

The Senate

Legal and Constitutional
Legislation Committee

Provisions of the Disability Discrimination
Amendment Bill 2003

April 2004

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RECOMMENDATIONS

Recommendation 1

5.18 The Committee recommends that the Bill would benefit from wider consultation, and recommends that it be referred to the Ministerial Council on Drugs Strategy for consideration. This would have the benefit that all Commonwealth, state and territory jurisdictions engaged in providing treatment services would be involved in the formulation of policies to address the implications of the Bill regarding accessibility and cost of services.

Recommendation 2

5.19 The Committee recommends that if the legislation is viewed as necessary for employment as is the case in the *NSW Anti-Discrimination Act 1977*, then if the Bill proceeds, its application should be restricted to the employment environment only.

Recommendation 3

5.20 The Committee recommends that if the Bill remains as is, and extends to areas beyond employment, the Bill should not proceed.

ABBREVIATIONS

ACCI	Australian Chamber of Commerce and Industry
ACOSS	Australian Council of Social Services
AIVL	Australian Injecting and Drug Users League
ANCD	Australian National Council on Drugs
DDA	Disability Discrimination Act
EM	Explanatory Memorandum
HREOC	Human Rights and Equal Opportunity Commission
NADA	Network of Alcohol and other Drug Agencies
NCOSS	Council of Social Service of NSW
PIAC	Public Interest Advocacy Centre
PILCH	Public Interest Law Clearing House
The Act	Disability Discrimination Act 1992
The Bill	Disability Discrimination Amendment Bill 2003
TUNSW	Tenants Union of NSW
UNSW	University of NSW
VIVAIDS	Victoria Drug User Organisation

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE BILL

1.1 On 4 December 2003, the Senate referred the Disability Discrimination Amendment Bill 2003 (the Bill) to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 25 March 2004. On 2 March 2004 the Senate agreed to extend the time for reporting to 7 April 2004. The Committee tabled an interim report on 7 April 2004 which stated that, due to the need to thoroughly consider the evidence it had received, the Committee intended to present its final report on 15 April 2004.

1.2 This chapter outlines:

- the conduct of the inquiry;
- the context in which the current Bill arose; and
- the aims of the *Disability Discrimination Act 1992* (the Act) that this Bill amends, including the scope of the Act and its definition of disability.

Conduct of the inquiry

1.3 The Committee advertised the inquiry in *The Australian* newspaper on 17 December 2003 and 28 January 2004 and invited submissions by 9 February 2004. Details of the inquiry, the Bill and associated documents were placed on the Committee's website. The Committee also wrote to over 100 organisations and individuals.

1.4 The Committee received 118 submissions and these are listed at Appendix 1. Submissions were placed on the Committee's website for ease of access by the public.

1.5 The Committee held public hearings in Sydney on 16 March 2004 and in Canberra on 24 March 2004. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

Acknowledgment

1.6 The Committee is grateful to, and wishes to thank, all those who assisted with its inquiry.

Purpose of the Bill

1.7 The Bill amends the *Disability Discrimination Act 1992* (the Act) to remove the prohibition on disability discrimination on the ground of a person's addiction to a prohibited drug. The Bill would not apply to people who are receiving treatment for their drug addiction. The Bill also makes consequential amendments to the *Workplace Relations Act 1996* to reflect the changes.

Context of the Bill

1.8 In his second reading speech introducing the Bill, Attorney-General the Honourable Philip Ruddock MP stated that:

The bill is prompted by community concerns about the implications of the decision of the Federal Court in *Marsden v. Human Rights and Equal Opportunity Commission and Coffs Harbour and District Ex-Servicemen and Women Memorial Club Limited*.

That decision suggested that it may be unlawful under the Disability Discrimination Act to discriminate against a person solely on the ground that the person has an addiction to or dependence on a prohibited drug.

The bill addresses the concerns of employers and business operators about this issue.¹

1.9 The *Marsden*² case referred to in the second reading speech concerned an opioid dependent person who was removed from a club and deprived of membership. *Marsden* was a case on appeal to the Federal Court from the Human Rights and Equal Opportunity Commission (HREOC). The issue in the appeal was the threshold question of whether the complainant was a person with disability entitled to bring a claim under the Act. HREOC had found against the complainant in this respect.³

1.10 The substantive elements in the case were never considered or determined by the Federal Court, but *Marsden* is noteworthy for the recognition that drug addiction falls within the definition of "disability" under the Act.⁴

1.11 Following the *Marsden* decision in 2000, the NSW Parliament passed (in 2002) an amendment to NSW anti-discrimination legislation providing that it is not unlawful to discriminate against drug addicts in the workplace.⁵ The Commonwealth Bill now under consideration goes beyond the area of employment, and applies to all areas covered by the federal Act, including employment, accommodation, education, access to premises, clubs and sport, administration of Commonwealth laws and programs, and the provision of goods, facilities, services and land.⁶

Disability Discrimination Act 1992

1.12 The stated objects of the Act are:

1 *House of Representatives Hansard*, 3 December 2003, p. 23541.

2 *Marsden v. Human Rights and Equal Opportunity Commission and Coffs Harbour and District Ex-Servicemen and Women Memorial Club Ltd* [2000] FCA 1619 (15 November 2000)

3 *People With a Disability, Submission 56*, p. 6.

4 *Ibid*; Clayton Utz Lawyers, *Submission 21*, pp. 5-6.

5 *Anti-Discrimination Act 1977* (NSW)

6 *House of Representatives Hansard* 3 December 2003, p. 23541. See also section 3 of the Act.

-
- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability;
 - (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and
 - (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.⁷

1.13 Discrimination in the Act includes:

- **Direct discrimination**, where a person is treated less favourably as a result of their disability than a person without that disability would be treated in the same circumstances. For example, if a person is refused entry to a club because their disability requires them to use a wheelchair, but other people who did not use a wheelchair are allowed into the club;
- **Indirect discrimination**, where a policy, practice or requirement is applied equally, but has a discriminatory effect on those with a disability. For example, if a requirement to pass a course of study is participation in a field trip, but a student with a disability cannot undertake the trip because of his disability.

1.14 The Act includes the following definition of disability:

"disability", in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or

- (j) may exist in the future; or
- (k) is imputed to a person.⁸

1.15 HREOC advised the Committee that the *Marsden* decision confirmed, rather than established for the first time, that the Act covers addictive disorders. HREOC referred to the World Health Organisation's International Classification of Disorders, and standard psychiatric diagnostic protocols, which recognise drug dependency as a disorder.⁹

Outline of the report

1.16 Chapter 2 discusses the stated rationales for the Bill.

1.17 Chapter 3 considers key terms in the Bill, namely "addiction" and "treatment".

1.18 Chapter 4 discusses evidence received regarding the potential effects of the Bill.

1.19 Chapter 5 gives the Committee's conclusions and recommendations.

Note on references

1.20 References in this report are to individual submissions as received by the Committee, not a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

8 *Disability Discrimination Act 1992* section 4.

9 *Submission 82*, p. 1.

CHAPTER TWO

THE NEED FOR THE BILL

Introduction

2.1 This chapter addresses concerns raised in submissions about the stated rationales put forward for the Bill, including the need:

- to address community concerns;
- to ensure that disability discrimination laws are not used in an unjustified manner; and
- to address the harms and risks posed by drug addiction.

Rationale for the Bill: To address community concerns

2.2 As previously noted in Chapter 1 of this report, the Attorney-General cited community concerns about the implications of the *Marsden* decision as the prompting factor for the Bill.¹ Concerns of employers and business operators were particularly mentioned.

2.3 A number of submissions, however, argued that there was no evidence of wide community concern, and further that the number of discrimination complaints relating to drug addiction either before or since the *Marsden* decision have been minimal.² HREOC submitted that:

In almost eleven years of the operation of the legislation HREOC's records indicate a total of three complaints regarding discrimination on the basis of addiction to, or use of, a prohibited substance in the employment area. HREOC would be most interested to have any details of indications of wider prevalence of concerns in this area, which has been referred to in some public statements on this matter.³

2.4 Clayton Utz Lawyers supported this view, and questioned why the Bill had been introduced:

1 *House of Representatives Hansard*, 30 December 2003, p. 23541.

2 For example, Australian Lawyers for Human Rights, *Submission 71*, pp. 3-4; Australian Council of Social Services (ACOSS), *Submission 114*, p. 5; Clayton Utz Lawyers, *Submission 21*, pp. 5-6; Arnold Bloch Leibler Lawyers, *Submission 75*, p. 13.

3 *Submission 82*, p. 6.

Respectfully, there has been no widespread community concern about the implication of the *Marsden* decision. Given the actual decision in *Marsden*, it would be surprising if in fact it had generated any widespread concern.

It is unclear what has prompted the introduction of the present Bill, more than 3 years since the *Marsden* decision was handed down.⁴

2.5 Several submissions indicated that the *Marsden* decision had not resulted in an increase in discrimination claims related to drug addiction.⁵ Arnold Bloch Leibler Lawyers stated that:

The Marsden decision has not resulted in an 'opening of the floodgates'. Three years later, no further cases have been brought by drug users against employers under the federal legislation. Since Marsden, there has been only one other similar case (*Carr v Botany Bay Council*), which was not brought under the federal legislation, but under the NSW Anti-Discrimination Act 1977.

In any event, both cases relate to the use of anti-discrimination legislation by methadone users; that is, drug users who would still be protected by the Act if the amendments are passed. Users of illicit drugs are simply not utilising the Act in its current form to bring claims of discrimination.⁶

2.6 A representative of the Attorney-General's Department, when questioned about the origin and level of the community concerns cited as a reason for the Bill, stated:

My response to that is that community concerns were those brought to government. Ministers and government made assessments about those community concerns and, on the basis of those assessments, government decided to act in the way that it has.

...

There is nothing additional to what the government, ministers or the Prime Minister have publicly raised.⁷

2.7 In support of the Bill, peak business body the Australian Chamber of Commerce and Industry (ACCI) argued that the number of discrimination claims in the wake of the *Marsden* decision "was not a material consideration",⁸ and that while disability due to drug addiction remained a protected disability under the Act, employers were in

4 *Submission 21*, p. 5.

5 For example, Clayton Utz Lawyers, *Submission 21*, pp. 5-6; People with a Disability Australia, *Submission 56*, p. 7.

6 *Submission 75*, p. 13.

7 *Committee Hansard*, 24 March 2004, p. 29.

8 *Submission 48*, p. 10.

"an untenably ambiguous position".⁹ In response to Committee questioning, ACCI was not able to provide data on the volume of drug-use related complaints from employer organisations, but stressed the significance of drug (and alcohol) misuse as an issue for employers.¹⁰

2.8 Some submissions pointed out that drug-dependent people are in any case less likely to make discrimination complaints. The Support and Accommodation Rights Service asked:

Where are the landlords and club owners and employers who are affording "special rights" to drug users? Where are the cases clogging up the courts of people with addiction based disabilities alleging discrimination? The fact is that people with drug addictions constitute one of the most marginalized and disempowered groups in the community. Sadly, the right that this Bill aims to remove is not a right that many of them even know they have.¹¹

Rationale for the Bill: To ensure that disability discrimination laws are not used in an unjustified manner

2.9 A further rationale put forward related to the way in which disability discrimination laws are used. The Attorney-General in his second reading speech stated that the Bill:

... is directed to ensuring that our disability discrimination laws are not used in an unjustified manner.¹²

2.10 In a news release the Attorney-General also stated that:

... the Government wanted to send a strong signal that addiction to a prohibited drug is not a sufficient basis to gain the benefits of the anti-discrimination regime.¹³

2.11 Several submissions questioned the Attorney-General's statements, and suggested that the Bill is incorrectly predicated on the notion that the Act somehow

9 Ibid.

10 *Submission 48A*.

11 *Submission 74*, p. 9.

12 *House of Representatives Hansard*, 3 December 2003, p. 23541.

13 Attorney-General the Hon Philip Ruddock News Release '*Govt amends discrimination legislation as part of 'Tough on Drugs' Strategy*', 3 December 2003.

provides 'benefits' or special protections to people with disabilities.¹⁴ The NSW Disability Discrimination Legal Centre contested this perception:

There is a mistaken but widely held belief that the DDA [*Disability Discrimination Act 1992*] grants people with disability 'special status' or additional rights not available to the rest of the community. It seems likely that the current amendments stem, at least in part, from a perception that people who are dependent on prohibited drugs should not obtain 'extra' benefits as a result of their dependency. This view is fundamentally misconceived.

Discrimination legislation does not bestow rights on individuals; rather, it operates to ensure that social prejudices and stereotypes regarding disability, race or gender do not prevent individuals from enjoying 'the same fundamental rights as the rest of the community' [as per the DDA] It is essentially a tool for restoring standard rights to individuals who might otherwise be denied those rights.¹⁵

2.12 It was submitted that discrimination legislation does not in fact confer additional rights or protections. PILCH Homeless Persons Legal Clinic stated that the Act:

... merely prohibits less favourable treatment on the ground of disability in circumstances in which that treatment is unjustified or unreasonable. The so-called 'benefits' of the anti-discrimination regime are, in fact, core minimum protections that should not be violated in an attempt to prescribe behaviours.¹⁶

Rationale for the Bill: To address the harms and risks posed by drug addiction

2.13 The Attorney-General also suggested the Bill is necessary to address concerns over harmful behaviour of drug dependent people. The second reading speech stated that:

The government believes that people operating a business or a club should not have to face discrimination claims by drug addicts when trying to keep the work or social environment safe from other people's behaviour.

14 For example, Public Interest Law Clearing House (PILCH) Homeless Persons Legal Clinic, *Submission 22*, p. 11; Victoria Drug User Organisation (VIVAIDS), *Submission 64*, p. 18; NSW Disability Discrimination Legal Centre, *Submission 91*, p. 2.

15 NSW Disability Discrimination Legal Centre *Submission 91*, p. 2.

16 *Submission 22*, p. 11.

The general community also has a reasonable expectation that it can be lawfully protected from the harms and risks posed by another person's illicit drug addiction.¹⁷

2.14 Particular concerns of employers cited by ACCI in relation to the "harms and risks" posed by drug addiction included the effects of drug use on:

- workplace and public safety;
- productivity and product quality;
- absenteeism rates;
- customer goodwill; and
- workplace harmony.¹⁸

2.15 ACCI argued that employers must be able to deal effectively with these issues, as well as circumstances involving criminal acts such as theft, use of drugs in the workplace, and assault.¹⁹ ACCI submitted that it:

... supports measures which will guarantee the capacity of Australian employers to take whatever actions are necessary to appropriately respond to, and manage the interaction of drug use / drug addiction and the workplace.²⁰

Concerns raised

2.16 It is clear from evidence received by the Committee that the concerns of employers and others regarding the harmful affects of drug addiction in the community are already covered by existing legal frameworks. This evidence was provided not only by organisations within the community legal sector and by disability support groups, but also by major law firms and by HREOC. The following section of the report addresses existing legal frameworks covering:

- workplace performance;
- safety issues;
- tenancy; and
- criminal acts.

17 *House Hansard*, 30 December 2003, p. 23541.

18 *Submission 48*, pp. 1-9.

19 *Ibid.*

20 *Ibid.*, p. 10.

Workplace performance

2.17 Many submissions argued that the Act already provides protection for employers who choose not to employ a person or to dismiss an employee because a drug addiction prevents them from doing their job.²¹ Submissions noted sub-section 15(4) of the Act, which refers to the ability of a person with a disability to perform the "inherent requirements" of a position. Clayton Utz Lawyers submitted that this sub-section:

... makes it lawful for an employer to refuse to employ someone with a disability (such as an addiction to a prohibited drug) or dismiss an employee with a disability (such as addiction to a prohibited drug) if that person was unable to perform the inherent requirements of a particular employment or in order to perform those requirements, required services or facilities which would impose an unjustifiable hardship on the employer.²²

2.18 Clayton Utz Lawyers went on to add:

... the DDA currently allows an employer to dismiss an employee whose drug addiction prevented them from performing the inherent requirements of the job, or who required assistance from the employer which was unjustifiably hard. The DDA does not require an employer to employ or retain someone who cannot do the job due to drug addiction.²³

2.19 Other submissions supported this view, referring to case law which had established this principle.²⁴

2.20 Clayton Utz Lawyers gave some examples of how sub-section 15(4) already provides protection to employers, including the following example:

Assume person X is addicted to pethidine, and has been stealing from the workplace to support her addiction. The DDA does not prevent the employer from dismissing X.

Even if X argued that her theft was caused by her disability, it would be clear that the ability to work in a trustworthy and honest manner is an inherent requirement of the position. Provided that the employer treated the

21 For example Job Watch Employment Rights Legal Centre, *Submission 105*, pp. 12, 14; Professor Rosemary Hunter, *Submission 13*, p. 2; VIVAIDS, *Submission 64*, p. 26; Clayton Utz Lawyers, *Submission 21*, p. 11; Network of Alcohol and other Drug Agencies (NADA), *Submission 4*, p. 10.

22 *Submission 21*, p. 11.

23 Ibid.

24 Arnold Bloch Leibler, *Submission 75*, p. 11; PILCH Homeless Persons Legal Clinic, *Submission 22*, p. 17; citing *X v. The Commonwealth* [1999] HCA 63.

discovery of X's theft in the same way that they would treat any other employee who was discovered stealing from the workplace, the DDA would not be able to be used by X to stop her dismissal.²⁵

2.21 Another example given was of an employee displaying repeated absenteeism:

If a client came to us and said that they had been suffering discrimination at work because, as a result of their addiction, they were only able to turn up to work every third day and the employer was hassling them about it, our advice would be quite clearly that that demonstrated perhaps an inability for them to perform the inherent requirements of their job. We would advise them that they did not have grounds for a complaint.²⁶

2.22 ACCI disputed that the "inherent requirements" provision of the Act provides adequate protection for employers. ACCI submitted that the provision:

... does not offer employers options for reasonable responses to drug addiction/use in the same manner as the proposed amendments.
[and]

Extended debates on what are and what are not the inherent requirements of a job do little to assist employers in managing particular circumstances, nor in promptly and properly responding to employee drug use/addiction.²⁷

Safety issues

2.23 The Committee received evidence that remedies already exist for concerns regarding safety in the workplace and elsewhere. Clayton Utz Lawyers advised that the Act does not prevent employers from acting against an employee to protect the safety of other employees or customers, where the disability poses a real risk.²⁸

2.24 Several submissions pointed to occupational health and safety legislation in the states and territories that provide employers with safeguards in relation to ensuring that employee drug use does not impair workplace safety.²⁹ Referring to legislation in Victoria, Job Watch Employment Legal Rights Centre submitted that:

Any person, whether employer or employee, who contravenes or fails to comply with the provisions of the *Occupational Health and Safety Act* shall be guilty of an offence and open to penalty.

25 *Submission 21*, p. 11.

26 Mr David Hillard, Clayton Utz Lawyers, *Committee Hansard* 16 March 2004, p. 28.

27 *Submission 48*, p. 22.

28 *Submission 21*, p. 12.

29 For example, Public Interest Advocacy Centre (PIAC), *Submission 101*, p. 6; NADA, *Submission 4*, p. 5; ACOSS, *Submission 114*, p. 5.

Therefore, the State-based Occupational Health and Safety laws also provide an extra layer of protection for employers who need to take action against an employee who is posing a health risk at work, whether to himself or others.³⁰

2.25 It was also pointed out to the Committee that paragraph 47(1)(a) of the *Disability Discrimination Act 1992* provides a defence to an employer if they discriminate against a person in order to comply with another law, including occupational health and safety laws.³¹

Tenancy

2.26 The Committee received evidence that in relation to the provision of accommodation, concerns of landlords regarding the actions of tenants who are drug-dependent are already adequately covered. The Combined Community Legal Centres Group (NSW) submitted that:

In NSW (and all states and territories have similar legislation), the *Residential Tenancies Act* NSW and the *Residential Parks Act* NSW provide a basis for protecting landlords from loss caused by tenants who breach their lease. Tenants who are in rent arrears, or use the premises for illegal purposes such as drug dealing, or cause a nuisance to their neighbours can be evicted under the legislation.³²

2.27 The Committee heard that a landlord may give notice to terminate a tenancy without grounds under residential tenancies legislation in all states and territories except Tasmania.³³ The Tenants' Union of NSW (TUNSW) submitted that:

As the Residential Tenancies Act 1987 (NSW) ... makes no provision to protect tenants from discrimination, the provision for terminations without grounds leaves a wide field of opportunities for discriminatory terminations and evictions.³⁴

2.28 TUNSW pointed out the importance of anti-discrimination legislation:

... the only protections against discrimination that tenants have are those provided by anti-discrimination legislation, such as the Disability

30 *Submission 105*, p. 14.

31 Clayton Utz Lawyers, *Submission 21*, p. 12.

32 *Submission 99*, p. 9. Other submissions supported this view, including Support and Accommodation Rights Service, *Submission 74*, p. 8; Tenants' Union of NSW (TUNSW), *Submission 78*, p. 2

33 *Submission 78*, p. 2.

34 *Ibid.*

Discrimination Act 1992. It is crucial, therefore, that the integrity of anti-discrimination legislation is maintained. If those provisions are removed, as the Bill proposes to do in relation to persons whose disability is substance addiction, tenants are left without any protection against termination notices that are motivated by prejudice.³⁵

Criminal acts

2.29 The Committee noted employer concerns relating to criminal acts in the workplace, such as drug injecting on employer premises, drug dealing and violent assault. However, submissions to the Committee agreed that the criminal law was the existing and correct avenue for dealing with these issues. The Disability Discrimination Legal Service submitted that:

... the use of illicit drugs is a criminal matter and one that should be handled by the appropriate authorities. The Government has, through that passing of State and Federal legislation, undertaken the task of protecting society against the use, trade and distribution of illegal drugs. Accordingly, an employee who was found to be dealing with an illegal substance in any capacity would be liable for criminal prosecution.³⁶

2.30 People with a Disability Australia submitted that:

The *Disability Discrimination Act 1992*, (DDA) does not, and never has been construed so as to permit or excuse a person with disability from committing a criminal offence. A person seeking to claim protection or excuse for a criminal act under the *Disability Discrimination Act, 1992* would fail.³⁷

2.31 Some submissions contended that disability law is not the appropriate forum to regulate criminal conduct.³⁸ Professor Rosemary Hunter of the Griffith University Law School submitted that:

Drafting various exclusions for criminal conduct into anti-discrimination laws turns employers, landlords, educational institutions, providers of goods and services and club owners into junior police officers, allowing them, in some ways, even more power than the police. For example, an employer can coerce an employee to speak, and can conduct searches and seizures on company property without a warrant, but a police officer cannot.
...

35 Ibid.

36 *Submission 108*, pp. 23-24.

37 *Submission 56*, p. 5.

38 Professor Rosemary Hunter, Griffith University Law School, *Submission 13*, p. 3; PILCH Homeless Persons Legal Clinic, *Submission 22*, p. 19.

It is the job of Australia's trained police force to curb illegal drug use, and there is no reason to shift this burden to members of civil society.³⁹

A behavioural threshold?

2.32 As noted above, a primary consideration of the Government and of employers in advocating this Bill relates particularly to the behaviour of drug-dependent people, and the harms and risks that that behaviour can pose.

2.33 However the Committee notes concerns that the Bill if passed would make discrimination against a drug-dependent person lawful by the mere fact of their addiction, without there needing to be any behavioural threshold, such as dangerous actions or poor work performance. Mr David Hillard, of Clayton Utz Lawyers told the Committee:

Although the Attorney's second reading speech suggests that [the Bill] is about protecting from behaviour, the legislation kicks in a lot earlier than that. It becomes available to an employer under this amendment as soon as knowledge of addiction becomes available, rather than somebody actually doing something that affects their capacity to work.⁴⁰

2.34 Other submissions echoed these concerns. Ms Maureen Steele submitted that:

The issue is how people behave not their drug use. ... Instead of judging an individual according to their drug use, why not judge an individual according to their behaviour. ... Bad behaviour is unacceptable from anybody whether they use drugs or not, so why does drug use even have to come into the equation?⁴¹

2.35 Several witnesses and submissions drew the Committee's attention to a recent High Court decision which relates directly to the issue of the behaviour of a person with a disability. The PILCH Homeless Persons Legal Clinic submitted that the decision in *Purvis v New South Wales (Department of Education and Training)*⁴², confirmed that:

... under the DDA, a distinction must be made between a disability, and behaviour that is a manifestation of that disability. Less favourable treatment because of a person's disability is prohibited under the DDA,

39 *Submission 13*, p. 3.

40 *Committee Hansard* 16 March 2004, p. 28.

41 *Submission 73*, p. 5.

42 [2003] HCA 62 (11 November 2003).

whereas less favourable treatment because of a person's behaviour is lawful, notwithstanding that the behaviour may stem from the disability.⁴³

2.36 Arnold Bloch Leibler Lawyers described the case:

In [*Purvis*], a school was found not to have discriminated against an intellectually disabled student by expelling him, based on his violent behaviour towards teachers and pupils. The Court distinguished between his disability, and the behaviour which was a manifestation of that disability, and decided that it was not discriminatory to expel the student on the ground of his behaviour.

In arriving at this decision, the Court compared the treatment of the student with the treatment of another, hypothetical, student without a disability, who acted in the same violent fashion, and decided that the hypothetical student would have been treated in the same way.⁴⁴

2.37 Arnold Bloch Leibler Lawyers further advised that the reasoning applied in *Purvis* to the case of the student with a disability is equally applicable in the employment context:

If an employee's drug dependence resulted in behaviours that would constitute grounds for dismissal or other disciplinary action, regardless of the employee's disability, then to take such action will not result in discrimination, or unlawful termination.⁴⁵

2.38 In evidence to the Committee Mr David Hillard of Clayton Utz Lawyers related the *Purvis* decision to the context of rental accommodation:

[In relation to] the way in which the High Court in *Purvis* has recently decided how the *Disability Discrimination Act* operates in respect of disabilities which cause behavioural problems, if you are a landlord now and you have a tenant who is misbehaving in some way, regardless of whether that is because of a disability or a drug addiction you have the right to evict them. So I am not sure what additional protection landlords reasonably require under the present legislation.⁴⁶

2.39 In discussion with the Committee of a hypothetical situation, including inappropriate behaviour in a bank, Mr Hillard told the hearing:

I would expect that the [bank] would deal with anybody who behaved inappropriately, regardless of whether they did so because of a disability, in

43 *Submission 22*, p. 18.

44 *Submission 75*, p. 12.

45 *Ibid.*

46 *Committee Hansard*, 16 March 2004, p. 32.

a proper way by having that person perhaps removed from the premises. The way in which the High Court dealt with this precise issue in the *Purvis* decision is that you look at the way in which the financial service provider, in this case, would treat a person who behaved in the same way but not because of a disability. I would expect that the bank would ask you to leave, regardless of whether or not you were acting that way because of a disability.

I think that if you are going to run drug addiction as a disability complaint, logically, your concerns have to be about the way in which people behave; for example, we cannot employ this person with an addiction because they are going to do this sort of thing—they are going to steal from us, they are going to turn up late or they are going to do whatever. If your concerns are behavioural, which is what the language of the second reading speech seems to suggest, then the legislation already provides that protection, especially as a result of the *Purvis* decision.⁴⁷

2.40 The Committee sought clarification from the Attorney-General's Department regarding assertions in evidence that the "inherent requirements" provisions of the Act and also occupational health and safety legislation already protected employers and others. When asked whether he accepted these assertions, a representative of the Department stated:

My response is that the Government made an assessment that there was a need for the Bill. The Prime Minister and government made that assessment.⁴⁸

2.41 When asked about evidence regarding the *Purvis* decision, the representative stated:

To say that it is now lawful to discriminate on the basis of behaviour, which is the condensed version of what some of the evidence was, I would submit, is an oversimplification. It is not quite that simple.

What is required is a consideration of the circumstances of the person with the disability, the circumstances of the alleged discriminator—and a whole range of issues come in there—and the circumstances of a notional person without the disability who exhibits that behaviour. That is why I say bear in mind that the court there was dealing with a clear case of very extreme behaviour.⁴⁹

2.42 In discussion with the Committee regarding the reference in the second reading speech to "behaviour", the representative agreed that the word "behaviour" did not

47 *Committee Hansard*, 16 March 2004, p. 33.

48 *Committee Hansard*, 24 March 2004, p. 40.

49 *Ibid*, p. 34.

appear in the Bill. When advice was sought as to how the Bill would protect people from drug addicts' behaviour, the effect of the Bill in that regard remained unclear:

If a person takes action against someone—not on the basis of knowing or believing that they are addicted to a prohibited drug—and that person subsequently seeks to challenge that action on the basis of a complaint that the action amounted to discrimination against them on the basis of their addiction to a prohibited drug which amounts to a disability, the bill removes that capacity to make that complaint. In that sense, it does exactly what the Attorney said in the second reading speech. It says that people doing those things ‘should not have to face discrimination claims’. In that specific situation, the bill removes a capacity to bring a claim of discrimination; that is the effect of the bill.⁵⁰

2.43 The Committee notes that no clear answer to the question of a behavioural threshold was provided by the Department.

50 Ibid, p. 29.

CHAPTER THREE

ADDICTION AND TREATMENT

Introduction

3.1 This chapter discusses concerns raised in submissions and evidence in relation to two key elements that underpin the Bill, namely addiction and treatment. Much of the evidence received by the Committee was concerned with how the terms were defined (or not defined) in the Bill, and how it would be determined whether a person was addicted and whether they were undergoing treatment.

Addiction

3.2 Proposed paragraph 54A(1) of the Bill states that it is not unlawful for a person to discriminate against another person on the ground of the other person's disability if:

- (a) the disability is the other person's addiction to a prohibited drug; and
- (b) the other person is addicted to the drug at the time of the discrimination.

3.3 Many submissions indicated that these amendments would create considerable uncertainty. This section of the report addresses:

- defining addiction;
- determining if addiction exists;
- addiction and legal uncertainty; and
- addiction to which drugs?

Defining addiction

3.4 A majority of submissions pointed to the lack of a definition of "addiction" in the Bill and the subsequent difficulties faced by those attempting to interpret the legislation.¹ They indicated that there is no accepted definition of addiction within the alcohol and other drugs sector,² and that the term "drug dependence" is used rather

1 For example, UNSW Kingsford Legal Centre *Submission 69*, p. 3; National Legal Aid *Submission 94*, p. 4; NSW Council of Social Services *Submission 1*, p. 2; Australian Lawyers for Human Rights *Submission 71*, p. 6.

2 For example VIVAIDS *Submission 64* p. 10; Network of Alcohol and Drug Agencies, *Submission 4*, p. 10.

than "addiction", because "dependency" can be clinically defined.³ Other submissions pointed to the value-laden and emotive way the terms "addiction" and "drug addict" are often used.⁴

3.5 The Committee received evidence that in the medical and psychiatric field, drug addiction was exceedingly difficult to define,⁵ but that two schema of diagnostic criteria for substance dependence are employed.⁶ Both specify a number of defining characteristics to identify a person as dependent. Dr Alex Wodak (representing the Australasian Chapter of Addiction Medicine, Royal College of Physicians) told the Committee that a defining characteristic common to both schema is that drug use persists, 'despite negative consequences'.⁷

3.6 In evidence to the Committee a representative of the Attorney-General's Department acknowledged the complexity of assessing "addiction":

... the fact that there is no attempt at prescription of what addiction means is in fact a benefit of the bill. As the committee knows from its own experience as well as the evidence that has been presented to it, 'What is addiction?' is a very complex and difficult assessment to make.⁸

Determining if addiction exists

3.7 The Committee received evidence that there would be great difficulty in determining the presence of addiction, for all concerned, including employers, service providers, and the courts.

3.8 In one of the few submissions that supported the Bill peak business body ACCI argued that employers need to be able to manage the operational challenges posed by employee drug use. However, ACCI recognised the problems posed for employers by the lack of a definition of "addiction." ACCI submitted that:

The difficulty for employers of course is determining when someone is and is not "addicted", and in distinguishing "addiction" from episodic use or impairment.⁹

3 Australian Hepatitis Council, *Submission 4*, p. 4.

4 Australian Injecting and Illicit Drug Users League (AIVL), *Submission 17*, p. 4.

5 Dr Alex Wodak, Australasian Chapter of Addiction Medicine, Royal College of Physicians, *Submission 115*, p. 4.

6 Dr Alex Wodak, *Committee Hansard*, 24 March 2004, p. 20.

7 Ibid.

8 *Committee Hansard* 24 March 2004, p. 37.

9 Australian Chamber of Commerce and Industry (ACCI), *Submission 48*, p. 11.

3.9 Proposed paragraph 54A(1)(b) of the Bill providing that discrimination is lawful if "the other person is addicted to the drug *at the time of the discrimination*" raised further concerns for many participants in the Committee's inquiry. The ACCI pointed out that:

... employers need to be able to act to address unacceptable manifestations of drug use/impairment without subsequent disputation as to whether an individual was or was not technically addicted to the drug they were using at that time.¹⁰

3.10 The Committee noted evidence that it is not just employers, but also providers of goods and services such as bank tellers, bus drivers and Centrelink counter officers who would have difficulty determining whether or not a person was addicted. The Network of Alcohol and other Drug Agencies (NADA) submitted that:

NADA certainly does not believe that employers, landlords, club managers, etc would be in a position to confidently and accurately define an individual as 'addicted' or 'non-addicted'. NADA believes that the most likely outcome is that we will see the net of people affected by the legislation widened to occasional, casual or non-dependent users.¹¹

3.11 Dr Alex Wodak supported this view, telling the Committee that assessments of addiction would be made with great difficulty, and:

... it is very likely that any use would be confused with addiction—a dangerous slide that is difficult to prevent.¹²

Addiction and legal uncertainty

3.12 The potential for legal uncertainty was a recurrent theme in submissions. HREOC submitted that if employers act in error because of a lack of knowledge and expertise to determine that someone is addicted to a prohibited drug at the time of the discrimination, they may be exposed to increased complaints and liability for unlawful discrimination.¹³ Clayton Utz Lawyers submitted that:

... the Bill would inevitably lead to increased litigation, and create a greater level of uncertainty for people with disabilities, employers and business operators, government service providers and the wider community.¹⁴

10 *Submission 48*, p. 12.

11 *Submission 4*, p. 5.

12 *Committee Hansard*, 16 March 2004, p. 21.

13 HREOC, *Submission 82*, p. 5.

14 *Submission 21*, p. 18.

3.13 Arnold Bloch Leibler Lawyers raised the issue of the need for expert medical evidence:

Inevitably the lack of clarity will result in the need for legal argument in proceedings in the Federal Court, Federal Magistrates Court or Australian Industrial Relations Commission, requiring the respondent to obtain extensive medical and other expert evidence as to whether or not the person was "addicted to the drug at the time of the discrimination".¹⁵

3.14 However, the Committee noted that even medical and psychiatric experts may have difficulty in determining the presence of addiction. Emeritus Professor Ian Webster told the Committee that the medical profession made judgements about the presence of drug dependency only after talking to a patient, taking a medical history, and conducting a medical examination.¹⁶ Dr Alex Wodak supported this view, and pointed out that the involvement of the patient in an assessment of addiction added another level of complexity to the issue. Dr Wodak asked:

... knowing what is at stake, are complainants contesting discrimination made lawful by the [Bill] likely to accurately describe their subjective symptoms of addiction to facilitate their continued discrimination?¹⁷

3.15 It was also pointed out that drug testing (of urine or blood) could not be relied on: a positive test would indicate only that drugs are present, not that a person is addicted.¹⁸

3.16 The statement in the second reading speech that the Bill "will give certainty to all individuals and organisations covered by the DDA" was questioned in several submissions which argued that the Bill would instead create uncertainty.¹⁹ In evidence to the Committee, a representative of the Attorney-General's Department affirmed that the Government introduced the Bill to provide clarity, and added:

The bill does not provide clarity for those who wish to discriminate. It does not seek to give people comfort so they can go off and discriminate at all. It provides clarity but not for those who seek to discriminate.²⁰

15 *Submission 75*, p. 5.

16 *Committee Hansard*, 24 March 2004, p. 31.

17 *Submission 115*, p. 4.

18 Dr Alex Wodak, *Committee Hansard* 16 March 2004, p. 22.

19 For example NSW Disability Discrimination Legal Centre *Submission 91*, p. 2; Fitzroy Legal Service *Submission 98*, p. 11; Arnold Bloch Leibler Lawyers *Submission 75*, p. 15.

20 *Committee Hansard* 24 March 2004, p. 39.

3.17 The Committee notes that the Bill also does not seem to provide clarity for those who seek to act lawfully and not to discriminate (such as employers who need clarity when making decisions in the workplace).

Addiction to which drugs?

3.18 The Bill makes reference to "addiction to a prohibited drug", and defines a "prohibited drug" as:

... a drug within the meaning of regulation 5 of the *Customs (Prohibited Imports) Regulations 1956*.²¹

3.19 ACCI indicated concern that employers are not familiar with these regulations, yet still need to be able to act with confidence when responding to challenges posed by employee drug use.²²

Lawful use of prohibited drugs

3.20 Proposed paragraph 54A(2)(a) provides an exemption to the Bill, stating that discrimination is not lawful if:

the ... person's use of the drug is authorised by a law of the Commonwealth, a State or a Territory.

3.21 In his second reading speech the Attorney-General stated that:

... if a person is using a 'prohibited' drug lawfully—for example, under a validly issued prescription for that person's use—this kind of use is not included in the exemption, and cannot be discriminated against.²³

The example used in the EM is where morphine is used under a prescription for palliative treatment of cancer.²⁴

3.22 ACCI raised concerns regarding this proviso, pointing out that the behaviour of a person using a prohibited drug lawfully may still present challenges to an employer, such as absenteeism and unfitness for work.²⁵ ACCI was concerned that the proviso

21 Paragraph 54A(3) of the Bill.

22 *Submission 48*, p. 20.

23 *House of Representatives Hansard*, 30 December 2003, p. 23541. Other submissions raised this issue, including Support and Accommodation Rights Service, *Submission 74*, p. 14.

24 Explanatory Memorandum, p. 3.

25 *Submission 48*, pp. 12-13.

would place limits on employers in their ability to act in the interest of workplace safety and productivity.²⁶

Use of legal drugs

3.23 A number of submissions noted that there is an inconsistency in making discrimination lawful against a person whose disability is an addiction to a prohibited drug, yet retaining the unlawfulness of discrimination against a person whose disability relates to addiction to a legal drug. HREOC submitted that:

If and to the extent that there is a perceived need to provide further confirmation that employers may apply reasonable measures and policies to deal with inappropriate substance use, it is not clear why this need would be restricted to dealing with prohibited substance use rather than also extending to use of alcohol and prescribed substances. There may be some potential for confusion if the DDA states that discrimination is not unlawful on the basis of addiction to prohibited substances, but does not expressly address addiction to other substances such as alcohol.²⁷

3.24 Submissions drew attention to the large economic cost to the community of addiction to legal drugs such as alcohol and tobacco, including the effect of alcohol abuse on workplace productivity. Dr Alex Wodak told the Committee that alcohol and tobacco were responsible for 83 percent of drug-related economic loss to the community.²⁸ Australian Lawyers for Human Rights submitted that:

... the Bill targets one form of addiction while leaving a number of other, equally damaging, addictions untouched. For example, the level of addiction to alcohol and its impact on the community far outweighs that of addiction to prohibited substances. There is no suggestion that the DDA or [Workplace Relations] Act should be amended to specifically exclude protection for alcoholics.²⁹

Treatment

3.25 An area of significant concern in evidence received by the Committee related to that part of the Bill containing a proviso that persons undergoing treatment for their addiction are exempt from the operation of the Bill. Proposed paragraph 54A(2)(b) states that discrimination is not lawful if:

the ... person is undergoing a program, or receiving services, to treat the addiction to the drug.

26 Ibid.

27 *Submission 82*, p. 7.

28 *Committee Hansard*, 16 March 2004, p. 23.

29 *Submission 71*, p. 5.

3.26 Many submissions pointed out that this proviso raised significant practical and legal difficulties. Issues addressed in this section of the report include:

- defining treatment;
- determining if a person is undergoing treatment;
- availability and accessibility of treatment services;
- undergoing treatment may not alleviate community concerns;
- treatment as a choice; and
- willingness to seek treatment.

Defining "treatment"

3.27 The Explanatory Memorandum provides a description of treatment in the following terms:

Paragraph (2)(b) describes drug recovery treatment in fairly broad terms, as it is recognised that legitimate treatment of drug addiction encompasses a wide range of programs and services, some of which may not involve medical treatment. However, it is expected that the treatment would be in the form of a program or services that require a high degree of commitment to addiction recovery on the part of the person undergoing that treatment.³⁰

3.28 The EM goes on to say:

The protection is not limited to people actually undergoing a medically supervised (often residential) program, although it would cover that. The provision accepts that drug recovery treatment and services have a wide scope, providing the maximum benefit for people addicted to a prohibited drug. It does not specify what type of program or services would qualify, so as to not limit the type of treatments or services that can be accessed, and to ensure that people who are attempting to put their lives back on track are not inadvertently left out.

...

The phrase “receiving services” is broad enough to cover regular visits to a counsellor, priest or doctor to support their efforts to address the addiction. The protection would not extend to sham treatments – but ultimately the Human Rights and Equal Opportunity Commission investigating a

30 Explanatory Memorandum, p. 4.

complaint would have to be satisfied that the treatment is bona fide – as is appropriate.³¹

3.29 Many submissions drew attention to practical problems relating to the application of the treatment proviso, and the interpretation of terms such as "receiving treatment" and "undergoing a program."

3.30 The submission from Clayton Utz Lawyers gave some examples of instances where individuals and organisations would be unsure as to whether the treatment exemption applied. The submission poses questions as to whether the exemption would apply if a person is:

- being placed on a waiting list for a drug program;
- seeking advice from an ex-drug user;
- receiving informal counselling from a spouse; or
- [making] enquiries with a local doctor about what services may be available to help with the drug addiction.³²

3.31 Clayton Utz Lawyers also asked:

- Is a counselling session which took place six months ago enough to satisfy the section?
- Does a single conversation with a counsellor constitute "receiving services"?³³

3.32 Other submissions questioned whether "going cold turkey" and other "non-official" methods would be considered bona fide treatments.³⁴ Family Drug Support gave evidence about withdrawal methods undertaken with the assistance of family and friends, and told the Committee:

If the user chooses the cold turkey approach and the embrace of their family, this amendment will exclude them, as they have not chosen a recognised treatment process.³⁵

31 Ibid.

32 *Submission 21*, p. 7.

33 Ibid.

34 Support and Accommodation Rights Service, *Submission 74*, p. 15.

35 *Committee Hansard*, 16 March 2004, pp. 53, 55.

3.33 Concerns of employers regarding the treatment proviso were also brought to the attention of the Committee. ACCI submitted that the terms of the EM did not provide sufficient certainty, saying that:

Under the amendments as proposed, an employee's treatment status will potentially govern the legal liability of an employer in an action alleging illegal discrimination. Consistent with the aims of the amendments generally, employers are entitled to some exactitude in the obligations they must meet.³⁶

3.34 As an example of the uncertainty created for employers, ACCI referred to the statement in the EM that the exemption would extend to covering "regular visits to a counsellor, priest or doctor". ACCI asked:

- a. What's "regular" in regard to visits to a counsellor, priest etc?
- b. Is this just a registered counsellor, or can anyone qualify as a counsellor, priest etc?
- c. Is it just a counsellor, priest or doctor, or is it someone else, and who might this be? (Is this list exhaustive or indicative?).³⁷

3.35 An additional point of concern raised with the Committee was the stipulation in the EM that "sham treatments" would not meet the criteria to exempt a person from lawful discrimination.³⁸ A representative of the Attorney-General's Department advised the Committee that the decision as to whether a treatment was "sham" or not:

... would be up to the person conciliating the complaint, which would be the Human Rights and Equal Opportunity Commission or indeed a court on appeal from that.³⁹

3.36 However, Mr Graeme Innes, Deputy Disability Discrimination Commissioner for HREOC agreed in evidence to the Committee that the interpretation of "sham treatment" would be difficult.⁴⁰ Further, it was pointed out to the Committee that at the time of the discrimination occurring, the alleged discriminator would not know themselves what constituted a "sham" treatment.⁴¹ Ms Helen Dalley of the Disability Discrimination Legal Centre told the Committee that her organisation was not in a position to distinguish sham from bona fide treatments, and:

36 *Submission 48*, p. 14.

37 *Ibid*, p. 15.

38 Representatives of the Disability Discrimination Legal Centre, and People With a Disability Australia, *Committee Hansard*, 16 March 2004, p. 5,.

39 *Committee Hansard* 24 March 2004, p. 31.

40 *Committee Hansard* 16 March 2004, p. 13.

41 *Committee Hansard* 16 March 2004, p. 5.

... neither again is a person who is proposing to discriminate on the basis of addiction. ... we [have] the ... problem that we do not know in advance what the law is. We do not know what the law is until the courts have dealt with it, which ... creates a situation of uncertainty.⁴²

Determining if a person is undergoing treatment

3.37 The problem of actually determining whether someone is undergoing treatment was another issue raised with the Committee. The Public Interest Advocacy Centre (PIAC) submitted that:

In effect, the proposed amendments place the employer, landlord, service provider, etc in the untenable position of having to make a decision about whether or not someone is receiving “treatment” and whether this treatment is appropriate before they decide whether, for example, to give them a job or to provide them with rental accommodation. It is extremely unlikely that they will have the expertise to make such an assessment and there is a danger that any assessment they make will be subjective and based on limited or inaccurate information.⁴³

Legal issues

3.38 The Committee received evidence that the Bill poses legal difficulties for employers, providers of goods and services, and others. Clayton Utz Lawyers submitted that:

... an employer, a club owner or a provider of goods and services will rarely be in a position to know at the relevant time whether a person is undergoing a program or receiving services in relation to their addiction to the prohibited drug.Does the Bill pass the obligation on to an employer to enquire as to what treatment the particular person is receiving, before they make their decision?⁴⁴

3.39 Arnold Bloch Leibler Lawyers emphasised the legal uncertainty created for employers and others when faced with decisions about dealing with drug users:

If it cannot be determined whether a person is undergoing treatment, it is almost impossible to know whether a discriminatory act will be lawful or unlawful. In this specific context, the Bill will inevitably create great uncertainty for employers, landlords, service-providers and others who are required to be fully cognisant of its provisions.

...

42 Ibid.

43 *Submission 101*, p. 9.

44 *Submission 21*, p. 8.

Few employers will understand the real effect of the amendments. Without legal advice, which many small to medium sized employers cannot afford, the prospects are extremely high that the sections will be unwittingly misapplied by employers to justify dismissal of an employee.⁴⁵

3.40 ACCI expressed concern over legal uncertainty for employers:

Employers have an apprehension that the [treatment] exclusion may create a level of ambiguity which is inconsistent with fundamental employer expectations regarding clarity of obligations and scope to take corrective action.

...

Employers need exactitude on precisely when they will, and will not be liable to action under anti-discrimination legislation.⁴⁶

Privacy issues

3.41 Many submissions raised concerns over the privacy implications of the treatment proviso, including a concern that the Bill is in direct contravention of the National Privacy Principles contained in the *Privacy Act 1988*.⁴⁷ Anglicare Victoria asked:

Will employees and tenants now be required to disclose whether they have a drug addiction and, if so, whether they are seeking treatment?

Will employers and landlords now be authorised to monitor employees and tenants to ensure that they are obtaining and maintaining treatment?⁴⁸

3.42 Privacy issues were also a concern for employers. ACCI put to the Committee:

How could an employer ... have any knowledge of whether an employee were receiving any treatment that would bring proposed s.54A(2) into play? ... Privacy laws may in fact preclude an employer from having such knowledge necessary to comply with both s.54A(1) and (2). This appears to be a clearly foreseeable difficulty with the amendments as introduced.⁴⁹

45 *Submission 75*, pp. 5-6, 14.

46 *Submission 48*, pp. 13, 15.

47 Clayton Utz Lawyers, *Submission 21*, p. 17. Also NADA *Submission 4*, p. 7; Support and Accommodation Rights Service, *Submission 74*, p. 11; Fitzroy Legal Service, *Submission 98*, p. 11; Australian Lawyers for Human Rights, *Submission 71*, p. 4.

48 *Submission 36*, p. 5.

49 *Submission 48*, pp. 15-16.

3.43 The Committee notes that counselling from a priest is a private matter, and some submissions pointed out that services such as Narcotics Anonymous are also premised on confidentiality.⁵⁰ In evidence to the Committee, Dr Alex Wodak put forward:

... if people are attending Narcotics Anonymous, which is probably the most commonly used form of treatment in the country, who is going to say that they were at anonymous meetings or they were not at anonymous meetings?⁵¹

Relapse

3.44 The Committee received evidence that making an assessment as to whether a person is undergoing treatment or not can be blurred by the fact that drug dependence is a chronic relapsing condition. Associate Professor Robert Ali, Chair of the National Expert Advisory Committee on Illicit Drugs submitted that:

... most drug dependent people move in and out of formal treatment and in and out of drug use over an extended period of time; with each successive episode contributing to an increased likelihood that they will change their drug using behaviour in the long term.⁵²

3.45 NADA submitted that even though participation in a treatment program would maintain protections under the amended Act, a drug-dependent person would be vulnerable to discrimination if they relapse and are not technically engaged in treatment at the time of discrimination.⁵³ The Victoria Drug User Organisation (VIVAIDS) submitted that:

The failure of the Bill to acknowledge relapse renders it unworkable.⁵⁴

Availability and accessibility of treatment services

3.46 A concern raised with the Committee was that drug dependent people often have difficulty accessing treatment services, for a number of reasons.

50 VIVAIDS, *Submission 64*, p. 11.

51 *Committee Hansard*, 16 March 2004, p. 20.

52 *Submission 96*, p. 2.

53 *Submission 4*, p. 10. ACCI *Submission 48* raised concerns about how employers dealt with this issue of relapse, referring to "recidivism" rather than relapse.

54 *Submission 64*, p. 14.

Availability of treatment services

3.47 Many submissions pointed to a lack of sufficient treatment services in Australia, and long waiting lists for treatment places.⁵⁵ Emeritus Professor Ian Webster (a physician, and member of the Australian National Council on Drugs) submitted that:

The Amendment fails to acknowledge that there is in Australia a continuing mismatch between the number of persons dependent on substances and their access and acceptance into effective treatment and rehabilitation programmes.⁵⁶

3.48 NADA submitted that:

The amendment fails to recognise that many people will not be in treatment not as a matter of choice but because they are unable to access treatment due to a lack of capacity in drug treatment agencies to meet demand.

For all the pharmacotherapy, detoxification and drug free residential rehabilitation treatment programs it is clear that demand constantly outstrips availability, despite governments at both the commonwealth and state levels providing significant funding increases to drug treatment services over the past decade.⁵⁷

3.49 Other submissions pointed out that treatment was not an option for some drugs. VIVAIDS submitted that despite an increase in the use of psycho-stimulant drugs such as cocaine and amphetamines, there are no generally accessible, recognised treatments currently available for people dependent on these drugs.⁵⁸

Accessibility of treatment services

3.50 The Committee received evidence that accessing treatment services was a problem for many people dependent on drugs, for a number of reasons.

3.51 Services in rural and regional areas were severely lacking, according to many submissions. PIAC submitted that:

People with addiction problems who live in rural and remote areas often face significant geographical and practical barriers in accessing treatment

55 For example PILCH Homeless Persons Legal Clinic *Submission 2*, p. 14; Support and Accommodation Rights Service *Submission 74*, p. 14; Australian Injecting and Illicit Drug Users League *Submission 17*, p. 6; Australian Hepatitis Council *Submission 3*, p. 2; Combined Community Legal Centres Group NSW *Submission 99*, p. 11.

56 *Submission 2*, p. 1.

57 *Submission 4*, pp. 8-10.

58 *Submission 64*, p. 17.

services. It is not uncommon for such people to have to travel considerable distances to access treatment, assuming that treatment is available.⁵⁹

3.52 Financial disadvantage was also a factor in accessing treatment services, the Committee heard. The NSW Users and AIDS Association submitted that the cost of treatments can be prohibitive for many, and is exacerbated by the trend in many jurisdictions to promote the expansion of private rather than government-run treatment programs:

Private methadone clinics in Sydney charge between \$7 and \$9 per day for the medication and on top of this, patients are required to see a doctor weekly without access to bulk billing arrangements. This means that many people are required to pay in excess of \$80 per week for their treatment. The high cost of some treatments are very difficult to afford when people are on social security benefits.⁶⁰

3.53 Exclusion of some drug-dependent people from treatment programs by service providers was another issue raised to demonstrate problems in accessing treatment services. PILCH pointed out that for people experiencing both mental illness and drug addiction, access to treatment was often denied, and added that:

Many mental health service providers are not prepared to provide services to people experiencing drug addiction, notwithstanding that the person's mental illness may be the underlying cause of the drug addiction (as may be the case if the addiction is a consequence of a person attempting to 'self-medicate').

Such people are caught in a vicious cycle; with drug treatment likely to be frustrating and unsuccessful unless the underlying mental illness is treated, and health care providers refusing to treat a person's mental illness until the person is 'drug free'.⁶¹

Undergoing treatment may not alleviate community concerns

3.54 Several submissions pointed out that even if a drug-dependent person is undergoing treatment, he or she may still be dysfunctional.⁶² The Law Society of Western Australia submitted that:

... the proposed section 54A(2)(b) is couched in such broad terms that ... people may meet its requirements, but continue to pose the danger the Bill is attempting to address. This problem arises because the fact that a person is undergoing bona fide treatment for addiction does not determine whether

59 *Submission 101*, p. 8.

60 *Ibid.*

61 *Submission 22*, p. 13.

62 Professor Rosemary Hunter, *Submission 13*, p. 2; HREOC *Submission 82*, p. 8.

the treatment is successful, and whether that person will pose a danger in a work or social situation.⁶³

3.55 ACCI submitted that despite an employee undergoing a treatment program, employers may still face challenges:

An employee may be on a methadone programme, but the use (or abuse) of methadone may lead to absenteeism, presenting for work in an unfit condition, endangerment to other employees, etc.⁶⁴

Treatment as a choice

3.56 The Committee heard concerns regarding the statement in the second reading speech that drug-dependent people undergoing treatment would be protected from discrimination to ensure that:

... people who are taking responsibility for their addiction cannot be discriminated against.⁶⁵

3.57 Several submissions argued that it was simplistic to assume that a person with a drug addiction was capable of making a choice to seek treatment.⁶⁶ Anglicare Victoria submitted that:

According to the Bill, a person will only be afforded protection from disability discrimination on the ground of drug addiction if that person 'takes responsibility' and undergoes treatment. This approach is flawed in that, in our experience, it fails to recognise that drug addiction may impair a person's capacity to 'take responsibility' for his or her own actions or to 'choose' to end drug use or seek treatment.⁶⁷

3.58 Professor Ian Webster told the Committee that drug dependence developed over a long period of time, and a "choice" to take drugs in the first instance did not mean there was a "choice" to be drug-dependent, or that that choice could be easily reversed. He stated that:

This legislation seems to believe that people are making these free-will choices and that you can suddenly turn that around. I think that is a fantasy

63 *Submission 113*, pp. 1-2.

64 *Submission 48*, p. 18.

65 *House of Representatives Hansard*, 3 December 2003, p. 23541.

66 For example, National Legal Aid, *Submission 94*, p. 3; PIAC *Submission 101*, p. 8; Queensland Anti-Discrimination Commission, *Submission 54*, p. 3.

67 *Submission 36*, p. 4.

and not in accordance with the experience of anybody who has worked with, seen or had to live with a person who has had a problem of dependence.⁶⁸

Willingness to seek treatment

3.59 Many submissions put forward the view that rather than encourage drug-dependent people to seek treatment, the effect of the Bill would be to make people reluctant to approach treatment services, for fear of being identified as an addict, and therefore subject to discrimination.⁶⁹

68 *Committee Hansard* 24 March 2004, p. 11.

69 For example Australian Federation of AIDS Organisations *Submission 103*, p. 2.

CHAPTER FOUR

POTENTIAL EFFECTS OF THE BILL

Introduction

4.1 This chapter discusses evidence received by the Committee regarding concerns that the Bill may have a number of negative consequences, including:

- creation of a hierarchy of disabilities and human rights issues;
- public health impacts;
- social impacts; and
- privacy implications.

4.2 Consultation on the Bill by Government is also discussed.

Creation of a hierarchy of disabilities and human rights issues

4.3 The Committee heard significant concerns that an effect of the Bill would be to create a hierarchy of disabilities, distinguishing between disabilities that are "worthy" of protection, and disabilities that are not. Many argued that it was artificial or inappropriate to label as "undeserving" those whose disabilities were "self-inflicted" or obtained through illegal activity.¹

4.4 The NSW Disability Discrimination Service expressed its concern that:

... the amendments will lead to a gradual erosion of the definition of 'disability' into categories of 'socially approved' disability and categories of disability that do not receive social or political approval, or the establishment of a hierarchy of disability with different rights permitted for different types of disability.²

4.5 Several submissions argued that it was false to distinguish between addiction to prohibited substances and addiction to legal drugs.³ HREOC submitted that it was not clear why there is a need to restrict policy responses to inappropriate substance use to

1 For example NCOSS *Submission 1*, p. 3; Combined Community Legal Centres Group (NSW) *Submission 99*, p. 7; NADA *Submission 4*, p. 10; UNSW Kingsford Legal Centre *Submission 69*, p. 6.

2 *Submission 91*, p. 6.

3 Professor Ian Webster *Submission 2*, p. 7; NADA *Submission 4*, p. 10; Support and Accommodation Rights Service *Submission 74*, p. 14.

prohibited drugs, and not extend to the use of alcohol and prescribed substances. HREOC added:

There may be some potential for confusion if the DDA states that discrimination is not unlawful on the basis of addiction to prohibited substances, but does not expressly address addiction to other substances such as alcohol.⁴

4.6 Other submissions argued that it was dangerous to differentiate between disabilities gained through voluntary or involuntary acts, and between legal and illegal activity. People with a Disability Australia hypothesised about a person who acquired a severe physical disability as a result of driving at unlawful speed, or while under the influence of alcohol, or whilst not wearing a seatbelt, and stated:

It would be unthinkable that a person with severe physical disability would be denied protection against discrimination because their impairment arose as a result of a voluntary (possibly illegal) act, and it should be equally unthinkable that a person with addiction should be denied such protection.⁵

4.7 Related human rights concerns were raised in many submissions.⁶ Some contended that the Bill was in contravention of the spirit of the international human rights instruments and laws that underpin the Act itself, stating that human rights laws were designed to protect people's basic human rights, especially the rights of those who are marginalised or disadvantaged.⁷ The NSW Disability Discrimination Legal Centre stated:

Given its role in ensuring the universality of basic human rights, it is vitally important that the DDA is not used as an instrument of social or political censure.⁸

Public health impacts

4.8 Several submissions suggested that the Bill would undermine public health objectives, and that it was inconsistent with the harm minimisation policy framework supported by Government.⁹ As already mentioned in this report, many submissions argued that a consequence of the Bill would be that drug-dependent people would be

4 *Submission 82*, p. 7.

5 *Submission 56*, p. 16.

6 For example Australian Lawyers for Human Rights *Submission 71*, pp. 4-5; Australian Hepatitis Council *Submission 3*, p. 2; UNSW Kingsford Legal Centre *Submission 69*, p. 3.

7 NCOSS, *Submission 1*, p. 2.

8 *Submission 91*, p. 3.

9 For example VIVAIDS, *Submission 64*, p. 20.

reluctant to seek treatment for their addiction out of fear that they will be identified as a drug user and then be subject to discrimination. The Australian Federation of AIDS Organisations submitted that fear of the stigma associated with being identified as a drug user is a major disincentive to accessing health and support services, including drug treatment services, needle exchange services, peer education services and testing and treatment for HIV and Hepatitis C.¹⁰

4.9 Groups and individuals from the medical, HIV/AIDS and Hepatitis C communities expressed concern that the reluctance of drug users to access treatment programs and related health services, such as needle and syringe programs, would lead to an increase in the incidence of blood-borne viruses.¹¹

4.10 Several submissions referred to harm reduction policies employed by governments in Australia, which accept the existence of drug use, and without condoning or condemning that use, employing strategies that attempt to minimise the effects of drug use, especially on public health.¹² Many pointed to the importance of needle and syringe programs in harm minimisation, VIVAIDS submitting that Australia's success in maintaining a low transmission rate of HIV/AIDS amongst people who inject drugs has largely been due to the existence of these programs.¹³ VIVAIDS indicated that fear of being identified as a drug user may drive people away from these services,¹⁴ and the NSW Users and AIDS Association expressed a view that:

... should the proposed amendments be enacted then Australia runs the risk of increasing the transmission of HIV/AIDS and hepatitis C among injecting drug users (IDU) and then to the general community.¹⁵

4.11 The Australian Injecting and Drug Users League (AIVL) argued that an increase in the transmission of blood borne viruses "would result in a major public health crisis" and added:

... harm reduction programs such as [needle and syringe programs] and peer-based drug user organisations provide a whole range of health, legal

10 *Submission 103*, p. 2.

11 For example Australian Hepatitis Council, *Submission 3*, p. 2; Territory Users Forum, *Submission 86*, p. 2; NSW Users and AIDS Association, *Submission 90*, p. 5; Australian Injecting and Illicit Drug Users League (AIVL), *Submission 17*, p. 5.

12 For example Australian Injecting and Illicit Drug Users League (AIVL) *Submission 17*, p. 5; Hepatitis C Council of Victoria *Submission 55*, pp. 2-3.

13 *Submission 64*, p. 20.

14 *Ibid.*

15 *Submission 90*, p. 5.

and social services including referral to drug treatment services. If people who use illicit drugs are scared to use these services, it could create an additional barrier to drug treatment access.¹⁶

4.12 When questioned about public health concerns raised with the Committee, a representative of the Attorney-General's Department stated:

I accept that is a view that has been put very strongly to the committee. I cannot comment on it, except to repeat that the intention and the government's understanding of the effect of the bill is that it would not create a different set of circumstances where it would be open slather or, indeed, encourage people to act or to discriminate. It is certainly not the intention. To the extent that evidence of concern has been put to the committee, I cannot critique that.¹⁷

Social impacts

4.13 The Committee received evidence that the Bill would have significant social impacts, including on the rehabilitation of drug-dependent people, on the level of discrimination, on levels of homelessness and illegal activity, and on the families of drug-dependent people.

Rehabilitation

4.14 Many submissions voiced concerns that the Bill will seriously affect the ability of drug-dependent people to maintain employment, stable housing, and healthy social networks which underpin and are vital to the rehabilitation process.¹⁸ Employment was identified as a key issue in evidence to the Committee. Professor Ian Webster submitted that:

It is important for the benefit of the whole society and for other reasons that persons who use drugs and especially when completing treatment are able to participate in employment. Having a job, being able to work is the central issue for rehabilitation in contemporary Australia.¹⁹

4.15 The UNSW Kingsford Legal Centre pointed to the negative consequences of the Bill in terms of access to employment and housing:

16 *Submission 17*, p. 5.

17 *Committee Hansard* 24 March 2004, p. 41.

18 For example Associate Professor Ali, Chair of the National Expert Advisory Committee on Illicit Drugs, *Submission 96*, p. 2; Mr Peter Keil, *Submission 95*, p. 1; Centacare, *Submission 88*, p. 4; NSW Young Lawyers Human Rights Committee, *Submission 109*, p. 3; Youthlaw, *Submission 107*, p. 1.

19 *Submission 2*, p. 8.

Under the proposed changes to the DDA there is no protection offered to drug users if they are denied jobs, housing, and other services simply because they use a particular drug rather than because of their behaviour. Stereotypes of drug users rather than the behaviour of the individual will dictate whether they will find work or have a roof over their heads.²⁰

4.16 Families of drug users emphasised the positive effect of employment in the rehabilitation process of drug users, and on the families of drug users:

Families learn to take solace from small incremental steps to recovery. ... Small victories, like drug users obtaining employment or moving into rental accommodation are celebrated and make an enormous difference to the family's ability to cope. The added anxiety of losing these important gains would increase the burdens that families carry.²¹

Increased marginalisation and discrimination

4.17 Submissions also suggested that the Bill could be interpreted as an invitation to discriminate,²² and that it represents a "green light" for explicit discrimination against drug users.²³ The Support and Accommodation Rights Service submitted that discrimination against people with drug-related disabilities was commonplace, and stated that:

The right to be free of discrimination is a fundamental human right to which we should all be entitled and is one that very few drug users even know that they have. The sad truth is that people with drug-related disabilities already struggle to access basic goods and services every day of their lives. Any legitimating of such discrimination will harm them and the community even further.²⁴

4.18 In evidence to the Committee, Mr Chris Martin of the Tenants Union of NSW indicated that discrimination against renters already occurs, and that the Bill if passed would allow and encourage negative, offensive practices to be brought against tenants and other renters.²⁵ He added:

20 *Submission 69*, p. 5.

21 *Submission 19*, p. 5.

22 Arnold Bloch Leibler, *Submission 75*, p. 7.

23 NSW Users and AIDS Association, *Submission 90*, p. 6.

24 *Submission 74*, p. 16.

25 *Committee Hansard*, 16 March 2004, p. 47.

Landlords manage to discriminate quite enough without further encouragement.²⁶

4.19 In evidence to the Committee, a representative of the Attorney-General's Department stated that the Bill is not intended to provide encouragement for discriminatory acts:

The bill does not authorise an open slather against people who may be addicted to a prohibited drug. This is because the exemption will only apply in specific circumstances which are outlined in the bill and which must be established by evidence.²⁷

Impact on levels of homelessness and illegal activity

4.20 Several submissions argued that a flow on effect of the Bill would be an increase in homelessness, as permitting lawful discrimination would create additional barriers for drug-dependents in securing rental accommodation.²⁸ Mr Chris Martin of the Tenants Union of NSW told the Committee that inability to keep stable housing would exacerbate the conditions that encourage drug use and make "getting clean" more difficult. He added:

The bill, in effect, could shake out people from the relative stability of the residential tenancies market into the less stable tenures of boarding houses and rooming houses, which in New South Wales are not covered by residential tenancies legislation, and then further down again into the SAAP [Supported Accommodation Assistance Program] sector, the emergency shelters and ultimately homelessness, whether on the street or on other people's lounges.²⁹

4.21 Another flow on effect suggested in submissions was an increase in illegal activity, if drug-dependent people were denied employment, housing, and access to basic services.³⁰ Centacare submitted that:

Lack of income can lead people to seek finances from more available illegal means, prostitution, trafficking or theft. ... It may lead to criminal convictions and exposure to unhealthy social networks.³¹

26 Ibid p. 49.

27 *Committee Hansard* 24 March 2004, p. 26.

28 NCOSS *Submission 1*, p. 4; also Tenants Union of NSW, *Submission 78*, p. 3.

29 *Committee Hansard*, 16 March 2004, p. 48.

30 VIVAIDS, *Submission 64*, p. 24; Fitzroy Legal Service, *Submission 98*, p. 8.

31 *Submission 88*, p. 8.

Impact on families and associates

4.22 The Committee received several submissions from family members of drug-dependent people arguing that the Bill would have negative consequences not only for the addicted person but for their families as well. One sister whose brother struggled with drug dependency wrote:

Families are deeply affected when a member is addicted. This legislation will increase their suffering and pain, and provide no real understanding within the community with regard to the support they need.³²

4.23 Many submissions argued that although under the Act it will remain unlawful to discriminate against a person because their associate is dependent on prohibited drugs, there will be a spill-over effect on families.³³ PIAC submitted that:

The Bill will not ... protect the spouse or child of a drug user if they become homeless as a result of the drug user being denied employment or evicted from their accommodation.³⁴

Existence of more than one disability

4.24 Several submissions argued that the Bill failed to take into account the complexities of situations where a person suffers from more than one disability, for example drug dependency and hepatitis C, or drug dependency and mental illness.³⁵

4.25 VIVAIDS referred to the strong relationship between hepatitis C and injecting drug use, and expressed its concern that:

... it will be difficult to disentangle hepatitis C discrimination from discrimination on the grounds of drug use.³⁶

4.26 Several submissions pointed to a close link between mental illness and substance abuse. NCOSS argued that a person could discriminate against another person with a dual diagnosis and justify that it was on the ground of their substance dependency.³⁷ Professor Ian Webster submitted that while the Bill would not remove those with mental illness from the protections of the Act:

32 Ms Bronwyn Barnard, *Submission 81*, p. 1.

33 NADA, *Submission 4*, p. 8; Tenants Union of NSW, *Submission 78*, p. 3; PILCH Homeless Persons Legal Clinic, *Submission 22*, p. 21.

34 *Submission 101*, p. 10.

35 For example, Australian Hepatitis Council, *Submission 3*, p. 3; NCOSS *Submission 1*, p. 5.

36 *Submission 64*, p. 21.

37 *Submission 1*, p. 5.

... [the Bill] does not disentangle realistically the multitudinous intersections between mental and substance use problems. It is the antithesis of what can be achieved in practice.³⁸

Privacy implications

4.27 An earlier section of this report referred to evidence regarding privacy concerns in relation to the treatment proviso. The exemption allowed by the Bill to those undergoing treatment raises several questions, such as whether an employer would be required to monitor treatment of employees, and whether an employee would be required to disclose their treatment status and medical records. NADA submitted that:

People's right to privacy in respect of medical or professional treatment for their drug dependence will necessarily be violated by this amendment.³⁹

4.28 Other privacy concerns in relation to databases were raised. Australian Injecting & Illicit Drug Users League (AIVL) asked:

... if someone loses their job for being a "drug addict" where is this recorded? Who has access to such records and will this "judgement" be used against them every time they apply for a job – regardless of their circumstances at the time?⁴⁰

4.29 Mr Chris Martin of the Tenants Union of NSW expressed concern regarding the potential for "blacklist" tenant databases to include information about a person's drug addiction. He told the Committee:

Privacy—and concerns about the way information with regard to tenants is held and used by real estate agents and landlords—is a big problem in the rental housing system. I am referring in particular to the practices of tenant database operators, so-called blacklists. There are problems enough with them already.

It is a horrible prospect to think of database operators including in their listings an allegation—and it may be nothing more than an allegation—from their listing members that a tenant is a drug addict. That is a nightmarish prospect and is something that the bill would appear to allow or encourage.⁴¹

38 *Submission 2*, p. 6.

39 *Submission 4*, p. 7.

40 *Submission 17*, p. 6.

41 *Committee Hansard*, 16 March 2004, p. 50.

Consultation

4.30 A representative of the Attorney-General's Department gave the Committee information about consultation undertaken in the preparation of the Bill:

Within government the consultation involved relevant departments administered by the Minister for Health and Ageing, Family and Community Services, Prime Minister and Cabinet, Employment and Workplace Relations. Outside the agency level, ministers made their own assessments of representations that had been made to them.⁴²

4.31 The Committee received submissions from two members of the Australian National Council on Drugs (ANCD), Emeritus Professor Ian Webster, and Associate Professor Robert Ali (who is also the Chair of the National Expert Advisory Committee on Illicit Drugs). Both had serious concerns about the Bill. In evidence to the Committee Professor Webster was not aware of any consultation with ANCD, and stated:

We were surprised, as a Council, to see that this legislation had been put into parliament without consultation with the Australian National Council on Drugs.⁴³

4.32 After questioning at the public hearing, the Attorney-General's Department later advised that the Australian National Council on Drugs "provided informal comments in response to the Prime Minister's announcement about the proposed legislation."⁴⁴

4.33 The Department of Health and Ageing was asked for comment regarding the submissions received from Professors Webster and Ali, but no response was received.

4.34 The Committee notes advice from the Attorney-General's Department that the Privacy Commissioner was not consulted in the preparation of the Bill.⁴⁵

42 *Committee Hansard* 24 March 2004, p. 39.

43 *Committee Hansard* 24 march 2004, p. 11.

44 *Submission 118*, answer to Question on Notice 4.

45 *Submission 118*, answer to Question on Notice 6.

CHAPTER FIVE

THE COMMITTEE'S CONCLUSIONS

5.1 The Committee recognises that the harmful effects of drug use in the community are of great concern to many. The Committee received submissions from organisations and individuals who deal with the consequences of drug use on a daily basis, including employers, members of the medical profession, the legal sector, the alcohol and drug sector, the HIV/AIDS and hepatitis C communities, and importantly, from people affected by the drug use of a family member. That 118 submissions were received indicates the level of concern on this issue. However all but two of them opposed the Bill in whole or in substantial part. Even the ACCI which supported the principle behind the Bill pointed to wide-ranging concerns over its terms, in more than 50 paragraphs over nine or ten pages of their submission.

5.2 The Committee acknowledges the ACCI's evidence about the impact in the workplace of employee drug use, and appreciates concerns that employers must be able to respond to the challenges presented. These challenges are very real for employers, and include drug-related poor performance, absenteeism, crime, and threats to workplace safety and productivity.

5.3 In the course of the inquiry the Committee has received persuasive evidence suggesting that existing legal frameworks address the concerns of employers and others in the community, and that there is no need for this Bill. Lawyers working in the field of disability discrimination indicated that the existing provisions of the *Disability Discrimination Act 1992* provide employers with adequate protection against claims of discrimination. In particular, the Act does not require an employer to employ or retain a person if that person cannot perform the inherent requirements of the position.

5.4 Inherent requirements may include, for example, a requirement to perform to a certain level, provide good customer service, operate machinery safely and not under the influence of drugs or alcohol, or to handle cash with honesty. A person whose disability (including drug dependence) prevented them from performing these reasonable inherent requirements would not have a viable claim of discrimination. The Committee heard further evidence that occupational health and safety laws also provide protection for employers seeking to maintain safe workplaces. Thus a discrimination claim from a person who could not perform a job safely or who could not meet safety standards would fail.

5.5 Responses from the Attorney-General's Department in answer to the persuasive evidence that existing legal frameworks already provided protection were not convincing. The Committee is not satisfied with the Department's opaque response when asked what the identified gaps were in the Act and in occupational health and safety legislation:

The Government's assessment that the Disability Discrimination Amendment Bill 2003 (the Bill) was necessary was not based on an analysis of gaps in occupational health and safety legislation. Occupational health and safety legislation concerns the general health, safety and welfare of employees at work. It does not provide a specific framework for complaints of disability discrimination. The Bill will not conflict with the objectives of occupational health and safety legislation. The Bill contains a specific amendment to the Disability Discrimination Act 1992 to remove the basis of complaint, in certain circumstances, if the sole basis for the complaint is that the person was discriminated against because of their addiction to a prohibited drug.¹

5.6 The Committee has noted evidence that cases brought involving discrimination on the ground of a person's addiction to a prohibited drug are rare, and that no evidence of widespread community concern over this issue could be provided to the Committee. The Committee notes that the use of drugs is a live issue in workplaces, and that employers are spending significant resources on policies, procedures and testing to deal with the issue. However it is notable that ACCI was unable to provide data on the level of complaints made by employers in regard to drug use.

5.7 The Committee is mindful of the fact that in 2002 the NSW Parliament amended its State anti-discrimination laws to provide that it is not unlawful to discriminate in the workplace against people addicted to a prohibited drug, on the grounds of their addiction. The Committee is most concerned that this Bill goes far beyond employment. The proposed exemption would apply to all areas covered by the Act, including rental accommodation, education, sport, administration of Commonwealth laws and programs, and access to facilities, services and premises. The Committee notes evidence it received that tenancy legislation, for example, already gives landlords the right to lawfully evict tenants who are not fulfilling the requirements of their lease or causing damage or nuisance.

5.8 The Committee notes the Attorney-General's statement that the Bill relates to the need to keep the work or social environment safe from other people's behaviour. However, the Committee is concerned that the focus of the Bill is solely on the fact of a person's addiction, rather than any behaviour related to the addiction. The Bill makes discrimination lawful if a person is addicted to a prohibited drug, whether or not that person is displaying inappropriate behaviour, and whether or not, in the case of a workplace situation, the person is able to perform his or her job.

5.9 The Committee also heard evidence from a range of individuals and organisations, including HREOC and various legal practitioners, about the recent High Court decision of *Purvis* (regarding a discrimination claim brought under the Act) which distinguished between less favourable treatment of a person on the grounds of a disability and less favourable treatment on the grounds of behaviour that may be a

1 *Submission 118*, Question on Notice 5.

manifestation of that disability. It was strongly argued that the *Purvis* decision reinforces the contention that the Act already provides sufficient protection for employers to deal with problem behaviour.

5.10 The Committee notes the considerable criticism of the drafting of, and the use of particular terms in the Bill. Many submissions and witnesses argued that the absence of definitions of "addiction" and "treatment" will lead to significant uncertainty. The Committee especially recognises the concerns of employers in this regard. ACCI spent several pages of their submission addressing these issues, including the difficulties of distinguishing addiction from episodic use, and in determining whether a person is addicted "at the time of discrimination". Evidence from the medical profession that defining addiction is difficult and complex leads the Committee to question how lay people such as those referred to in evidence including employers, bank tellers and bus drivers would be able to make that assessment.

5.11 The proviso that people undergoing a program or receiving services to treat their addiction would be exempt is another area of concern to the Committee. The definition of treatment is deliberately broad according to the Attorney-General, but the Committee acknowledges the many difficulties raised for employers and others by the lack of definition. Questions as to what constitutes bona fide treatment and who will make that decision are real questions for employers, for example, when they have to make daily operational decisions without the benefit of a court ruling some way down the track.

5.12 The Committee is also concerned about other aspects of the treatment proviso. These include the shortfall in availability of treatment places, the inaccessibility of treatment for the disadvantaged and those in rural and regional areas, and the privacy issues raised by the requirement for employers and service providers to know a person's treatment status before taking action.

5.13 The public health impacts are significant. Whilst the Bill would seek to encourage people to undergo treatment for their addiction, the Committee was provided with no evidence by the Department or from any other source that the Bill's enactment will result in more people seeking treatment, or being encouraged to do so. Indeed the Committee heard evidence to the contrary, and acknowledges concerns that instead drug-dependent people would become reluctant to seek treatment for fear of being identified as a drug addict, and therefore subject to discrimination which may lead to loss of employment and housing. The Committee was advised that their reluctance to access health services may lead to a decline in usage of needle and syringe programs, and also heard evidence that an increase in rates of blood-borne viruses such as HIV/AIDS and hepatitis C may well result.

5.14 The potential for an increase in the marginalisation of drug-dependent people is also of concern, and the Committee especially notes the evidence of families of people dependent on drugs that gaining and maintaining employment is a crucial factor in the rehabilitation process.

5.15 The Committee noted the level of disquiet expressed in submissions over distinguishing between disabilities that are "worthy" of protection, and disabilities that are not. The Committee also heard about the potentially damaging effect of legal drugs such as alcohol or those drugs that are lawfully prescribed.

5.16 The Committee recognises that the *Disability Discrimination Act 1992* exists to ensure (as stated in section 3 of the Act) that "persons with disabilities have the same rights to equality before the law as the rest of the community". The Committee is concerned that Bill will undermine the intent of the Act, and exclude a particular set of persons from the Act's basic human rights protection. The Committee is also concerned with the Attorney-General's Department statement, unsupported by evidence or argument, that the Bill will not encourage discrimination against drug-dependent people, when all the evidence provided to the Committee says that increased discrimination is the likely result.

5.17 In summary, the Committee is not satisfied that the Bill is required to address concerns about the effects of drug use in the community: these concerns are already addressed by existing legal frameworks. The Committee further notes that there are practical difficulties in the application of the amendments. Not the least of these is the problem of defining addiction, defining treatment, and the issue of determining if a person is in treatment. The repeated statement that the Bill will give certainty to individuals and organisations is questionable, given the evidence, including that from ACCI, which points clearly to the contrary. The Committee is of the opinion that amending the Bill to provide detailed definitions is not a practical solution, given the complexity of diagnosing addiction and the range of treatment options available. The privacy issues raised by the treatment proviso are difficult to address. The potential public health and social impacts of the Bill if passed cannot be ignored.

Recommendation 1

5.18 The Committee recommends that the Bill would benefit from wider consultation, and recommends that it be referred to the Ministerial Council on Drugs Strategy for consideration. This would have the benefit that all Commonwealth, state and territory jurisdictions engaged in providing treatment services would be involved in the formulation of policies to address the implications of the Bill regarding accessibility and cost of services.

Recommendation 2

5.19 The Committee recommends that if the legislation is viewed as necessary for employment as is the case in the *NSW Anti-Discrimination Act 1977*, then if the Bill proceeds, its application should be restricted to the employment environment only.

Recommendation 3

5.20 The Committee recommends that if the Bill remains as is, and extends to areas beyond employment, the Bill should not proceed.

Senator Marise Payne

Chair

DISSENTING REPORT

LABOR SENATORS

1.1 Labor Senators believe that there is insufficient evidence to indicate a need for the Bill.

1.2 Labor Senators are also concerned that the definitions of 'addiction' and 'treatment' in the Bill are unclear and problematic. As noted by the majority report, it would not be practical to attempt to overcome these problems by amending the Bill to give detailed definitions. It would also be difficult to address the privacy issues raised by the Bill, regarding whether a person has participated in treatment for their addiction.

1.3 There appears to have been insufficient consultation in preparing the Bill. As noted by the majority report, neither the Australian National Council on Drugs nor the Federal Privacy Commissioner were consulted in relation to the Bill.

1.4 Labor Senators note that the *Marsden* and *Carr* cases that are discussed in the majority report, are the only cases to have arisen under Commonwealth and NSW discrimination legislation in relation to drug addiction respectively. Importantly, neither of these cases would have been covered by the Bill, as both cases involved users who were engaged in a registered methadone program.¹ The Bill is clearly unnecessary.

1.5 Labor Senators are concerned by evidence, including concerns raised by ACCI, that the term 'treatment' is vague and is difficult for employers to determine.² Labor Senators believe that in this respect the Bill is unworkable and will leave employers in a greater state of uncertainty than at present.

1.6 Labor Senators note that the majority report concedes that the potential health and social impacts of the Bill, if passed, cannot be ignored. Labor Senators agree with this point and, because of concerns over these impacts, believe that the Bill should not proceed.

1.7 If the Government seeks to amend the Bill, or to reintroduce a similar Bill in the future, Labor Senators believe that the Bill should first be referred to the Ministerial Council on Drugs Strategy for consideration. Furthermore, Labor Senators believe that

1 Clayton Utz Lawyers, *Submission 21*, p.6.

2 ACCI, *Submission 48*, pp. 14-15.

the consultation process should be wider, and should involve health professionals, the Australian National Council on Drugs, and the Federal Privacy Commissioner.

Recommendation 1

1.8 Labor Senators recommend that the Bill not proceed.

Recommendation 2

1.9 Labor Senators recommend that if the Government seeks to propose an amended or equivalent Bill in the future, that formal consultation be undertaken with the Ministerial Council on Drugs Strategy, health professionals, the Australian National Council on Drugs, and the Federal Privacy Commissioner.

Senator the Hon. Nick Bolkus

Senator Joseph Ludwig

Deputy Chair

DISSENTING REPORT

AUSTRALIAN DEMOCRATS

Introduction

1.1 The Australian Democrats acknowledge the enormous personal, social and financial costs associated with addiction, and are supportive of measures to reduce these costs and the suffering and hardship they produce.

1.2 The Australian Democrats do not believe the *Disability Discrimination Amendment Bil 2003* is an appropriate response to these issues.

1.3 The Australian Democrats expressed immediate concern at statements by the Prime Minister and Attorney General, who in November 2003, signalled their intention to amend the *Disability Discrimination Act 1992* (DDA) to remove the prohibition on disability discrimination on the ground of a person's addiction to illicit substances.

1.4 On the basis of speculation about what a forthcoming amending bill was likely to contain, the Democrats outlined their concerns in an adjournment speech incorporated in the Senate Hansard on 3 December 2003.

1.5 Specifically, our concern was that an amending bill to remove addiction to illicit substance from protection under the DDA was likely to:

- (a) be predicated on the false belief that the DDA confers additional rights to those it protects, rather than ensuring equal treatment of those with a disability;
- (b) have serious human rights implications and be in possible breach of international human rights law;
- (c) contribute to an increase in incidence of discrimination experienced by those who use a range of drugs, illicit and otherwise, and their associates;
- (d) create significant definitional problems in relation to terms such as "addiction", and "treatment";
- (e) reinforce and create further moral, ethical, legal and social distinction between addictions to different classes of drug, on the basis of their legality and with no regard to the actions or behaviour of the person addicted to an illicit substance;

- (f) create an unhelpful and unfair distinction between those in and out of treatment;
- (g) reduce the efficacy of harm minimisation approaches to drug use and help-seeking behaviour amongst addicted and other drug and alcohol using persons;
- (h) result in increased overdoses, mental and other health complications, HIV/AIDS and Hepatitis transmission, and other family and social problems;
- (i) counter research demonstrating effective drug strategies combine adequate housing, support and health services and a stable income;
- (j) create a worrying distinction between the “deserving” and the “undeserving”, the “genuinely disabled” and “others”; and finally, such a bill would *Senate Hansard* 3 December 2003, p. 18834
- (k) do little to respond to the range of issues raised, predominantly by the Australian Chamber of Commerce and Industry, in relation to drug use in the workplace, and employer confidence and certainty.

1.6 As anticipated, the Disability Discrimination Amendment Bill 2003, tabled in the House of Representatives on 3 December 2003, aimed to remove all protection under the DDA to those addicted to illicit substances unless in receipt of treatment.

1.7 The Australian Democrats note that of the 118 submissions received by the Committee into this Inquiry, all but two of those opposed the Bill.

1.8 We further note that all of the concerns raised by the Australian Democrats in December 2003 have been corroborated by the vast majority of submitters to the Inquiry, and that these concerns have been further added to, including in evidence given by those who support the Bill.

1.9 The Australian Democrats acknowledge and support the work of the Committee, and concur with the conclusions reached by it.

1.10 The Australian Democrats do not however, support the recommendations of the Committee.

1.11 In summary, the Australian Democrats are strongly opposed to the Bill in its entirety and continue to be of the view that it fails to meet its intended aims, is counterproductive to the work of drug and alcohol professionals, is damaging to those with addictions to all drugs and alcohol and their associates, and is completely unnecessary.

1.12 Additional comments on the basis of these dissenting views are detailed below, along with a range of alternative recommendations.

Rationale for the Bill

1.13 The Australian Democrats acknowledge the Attorney-General's rationale that the Bill is required to address community concerns, to ensure that disability discrimination laws are not used in an unjustified manner, and to protect the community from certain behaviours purporting to result from drug addiction.

1.14 The Australian Democrats note the Committee's finding however that neither the Attorney-General's Department or the Australian Chamber of Commerce and Industry (ACCI), were able to provide evidence of the nature and extent of either community concern or complaints made by employers in regard to drug use.

1.15 With regard to the issue of whether anti-discrimination laws are being used in an unjustified manner, we draw attention to the paucity of complaints alleging discrimination on the basis of addiction to illicit substances.

1.16 In fact, only two discrimination cases were cited in evidence to the Committee – the *Marsden* case, which precipitated both the Bill in question and the New South Wales amendment relating to employment, and another case, currently underway in NSW, referred to in evidence given by Clayton Utz.

1.17 The latter is the only case cited to directly involve a claim of discrimination against a drug addicted person in employment.

1.18 The Australian Democrats also wish to draw attention to the fact that neither case would have differed substantially in the absence of these amendments because both claimants were engaged in treatment programs at the time of the (alleged) discrimination.

1.19 Consequently, the Democrats are of the view that no evidence exists to support the Attorney-General's rationale regarding community concern or unjustified use of antidiscrimination laws.

1.20 With regard to the harms and risks posed by drug addiction, the Australian Democrats share concerns regarding the lack of a behavioural threshold in the Bill, and share the Committee's view that where actual harms and risks are present, existing legal frameworks already exist to adequately respond to those risks.

Need for Further Consultation

1.21 The Australian Democrats question the need for additional consultation on the Bill, given the Inquiry which is the subject of this report, provided an opportunity for key stakeholders to provide that input.

1.22 The Inquiry has taken evidence from a large number of disability organisations, legal professionals, tenancy services, drug and alcohol services, mental health experts, other community advocates, and employer representatives.

1.23 Given the large number of individuals and organisations that contributed to the Inquiry, and their breadth of experience and knowledge, The Australian Democrats are of the view that the consultation process has adequately represented key stakeholder groups.

1.24 Overwhelmingly, that consultation process has advised that the Bill will not achieve its intended outcomes, and in many instances will be counterproductive to those aims.

1.25 The Australian Democrats are of the view that further consultation is unlikely to reveal new insights into the operation and impact of the Bill that would significantly add to or counter the evidence already received by the Committee.

1.26 The Australian Democrats support the Committee's view that issues raised during the course of the Inquiry into provisions of the Disability Discrimination Amendment Bill, particularly in relation to accessibility, availability and cost of services, would benefit from referral to and consideration by the Ministerial Council on Drugs Strategy.

1.27 The Australian Democrats wish to highlight that issues pertaining to accessibility, availability and cost of services are not newly identified as a consequence of this Inquiry, and that previous inquiries have presented similar findings, most recently, the August 2003 House of Representatives Inquiry into Substance Abuse in Australian Communities, *Roads to Recovery*.

1.28 The Australian Democrats wish to draw the Committee's particular attention to Recommendations 19-22 of the *Roads to Recovery* report which deal specifically with funding and availability of drug treatment services.

Restriction of the Bill to Employment

1.29 The Australian Democrats oppose the passage of the Bill even if restricted to areas of employment, as is the case in the *NSW Anti-Discrimination Act 1977*.

1.30 Evidence presented to the Committee by many submitters including the Australian Chamber of Commerce and Industry (ACCI) which supports the Bill, is that many of the technical flaws and negative impacts of the Bill are inherent in its drafting.

1.31 It is the view of the Australian Democrats that these issues will not be addressed by restricting the application of the Bill to areas of employment. House of Representatives Standing Committee on Family and Community Affairs, *Road to Recovery*, Report on the Inquiry into substance abuse in Australian communities, pp. 67-73

1.32 The Australian Democrats draw attention to the Committee's acknowledgement of the ACCI's wide ranging concerns over the Bill's terms, and responses from the Attorney-General's Department it describes as unconvincing and opaque.

1.33 Overwhelming evidence was given to the Committee about the wide ranging protections available to employers to deal with issues of drug use and addiction in the workplace including:

- (a) DDA provisions for inherent requirements and unjustifiable hardship;
- (b) work place performance measures;
- (c) occupational health and safety legislation; and
- (d) criminal law.

1.34 Further, evidence was provided by the ACCI and others, that rather than clarifying the rights of employers and reducing litigation taken against employers, the Bill was likely to result in greater confusion, and place greater onus on employers to attempt to assess and monitor the addiction and treatment status of their staff.

1.35 It is of concern to the Australian Democrats that in spite of the weight of this evidence, and the concerns raised and unconvincing evidence offered by the only supporters of the Bill, that consideration should be given to continued support for the Bill, albeit in restricted terms.

Recommendations

Recommendation 1

1.36 The Australian Democrats recommend that the Bill should not proceed.

Recommendation 2

1.37 The Australian Democrats recommend that the Bill should not be amended to restrict its application to employment only.

Recommendation 3

1.38 The Australian Democrats recommend that the Committee's findings be referred to the Ministerial Council on Drug Strategy for consideration, with particular focus on the formulation of policies to address accessibility, availability and cost of services issues raised in the Inquiry.

Recommendation 4

1.39 The Australian Democrats recommend that the Committee's findings be considered in conjunction with the more detailed findings of the *Roads to Recovery* report.

Recommendation 5

1.40 The Australian Democrats recommend that the Commonwealth review its *Tough on Drugs* Policy to place greater emphasis on harm minimisation approaches to drug use, and increased funding for support and treatment programs targeting those addicted to licit and illicit substances and their families.



Senator Brian Greig

13 April 2004

APPENDIX 1

ORGANISATIONS AND INDIVIDUALS THAT PROVIDED THE COMMITTEE WITH SUBMISSIONS

- 01 Council of Social Services of New South Wales
- 02 Emeritus Professor Ian W Webster
- 03 Australian Hepatitis Council
- 04 Network of Alcohol and Drug Agencies
- 05 Alcohol and other Drugs Council of Australia
- 06 Law Society of NSW
- 07 The Cancer Council Victoria
- 08 Name Withheld
- 09 Dr Mike McDonough
- 10 Yarra Drug & Health Forum
- 11 Mr Stewart Stubbs
- 12 Victorian Alcohol & Drug Association
- 13 Professor Rosemary Hunter & Dr Bridget Cullen Mandikos
- 14 Hornsby and District Community Drug Action Team
- 15 Mr Nguyen Thi Ha Tho
- 16 DEAC
- 17 Australian Injecting and Illicit Drug Users League
- 18 Drug Users Network Education Support
- 19 Family Drug Support
- 20 Macarthur Legal Centre
- 20A Macarthur Legal Centre
- 21 Clayton Utz Lawyers
- 22 Homeless Persons' Legal Clinic
- 22A Homeless Persons' Legal Clinic
- 23 Disability Council of NSW
- 24 Youth Affairs Council of Victoria
- 25 Cairns Community Legal Centre Inc

26 Name Withheld
27 Mr Thomas Sylva
29 Ms Helen Mentha
30 Mr Gary Meyerhoff
31 Mr Angus Robb
32 Inner West and North West Needle and Syringe Programs
33 Mr Peter Higgs
34 Dr Campbell Aitken
35 Mr Ben Ellis
36 Anglicare Victoria
37 Darwin Community Legal Services
38 The Royal Australian College of General Practitioners
39 Peninsula Community Legal Centre Inc
40 Illawarra Legal Centre Inc
41 Mr Simon Condon
42 Hepatitis C Council of NSW
43 Ms Sarah Lord
44 Youth Projects Inc.
45 Australian Nursing Federation
46 NSW Commission for Children and Young People
47 ANEX
48 Australian Chamber of Commerce & Industry
48A Australian Chamber of Commerce & Industry
49 Urban Seed
50 Australian Research Centre in Sex, Health and Society
51 Australian Drug Foundation
52 Tenants Union of Victoria
53 Name Withheld
54 Anti-Discrimination Commission of Queensland
55 Hepatitis C Council of Victoria
56 People with Disability Australian Inc
57 The Australian Parliamentary Group for Drug Law Reform
58 Students Representative Council - University of Sydney
59 Shoalcoast Community Legal Centre Inc.
60 Gambling Impact Society (NSW)

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- 61 Oolong House
62 Mr Lynden Baxter
63 Human Rights WA
64 VIVAIDS Victorian Drug User Organisation Inc
65 BATForce, Barwon Adolescent Task Force
66 Mr John S Carleton
67 Ms Virginia Jay
68 Ms Kate Fitzpatrick
69 UNSW Kingsford Legal Centre
70 Ms Tamara Clifford
71 Australian Lawyers for Human Rights
72 Professor Lee Ann Basser
73 Ms Maureen Steele
74 Support and Accommodation Rights Service
75 Arnold Bloch Leibler Lawyers and Advisors
76 St. Kilda Legal Service
77 Footscray Community Legal Centre Inc
78 Tenants' Union of NSW
79 Disability Discrimination Legal Advocacy Service (DDLAS)
80 Aboriginal and Torres Strait Islander Services (ATSIS)
81 Ms Bronwyn Barnard
82 Human Rights and Equal Opportunity Commission
82A Human Rights and Equal Opportunity Commission
83 Ms Christine McIver
84 Mr Ian Harvey
85 Mr Adam Bensen
86 Territory Users' Forum Inc
87 Network Against Prohibition (NAP)
88 Centacare Catholic Family Services (Mary of the Cross Centre)
89 Western Australian Network of Alcohol and other Drug Agencies
(WANADA), WA Substance Users Association (WASUA),
Community Legal Centres Association WA (CLCAWA)
90 NSW Users & AIDS Association (NUAA)
91 Disability Discrimination Network of the National Association of
Community Legal Centres
92 Moreland City Council

- 93 Royal Australian and New Zealand College of Psychiatrists
- 94 National Legal Aid
- 95 Mr Peter Keil
- 96 Associate Professor Robert Ali, Chair, National Expert Advisory Committee on Illicit Drugs
- 97 Dr Andrew R MacQueen
- 98 Fitzroy Legal Service
- 99 Combined Community Legal Centres Group (NSW)
- 100 National Children's and Youth Law Centre
- 101 Public Interest Law Advocacy Centre
- 102 Victorian Aboriginal Legal Services Co-operative Ltd
- 103 Australian Federation of AIDS Organisation Inc
- 104 Families and Friends for Drug Law Reform
- 105 Job Watch Employment Rights Legal Centre
- 106 The Victorian Bar
- 107 Youthlaw
- 108 Disability Discrimination Legal Service
- 109 NSW Young Lawyers Human Rights Committee
- 110 Name withheld
- 111 Name withheld (13 identical submissions)
- 112 Name withheld (62 identical submissions)
- 113 Law Society of WA
- 114 Australian Council of Social Service (ACOSS)
- 115 The Royal Australasian College of Physicians
- 116 Mental Health Legal Centre Inc
- 117 City of Greater Dandenong
- 118 Attorney-General's Department

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Sydney, Tuesday 16 March 2004

Disability Discrimination Network of the National Association of Community Legal Centres

Ms Helen Dalley, Principal Solicitor

People with Disability Australia Inc

Mr Phillip French, Executive Officer

Mr Matthew Keeley, Senior Legal Officer

Human Rights and Equal Opportunity Commission (HREOC)

Mr Graeme Innes, Deputy Discrimination Commissioner

Mr David Mason, Director, Disability Rights

Ms Karen Toohey, Head of Disability Complaints

Ms Rocky Clifford, Director of Complaints Handling

Australasian Chapter of Addiction Medicine, Royal Australian College of Physicians

Dr Alex Wodak

Clayton Utz Lawyers

Mr David Hillard, National Pro Bono Director

Ms Belinda Abey, Pro Bono Solicitor

Public Interest Advocacy Centre (PIAC)

Ms Anne Mainsbridge, Solicitor

Australian Federation of AIDS Organisations Inc

Mr John Godwin, Policy Analyst

Mr Michael Lodge, Board Member

Tenants' Union of NSW

Mr Chris Martin, Policy Officer

Family Drug Support

Mr Ted Bassingthwaighte, Chair

Mr Michael Dawson, Board Member

Mr Robert Lorsch, Board Member

Canberra, Wednesday 24 March 2004

Alcohol and other Drugs Council of Australia

Ms Cheryl Wilson, Chief Executive Officer

Ms Emma Saleeba, Policy Officer

Australian Injecting and Illicit Drug Users League

Ms Annie Madden, Executive Officer

Ms Nicky Bath, Policy Officer

Emeritus Professor Ian Webster AO**Australian Chamber of Commerce & Industry (ACCI)**

Mr Scott Barklamb, Manager, Workplace Relations

PILCH Homeless Person's Legal Clinic

Ms Paula O'Brien, Executive Director

Attorney-General's Department

Mr Matt Minogue, Assistant Secretary, Civil Justice Branch

Ms Mary Meaney, Principal Legal Officer