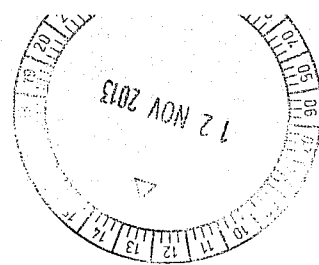


# AUSTRALIAN MEDICAL ASSOCIATION



WESTERN AUSTRALIA



File Ref: K:2013/November/nb.rc.ltr to Inquiry into Medicines, Poisons and Therapeutic Goods Bill\_121113

12 November 2013

Committee Clerk  
Standing Committee on Uniform Legislation and Statutes Review  
Legislative Council  
GPO Box A11  
PERTH WA 6837

Dear Sir/Madam

## **INQUIRY INTO MEDICINES, POISONS AND THERAPEUTIC GOODS BILL 2013**

The Association would like to thank the Standing Committee on Uniform Legislation and Statutes Review for the opportunity to make a submission to the Inquiry into the Medicines, Poisons and Therapeutic Goods Bill 2013.

The attached submission details the Association's proposed amendments to the Bill. The submission identifies several areas of concern:

- Part 7- Drugs of addiction s.94 (1) Definition of a drug-dependent person
- Part 7- Drugs of addiction s.97 Practitioner to inform CEO of drug dependent status of patient
  - s.97 (1) '*reasonable belief*'
  - s.97 (2) 48 hour timeframe

The Association looks forward to ongoing discussion and input on these matters.

For clarification on any issues raised in the submission, please contact Nicola Bazzoni on (08) 9273 3446 or via email at [nicola.bazzoni@amawa.com.au](mailto:nicola.bazzoni@amawa.com.au).

Yours sincerely

  
DR RICHARD CHOONG  
PRESIDENT



## Introduction

The Association would like to thank the Standing Committee on Uniform Legislation and Statutes Review for the opportunity to make a submission to the Inquiry into the Medicines, Poisons and Therapeutic Goods Bill 2013.

The Association has in the past raised various concerns with the Minister for Health, The Hon Dr Kim Hames, and is pleased that some of these concerns have been addressed through amendments made to the Bill in the Legislative Assembly. However, the Association also wishes to highlight a number of other issues raised by medical practitioners.

These issues relate to:

- Part 7- Drugs of addiction s.94 (1) Definition of a drug-dependent person
- Part 7- Drugs of addiction s.97 Practitioner to inform CEO of drug dependent status of patient
  - s.97 (1) 'reasonable belief'
  - s.97 (2) 48 hour timeframe

## Part 7- Drugs of Addiction s.94. (1) Definition of a Drug Dependent Person

The Bill defines a drug dependent person as:

94. (1) Terms used: drug dependent person: *a person who has acquired, as a result of repeated administration of drugs of addiction or Schedule 9 poisons, an overpowering desire for the continued administration of a drug of addiction or a Schedule 9 poison.*

The Association notes that during the consultation period the need for an accurate quantifiable definition of 'drug dependent person' was highlighted by several stakeholders. The Association is of the view that the use of the term '*overpowering desire*' could result in unintended consequences given that it is a subjective term. As practitioners are required under s.97 to notify the CEO of the drug dependent status of a patient, who could then be added to the Drugs of Addiction Record, it is crucial that the definition is robust.

The Western Australian Substance Users Association's (WASUA) submission on the *Medicines, Poisons and Therapeutic Goods Bill 2011* made reference to the definition found in The Diagnostic and Statistical Manual IV (DSM IV) as an appropriate means of defining 'drug dependency'.

The DSM IV defines substance dependency as follows:

*'The essential features of Substance Dependence are a cluster of cognitive, behavioural, and physiological symptoms indicating that the individual continues use of the substance despite significant substance-related problems. There is a pattern of repeated self-administration that usually results in tolerance, withdrawal, and compulsive drug-taking behaviour.'*

The definition of 'drug dependent person' in the *Health Act 1937 (QLD)* encompasses several elements of the DSM IV definition:

*'s.5 Interpretation: drug dependent person means a person—*

*(a) who, as a result of repeated administration to the person of controlled or restricted drugs or poisons—*

*(i) demonstrates impaired control; or*

*(ii) exhibits drug-seeking behaviour that suggests impaired control;*

*over the person's continued use of controlled or restricted drugs or poisons; and*

*(b) who, when the administration to the person of controlled or restricted drugs or poisons ceases, suffers or is likely to suffer mental or physical distress or disorder.'*

The definition in s.94 should be amended to include elements of the DSM IV definition similar to that in the *Health Act 1937 (QLD)*. This will ensure that subjective interpretation of the definition is not required on the part of practitioners when assessing whether a patient falls within the definition of 'drug dependent'.

#### **Part 7- Drugs of Addiction s.97 Practitioner to inform CEO of drug dependent status of patient**

The requirement of a registered health practitioner to notify the CEO of their belief a person is drug dependent is currently contained within the *Drugs of Addiction Notification Regulations 1980*. Whilst the Association understands the advantages of moving this requirement into the body of the new legislation, there are several areas of concern which, despite the extensive consultation period, have not been addressed in the Bill.

#### **s. 97 (1) 'reasonable belief'**

The Bill currently requires an authorised health professional who '*reasonably believes*' a patient to be drug dependent to notify the CEO within 48 hours.

It was confirmed during parliamentary debate on 26 September 2013 by the member for Armadale, Dr Buti, that:

*'Any time that "reasonable" is used in legislation that is before the courts, it is an objective measure. It is important that this is cleared up because the judges will go to Hansard for the intention of the legislation. If we have "reasonable" in the legislation, that is generally the objective bystander. In other words, when a doctor makes a decision, would the person judging that see that as "reasonable". It is not a subjective assessment. It is the objective standard.'*

The Association believes that proposing an objective standard is inherently dangerous in situations such as these. The current clause does not provide medical practitioners with the protection required to effectively assess and treat a patient without fear of repercussions. It

was acknowledged in Parliament that the term 'reasonable belief' has a 'fluffiness' around it. The Association does not believe that any term should be included in the legislation unless it has a clear and defined meaning. Without this, a practitioner will be relying on the good graces of the Department of Health to not prosecute this clause.

A more appropriate form of words, in the Association's view, would read as follows:

*'(1) An authorised health practitioner **who, during the clinical assessment of a patient, forms a belief** that a patient of the practitioner is a drug dependent person commits an offence if the practitioner does not make a report in accordance with subsection (2).*

*(2) A report must ----*

*(a) be made to the CEO within 48 hours of an authorised health practitioner forming a belief that a person is a drug dependent person' and  
(b) set out the grounds on which the belief is based.'*

The Association believes it is essential to make reference to the clinical manner in which this belief would be formed. This form of wording provides practitioners with greater protection and removes the objective standard currently contained in the clause.

s.97 (2) 'A report must be made to the CEO within 48 hours of an authorised health practitioner forming a belief that a person is a drug dependent person'

The Bill mandates a 48 hour timeframe from the time the practitioner forms the belief that a patient is drug dependent for the practitioner to make a report to the CEO. Given that an electronic system, where notification will be instantaneous, is a few years from operation, the Association believes there needs to be more flexibility in the current timeframe.

The Victorian legislation, *Drugs, Poisons and Controlled Substances Act 1981*, provides a greater degree of flexibility for practitioners:

**'s.33 Notification of drug-dependent person:**

*(2) A registered medical practitioner must give a notification of drug-dependent person...as soon as practicable.'*

The flexibility in the Victorian legislation would be entirely appropriate for the WA Bill. The Association is aware that the 48 hour timeframe currently exists in the *Drugs of Addiction Notification Regulations 1980* but believes that the improvements suggested here are necessary and warrant an amendment to the status quo.

### **Summary**

1. The current definition of a drug dependent person within the Bill is subjective and open to interpretation.
2. The term '*reasonably believes*' connotes an objective standard rather than a belief formed as the result of a clinical assessment by the practitioner.
3. The 48 hour timeframe provided in section 97 is inflexible and, in some cases, unworkable.

### **Recommendations**

1. The definition should be amended to include elements of the DSM IV definition and the definition contained in the *Health Act 1937 (QLD)*.
2. The objective standard prescribed in section 97 (1) should be removed and reference to clinical assessment should be included.
3. The 48 timeframe in section 97 (2) should be removed and replaced with a more flexible timeframe to ensure practitioners are able to meet their obligations under the clause.