

9 February 2004

Senator Marise Payne
Chair, Senate Legal and Constitutional Committee
c/ The Secretariat
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600

Dear Senator,

Re: Proposed amendments to the Disability Discrimination Act

Thank you for the opportunity for Anex to make a submission to the Committee's inquiry.

Anex is a charitable organisation dedicated to the prevention of drug-related harms to individuals, families and the Australian community. Anex's membership consists of community health centres, hospitals, local governments and other organisations providing services to prevent drug-related harms.

Among the harms related to drug use is the inability to participate and contribute fully to the community. Anex is concerned that the proposed amendments to the *Disability Discrimination Act* 1992 (Cth) will exacerbate this through:

- Lack of clarity about what constitutes "addiction"; and
- Lack of consideration of the realities of the drug treatment system with its long waiting times.

As research indicates more than 2.7 million Australians reported having recently used drugs. It is Anex's contention that the majority of them are not "addicted" but are merely experimental and/or periodic drug users. It would be unjust for these people who are participating and contributing to society to be adversely impacted by a mere lack of clarity about the definition of "addiction" for the purposes of the Act.

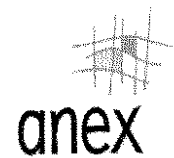
I would be keen to meet with you to discuss these issues, and may be contacted on (03) 9417 – 4838 or by email at j.ryan@anex.org.au. In addition, I would welcome the opportunity to present before the Committee on aspects of this submission in person.

In the meantime, please find enclosed our submission on these issues and thank you once again for the opportunity to contribute to the work of the Committee.

Yours sincerely,



John Ryan
Chief Executive Officer



Submission to the Senate Legal and Constitutional Committee
Inquiry into the provisions of the Disability Discrimination Amendment Bill 2003

9 February 2004

1. INTRODUCTION

1.1 Background

On 4 December 2003 the Senate referred the provisions of the Disability Discrimination Amendment Bill 2003 (Cth) (the Bill) to the Senate Legal and Constitutional Committee for inquiry and report by 25 March 2004.

The Bill seeks to amend the *Disability Discrimination Act 1992* (Cth) (DDA) by excluding drug addiction from provisions of the Act thereby making it lawful to discriminate a person on the ground of that person's addiction to a prohibited drug. An exception to this circumstance is created where that person is undergoing a program, or receiving services, to treat the addiction.

The Bill applies in all areas currently covered by the DDA. Specifically it includes employment, accommodation, education, club membership, sport, the administration of Commonwealth programs, and access to goods, services, facilities and premises.

As indicated by the Attorney General, the primary purpose of the Bill is to require that people take responsibility for their actions by seeking and maintaining treatment in relation to their drug addiction. A secondary purpose is to keep the work environment safe from other people's behaviour.

According to the Attorney General, the Bill was in part prompted by community and business concerns and aims to give certainty to all individuals and organisations covered by the DDA.

1.2 About Anex

Anex is a charitable organisation dedicated to the prevention of drug-related harms to individuals, families and the Australian community. Anex's membership consists of community health centres, hospitals, local governments and other organisations providing services to prevent drug-related harms.

2. ISSUES ARISING FROM THE PROPOSED *DISABILITY DISCRIMINATION AMENDMENT BILL*

2.1 Uncertainty as to the definition of "addiction"

Notwithstanding that the Bill aims to create certainty for individuals and organisations covered by the DDA, it is submitted that *prima facie* the Bill fails to do so as it does not provide a definition of "addiction".

Figures from the National Drug Strategy Household Survey 2001¹ indicate that more than 2.7 million Australians have used illicit drugs in the 12 months prior to the survey. Not all of these people are necessarily "addicted", and most are contributing members of society.

¹ Australian Institute of Health and Welfare (2002) *2001 National Drug Strategy Household Survey: Detailed Findings* (Canberra: Australian Institute of Health and Welfare)

Given that there is no clarity as to what constitutes "addiction" the proposed amendment to the DDA – *prima facie* – places a substantial group of Australians at the mercy of the particular uninformed opinions of employers, landlords, and service providers. The lack of clarity as to what constitutes "addiction" may cause more harm and good; in the worst case scenario, resulting in more unemployment and homelessness.

It is submitted that resolution of the definitional questions related to the term "addiction" is likely to generate significant debate and, in court, is likely to require extensive and costly expert evidence.

Based on its research, the Drug Policy Expert Committee² provides that there are different categories of drug use including:

- **Abstinence:** where a person does not use drugs at all;
- **Experimentation:** where a person may use drugs but does not continue to use it habitually or regularly;
- **Recreation:** where drugs may be used to relax, socialise, celebrate and have fun usually on weekends or more regularly; and
- **Dependence:** where a person has little or no control over his/her drug use, and this may have serious effects on their connections to social networks and overall health status.

The Drug Policy Expert Committee (2001) observes that there are degrees of dependence, and that it may be psychological, physical or both. This view is consonant with the psychiatric diagnostic tool DSM-IV that lists among the criteria to establish "dependence":

- Time spent in obtaining the substance replaces social, occupational or recreational activities.

The DSM-IV provides a definition for "substance abuse", ie problematic drug use, as encompassing:

- Failure to fulfil major obligations;
- Use when physically hazardous;
- Recurrent legal problems; and
- Recurrent social or interpersonal problems.

In the interest of achieving clarity on this issue, and within the context of the aims and objectives of the DDA, it is submitted that an objective test for addiction ought to be included.

Specifically, Anex recommends the following definition:

"Where a person has little or no control over his/her drug use, and that the compulsion to use drugs is so overwhelming that this

² Drug Policy Expert Committee (2001) *Drugs: Meeting the Challenge Stage Two Report* (Melbourne: Department of Human Services)

seriously impairs the ability of that person to function in a reasonable manner in the areas covered by the DDA.”

2.2 Introduction of additional barriers to people taking responsibility for their drug use

According to the Attorney General, the primary purpose of the Bill is to require that people take responsibility for their actions by seeking and maintaining treatment in relation to their drug addiction.

While Anex agrees that it is a commendable aim, it is submitted that the proposed amendment will create additional barriers such as to defeat this purpose.

Treatment is not always accessible, particularly financially or socially disadvantaged people. In many cases it is those people who are the most marginalised and the most in need of the protection of laws such as the DDA that cannot access services.

Even when a person decides to take responsibility of their drug use and hence, to seek treatment, it may be a considerable time before s/he is able to access the service. In Australia, the demand for drug treatment continues to outstrip supply and across the country there are long waiting lists.

Hence, while the Bill allows for an exception where a person is undergoing a program, or receiving services, to treat the addiction to the drug, the reality is that it is not always possible for people wishing to take responsibility of their drug use to be admitted to a program or receive services to treat the addiction.

It would be unfair that a person who has sought drug treatment and who has been turned away, or is on a waiting list, cannot avail him or herself of the protection of the law against discrimination.

It is through effective treatment and support that people who are wishing to address their dependence on drugs can develop the capacity to take control over and take responsibility for their actions, and to achieve their goal of restored health and functioning.

Anex submits that being gainfully employed, having appropriate accommodation, and social participation are some of the factors that assist people in taking control over their drug use.

Accordingly, Anex recommends that the provisions of the Bill be amended such that the exception is expanded to apply to cases where a person has taken reasonable steps to seek treatment for their addiction.

3. SUMMARY OF RECOMMENDATIONS

For the foregoing reasons, Anex recommends that:

1. The provisions of the Bill be amended to include the following definition of "addiction":

"Where a person has little or no control over his/her drug use, and that the compulsion to use drugs is so overwhelming that this seriously impairs the ability of that person to function in a reasonable manner in the areas covered by the DDA."

2. The provisions of the Bill be amended such that the exception is expanded to apply to cases where a person has taken reasonable steps to seek treatment for their addiction.