



Legislative Assembly

Anti-Discrimination Amendment (Drug Addiction) Bill Hansard

Extract

28/11/2001

Second Reading

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [10.49 a.m.]: I move:

That this bill be now read a second time.

In November last year the Premier informed the House that the Government would review New South Wales disability discrimination laws to prevent them from being used in an unintended manner. The Premier's comments were prompted by the Federal Court's decision in *Marsden v Human Rights and Equal Opportunity Commission and Coffs Harbour and District Ex-Servicemen and Women Memorial Club Limited*. The Federal Court's decision suggested that drug addiction could be treated as a disability under the Commonwealth Disability Discrimination Act. The relevant provisions in the New South Wales Anti-Discrimination Act are in the same terms as the Commonwealth legislation. As such, there is a risk that the same interpretation could be given to the law in New South Wales.

The Premier's comments indicated support for the concerns expressed to the Government by employers about this issue. The Government does not believe that drug addiction should be treated as a disability under the Anti-Discrimination Act. These amendments should not be taken to suggest that drug addiction does constitute a disability. The Government believes that a sensible interpretation of the present provisions would not lead a court to decide that drug addiction is a disability. However, the Government recognises that employers desire more certainty than this. The disability provisions in the Anti-Discrimination Act apply to a number of fields, including education, accommodation and club membership. This bill focuses on employment rather than on these other fields, because it is in the employment area that this issue is likely to cause most concern.

These amendments in the employment area should not be interpreted to suggest that the Government intends that drug addiction be treated as a disability in the other fields covered by the Anti-Discrimination Act. In broad terms, the bill provides an exception to the disability discrimination provisions relating to employment so that it will not be unlawful to discriminate against a person on the ground of disability in employment when the disability relates to dependence on a prohibited drug. The exception will apply to the provisions in the Anti-Discrimination Act that are concerned with direct employment relationships. That is, the exception will apply to the prohibitions in relation to employees, commission agents, contract workers, partnerships and employment agencies.

The exception will not apply to the prohibitions in relation to local councillors, industrial organisations or qualifying bodies. The exception in the bill will apply to discrimination on the ground of disability if the disability relates to a person's addiction to a prohibited drug. A "prohibited drug" is defined as a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985. Methadone and buprenorphine are excluded from the definition of "prohibited drug" in the bill. They are important forms of treatment for heroin addicts. The bill includes a power to exclude other drugs by regulation.

"Disability" is given an extended meaning under the Anti-Discrimination Act. It includes a past or future disability and a belief that a person has a disability, whether or not the person in fact has the disability. The bill does not adopt this extended meaning. The exception in the bill will apply only when the person is actually addicted to a prohibited drug at the time of the discrimination. This will ensure that employers cannot discriminate against persons who have overcome their addictions or against persons who are not in fact addicts. The bill will supplement the existing provisions in the Act which provide protection for the legitimate needs of employers. The Government is committed to working with the whole community to find solutions to the serious and complex issue of drugs in our society.

The New South Wales Drug Summit in May 1999 and the Drug Summit Plan of Action in July 1999 demonstrate the Government's commitment in this area. My colleague the Special Minister of State released the "Report of Progress on the Drug Summit Plan of Action" earlier this year. The Government encourages people with drug problems to seek treatment. The expanded treatment options the Government has introduced are outlined in the "Report of Progress on the Drug Summit Plan of Action". This bill is not about penalising people with drug problems; rather, it is directed to ensuring that our disability discrimination laws are not used in an unintended manner. I commend the bill to the House.