a person who may be injured by withdrawal.	

75 – Use of reasonable force	We raised strong concerns about the breadth of the authorised officer appointment provision, and the scope of the powers that are granted to such an officer. **We recommended that this provision be revised to include safeguards such as those contained in Part IIA of the Criminal Code.**	***Criminal Code*** section 43ZA Nature of Supervision Orders ... (2A) Without limiting subsection (1), the court may decide a supervision order is subject to the condition that a person (an authorised person) authorised by the CEO (Health) may use any reasonable force and assistance: (a) to enforce the order; and (b) without limiting paragraph (a) – to take the accused person into custody, or to restrain the accused person, in order to prevent the accused person harming himself or herself or someone else. (2B) The CEO (Health): (a) must, by Gazette notice, make supervision directions about: (i) the qualifications of an authorised person; and (ii) the reporting by an authorised person of any use of force or assistance for

		subsection (2A); and (b) may, in the supervision directions, provide for any other matters about the use of such force and assistance as decided by the CEO (Health). (2C) An authorised person may use reasonable force or assistance as provided in subsection (2A) only in accordance with the supervision directions.
76 – Leave of absence		
77 – Power to search persons		
78 – Search and seizure generally	Subclause (5): we note that the power to destroy 'any other thing' seized during a search is extremely broad. **We recommend that clause 78(5) be deleted.**	
79 – Power to apprehend persons	We have strong concerns about "authorised officers" having the power of apprehension. This is a police-like power and carries a high risk of escalation. It also has the potential to put service staff in a dangerous situation.	

We recommend that the power of apprehension should be exercised only by police.

Further, subclause (3)(c) appears to give a person assisting an authorised officer a power to apprehend a person. This is an unusual provision that potentially gives significant powers to individuals without adequate training or authority to apprehend a person. Our concerns above in relation to an "authorised officer" would also apply to "a person assisting" an authorised officer.

If this clause 79 is not amended to grant the power of apprehension only by police, at a minimum,

we recommend that subclause (3)(c) be deleted.

80 – Police assistance in apprehending persons

81 – Records to be maintained at assessment facility

82 – Complaint procedures for treatment centres

It is vital that the scheme incorporate a transparent and independent complaints process. This should be set out in the Bill to ensure that it is rigorous.

We recommend that this clause 82 be amended to set out the process and procedure that will be followed in the event of a complaint.

Division 2 – Community Visitors Program

Subdivision 1 – Principal community visitor and community visitors

83 – Appointment

84 – Interim community visitor

85 – Vacation of office

86 – Termination of appointment

Subdivision 2 – Powers and functions of community visitors

87 – Functions of principal community visitor

88 – Inquiry functions

89 – Complaint functions

90 – Visiting duties

We recommend that the word "reasonable" be deleted from subclause (1).

91 – Powers of inspection

92 – Requests to be contacted by community visitors

93 – Reports by community visitors

Community visitors report to the CEO, and we note that this may make the scheme opaque. See also comments below in relation to the Annual Report to be prepared in accordance with clause 101.

The Department has noted that community visitors have the power to refer matters to authorities other than the CEO.

Subdivision 3 – Community visitors panel

94 – Establishment

95 – Appointment of members

96 – Vacation of office

97 – Termination of appointment

98 – Functions of community visitors panel

Community visitors are only required to visit a mandatory treatment centre every 6 months. We believe this is inadequate.

We recommend that clause 98(1) be amended to require the

community visitors panel to visit at least once every 3 months.

99 – Report by community visitors panel	
Subdivision 4 – Miscellaneous matters	
100 – Assistance to be provided	
101 – Annual report	While clause 101 does require the principal community visitor to publish an annual report, which is to be tabled in the Legislative Assembly. In our view this is not a sufficient measure to ensure accountability or public scrutiny of the findings of the public visitors. A matter identified at the beginning of a financial year may not be made public until over 15 months have passed.
Part 6 – Alcohol Mandatory Treatment Tribunal	
Division 1 – Establishment of Tribunal and related matters	
102 – Establishment of tribunal	We note that Health Department documentation contemplates the establishment of one Tribunal up in Darwin, with videolink to other locations.[2] This is a matter of great concern given that the scheme is intended to apply over a very wide geographical area. It is important

[2] http://www.health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/82/63.pdf&siteID=1&str_title=Mandatory Treatment Service Arrangements and Pathways.pdf

that a person have the opportunity to attend the Tribunal in person whenever possible. We urge the Government to consider establishing Tribunals in regional centres. At a minimum, an additional tribunal should be established in Alice Springs.

103 – Functions and powers

104 – Membership

We are concerned that the members of the Tribunal will not have knowledge or expertise regarding the operation and practical effects of income management.

We recommend that all members of the Tribunal receive training regarding the income management provisions of the operation of the *Social Security (Administration Act)* 1999 (Cth) and the practical operation of income management, so as to inform any decisions it makes regarding the suitability of income management.

105 – Term of appointment

106 – President and Deputy President

107 – Vacation of office

108 – Termination of appointment

109 – Composition of Tribunal

110 – Replacement of member

111 – Registrar and Deputy Registrars of Tribunal

Division 2 – General provisions for proceedings

112 – Form and lodgment of applications

113 – Right of appearance and representation

See also discussion above in relation to clause 51.

NAAJA noted that they do not have the capacity to represent people before the Tribunal, and it is unclear whether other legal services will be able to do this. The Department noted that they are currently looking at developing internal advocates who can assist people, and that this will be considered an alternative to legal representation.

The lack of resourcing for legal representation is a matter of serious concern, and we note that previous consultations had indicated that resources would be made available for legal representation.

We strongly recommend that representation by a lawyer is made

available to all people before the tribunal.

Subclause (5): we are concerned that this provison will allow orders to be made ex parte.

If income management orders are made in the absence of the person, and they take effect before the person is able to attend a Centrelink office, this will lead to hardship and deprivation contrary to the objects of the income management scheme as detailed in Part 3B of the *Social Security (Administration) Act* 1999.

For example, if a single person without children on Newstart Allowance is 70% income managed, they will only have access to $10.65 per day in cash for food, clothing and other essential items, until they are able to attend a Centrelink office or see a Department of Human Services – Centrelink remote services team. Remote services teams visit communities only every four to six weeks, depending on the size of the community. They generally do not travel to outstations. Some people will need to travel for a number of hours, which may require plane travel, to get to their closest Centrelink office.

114 – Conduct of proceedings

generally

115 – Conduct of hearing

Subclause (1): we note that hearings must be closed to the public. While we acknowledge that this clause is intended to protect the privacy of individuals made subject to an order, this represents a departure from the principles of transparency and accountability. This is particularly concerning in a system that will deprive people of their liberty.

We are also concerned that this clause may prevent the attendance of a support person (other than an advocate or the primary contact) or other persons whose attendance may be requested by or beneficial to the affected person.

We recommend that this clause 115, or clause 31, be amended to make clear that additional observers may be permitted to attend a hearing on request or with the consent of the affected person.

116 – Interpreter

117 – Evidence

118 – Reports of reasons for decisions

Division 3 – Notices relating to income management

119 – Eligible welfare payment recipient	Subclause (b): we understand that the drafters may have replicated the provisions of s 123UC of the *Social Security (Administration) Act 1999* (Cth), which relate to child protection income management. It is not appropriate for the purposes of the Tribunal to tie income management orders to the person's partner's eligibility for a welfare payment. The partner is not the subject of the proceedings before the Tribunal and so their status as an eligible payment recipient should not be relevant. Practically, we do not consider that the Department of Human Services – Centrelink would be able to provide the Tribunal with information as to the affected person's partner's payment status, given Principle 11 of Section 14 of the *Privacy Act* 1998 (Cth) which restricts a record keeper from disclosing the information unless the person consents to the disclosure or there is a serious or imminent threat to the life or health of the individual concerned. **We recommend that clause 119 (b) be removed.**
120 – Notice to Secretary requiring	**We recommend that clause 120(1)(b) be amended to allow the**

income management	**operation of this section to apply when The Tribunal makes an order reducing the period the income management order is in force.** **We recommend that clause 120(2) be amended to require the Tribunal to notify the Secretary of the date of effect of the notice, the duration of the order and the deductible portion.**	
121 – Notice to Secretary revoking requirement for income management		
Division 4 – Other matters		
122 – Contempt	See discussion above in relation to clause 72. As noted in that discussion, physical and fault elements are not identified as required by Part IIAA of the Criminal Code.	See also clauses 72 and s 73
123 – Offence to publish or broadcast name or report	This provision may have the effect of restraining a person who has been subject to an order from speaking publicly about their experience. The Department stated that this clause is intended to protect confidentiality, not to inhibit free speech. **We recommend that this clause be amended to provide that the identity of an affected person may be published or broadcast with the**	

	express consent of the affected person.
124 – Annual report	
Part 7 – Miscellaneous provisions	
Division 1 – Alcohol testing	
125 – Persons must submit to testing	We note that there is no information on the technical requirements for breath testing, nor is it clear that this provision will be enforceable.
126 – Testing officers	
Division 2 – Declaration of premises, appointment and functions of officers and authorisation of persons	
127 – Assessment facilities	
128 – Treatment centres	
129 – Functions of CEO	
130 – Clinical director	
131 – Senior assessment clinicians	See also discussion above in relation to clause 75.
	Subclause (2)(b): The requirements for the appointment of a senior treatment clinician are vague and potentially very broad. Given that

significant power is vested in the senior treatment clinician we believe it is not appropriate for an individual other than a medical practitioner to be appointed as a senior treatment clinician. There is often staffing pressure in the Northern Territory and it can be difficult to secure appropriately trained individuals. There is therefore a high risk that inadequately qualified workers may be appointed unless there is a clear statutory requirement that the senior treatment clinician be a medical practitioner.

We recommend that subclause 2(b) be deleted from the Bill. In the alternative, we recommend that the Bill set out the criteria to be applied by the CEO when appointing a senior treatment clinician under subclause 2(b).

Subclause (2)(b)(ii): We are alarmed that a senior treatment clinician can delegate his or her power to any other person, and that there are no safeguards in place to ensure that the functions of a senior clinician are, in fact, performed by a senior clinician. This is a matter of great concern. The Department has also acknowledged unease about this provision.

We recommend that clause 131 (2)(b)(ii) be deleted from the Bill.

In order to ensure that decisions regarding income management are made by appropriately skilled persons,

we recommend that the senior assessment clinician be able to delegate its authority regarding decision making regarding income management to a senior social worker at the Department of Human Services – Centrelink.

132 – Residential treatment providers	
133 – Authorised officers	
134 – Community treatment providers	
135 – Authorised officers	
Division 3 – Other matters	
136 – Act does not limit or affect other powers	
137 – Transport of persons to and from assessment facilities and treatment centres	
138 – Misleading information	We are alarmed that the offence created in this provision is extremely broad. For example, the offence may apply to a person under the influence of alcohol, or suffering serious withdrawal, who claims not to be or have been drunk when speaking to a clinician.

We believe there is a serious risk that this offence would capture a large number of people affected by the Bill.

We recommend that clause 138 be deleted. In the alternative, we recommend that clause 138 be amended to make clear that the offence will not apply to statements made by an affected person in the course of assessment or treatment.

139 – Protection from liability

Subclause (1): in our view, the requirement of due diligence should be extended to those acting in an official capacity under the Bill. The Bill vests individuals exercising official functions and those delivering treatment services to those subject to mandatory treatment with considerable power, including powers of detention and use of force. By contrast, those subject to assessment or treatment under the Bill will have extremely limited avenues of redress, and may be subject to criminal penalties if they fail to comply with a mandatory treatment order. This creates a marked imbalance of power. In our view it is appropriate that avenues of criminal and civil redress be available in the event that such significant power is exercised without due diligence.

We recommend that subclause (1) be insert the words "and in exercising due diligence" after the words "good faith".

In relation to subclause (3), in our view, it is appropriate that vicarious liability be extended to non-government organisations whose

employees may commit tortious or otherwise unlawful acts.

We recommend that 'person' be defined for the purposes of this clause 139 as 'natural person'. Alternatively, we recommend that the words 'or the employer of a person who is protected by Subsections 1 or 2' be inserted after 'Territory' in subclause (3).

140 – Collection and disclosure of information

141 – Confidentiality of information

142 - Regulations

Part 8 – Repeal and transitional matters

Division 1 – Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act

143 – Definitions

144 – Repeal

145 – Certain notices given, orders made under Repealed Act

We consider that the Tribunal should be required to make an assessment of the ongoing suitability of income management orders made under the repealed Act in line with recommendations made regarding clause 34.

We recommend that clause 145(1) be amended to prohibit the survival of income management orders made under the repealed Act.

Division 4 – Liquor Act

156 – Act amended

157 – Section 31A amended

158 – Section 122 amended

Division 5 – Mental Health and Related Services Act

159 – Act amended

160 – Section 33 amended

161 – Section 34 amended

Division 6 – Police Administration Act

162 – Act amended

163 – Section 4 amended

164 – Section 128 amended

165 – Sections 128A and 128B inserted — See discussion above in relation to clause 9.

166 – Section 130A amended

167 – Part X, heading replaced

168 – Part XI, heading replaced

Other matters:

We queried whether the Coroner's Act would also need to be amended to clarify that a death in a mandatory rehabilitation centre would be a death in custody. The Department noted that this would be a reportable death, in the same way as the death of a person involuntarily detained in a mental health facility.