

10 February 2004

By Facsimile: (02) 6277 5794

Ms Louise Gell  
Committee Secretary  
The Secretariat  
Senate Legal and Constitutional Committee  
Room S1.61, Parliament House  
CANBERRA ACT 2600

Dear Ms Gell

**INQUIRY INTO THE DISABILITY DISCRIMINATION AMENDMENT BILL 2003  
("the Bill") – LSWA304**

I refer to your letter dated 15 December 2003, inviting the Society to make a written submission on the above Bill.

On 3 December 2003 the Senate referred the provisions of the Bill to your Committee for inquiry and report by 25 March 2004. The amendments remove the prohibition on disability and discrimination on the ground of a person's addiction to a prohibited drug. The provisions would not apply to people who are receiving treatment for their addiction.

*Marsden v Human Rights & Equal Opportunity Commission* (2001) EOC 93-126 leaves open the possibility for persons dependent on opiates to be included in the category of persons with a disability under the Disability Discrimination Act 1992 (Cth) (DDA). It therefore gives rise to the possibility that courts can construe any kind of drug dependency as a disability under the DDA. The second reading speech refers to community concerns about the implications of *Marsden*, as it suggests that it may be unlawful under the DDA to discriminate against a person on the ground that the person has an addiction to or a dependence on a prohibited drug. It states that the Commonwealth Government believes that the Bill is necessary in order to allow work and social environments and the general community to be kept safe from harms and risks posed by people with a drug addiction.

Although the Bill seeks to protect work and social environments from harms and risks posed by people with drug addiction, it seems unlikely that the Bill will succeed in addressing this problem. The Bill couches in very broad terms the exemption from the DDA of persons addicted to a prohibited drug and therefore allows discrimination against those persons whether or not they are causing harm or risk to people in their work or social environments. The Bill also seems to go further than necessary in allowing the exemption in all areas of the DDA, such as the provision of goods and services. This is discussed below.

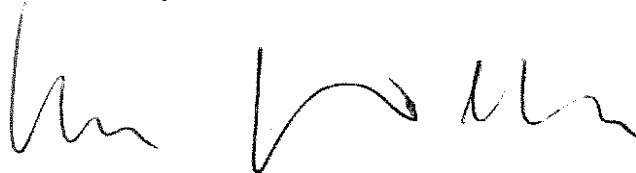
On the other hand, the Bill attempts to recognise that persons who are addicted to a prohibited drug, but who are addressing their problems, should not be discriminated against. The proposed section 54A(2)(b) states that the exemption does not apply if the person is undergoing a program, or receiving services, to treat the addiction to the drug. The Explanatory Memorandum states that this provision attempts to ensure that "people who are taking responsibility for their addiction [are not] discriminated against". However, the proposed s54A(2)(b) is couched in such broad terms that, firstly, it will be difficult to determine whether or not a person meets the requirements, and secondly, 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 the treatment is successful, and whether that person will pose a danger in a work or social situation.

The term "services" is defined in section 4 of the DDA, to include "services of a kind provided by members of any profession or trade". If the proposed section 54(a) is inserted into the DDA, then it would not be unlawful for a medical practitioner to discriminate against a person who is addicted to a prohibited drug. Therefore, in an isolated area, a person addicted to a prohibited drug may not be able to access services to treat the addiction to the drug.

Also, issues dealing with proving the various elements do not appear to have been considered. The complainant has the onus of proving the elements of discrimination. The respondent would have the onus of proving that the complainant falls within the exemption and, therefore, the discrimination is not unlawful under the DDA. The question then arises as to who would bear the onus of proving that the person addicted to a prohibited drug was having treatment for the drug.

Thank you for the opportunity to comment on this proposed legislation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ian Weldon', written in a cursive style.

Ian Weldon  
President