



5 February 2004

The Secretariat
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600

Dear Sir/Madam

**Hepatitis C Council of NSW submission to the Legal and Constitutional Committee
Inquiry into the Disability Discrimination Amendment Bill 2003**

Thank you for the opportunity to respond to the Legal and Constitutional Committee Inquiry into the Disability Discrimination Amendment Bill 2003.

Hepatitis C is Australia's most commonly notifiable infection with approximately 242,000 people currently infected with hepatitis C in Australia and an additional 16,000 people estimated to be infected with the virus annually. The public health impact of this level of infection is substantial.

Australia's response to hepatitis C since 1999 has been guided by the Australian Government's *National Hepatitis C Strategy 1999/00 – 2003/04*. This strategy identifies four main priority areas:

- Reducing hepatitis C transmission in the community
- Treatment of hepatitis C infection
- Health maintenance care and support for people affected by hepatitis C, and
- Preventing discrimination and reducing stigma and isolation for those living with hepatitis C.

Hepatitis C and injecting drug use are closely linked. In order to enhance hepatitis C virus prevention efforts it is imperative that the principles of harm minimisation are maintained and that people who inject illicit drugs are considered part of the general community.

Our submission succinctly summarises our view that people who use illicit drugs and the communities affected by drug use should be free from discrimination. We believe that this Bill is contrary to international human rights law, likely to exacerbate drug use and weaken our community, and likely to have a negative educational effect.

Please contact me should you require any additional information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lynne Martin'.

Lynne Martin
Acting Executive Officer

The Disability Discrimination Amendment Bill 2003

A submission to the Senate Legal and
Constitutional Committee by the
Hepatitis C Council of NSW

4 February 2004

The Hepatitis C Council of NSW

The Hepatitis C Council of NSW is the independent, community-based non-government organisation funded by the NSW Health Department to provide information, support, referral, education, prevention and advocacy services for all people in NSW affected by hepatitis C.

We strive to be representative of, supportive and accessible to people affected by chronic viral hepatitis, especially hepatitis C. Working actively in partnership with other organisations and the affected communities, we work to bring about improvement in the quality of life, information, support and treatment for the affected communities and to prevent hepatitis C virus (HCV) transmission.

We integrate principles of quality within all aspects of our operations and are accredited by the Quality Improvement Council of Australia in recognition of our successful assessment against the Australian Health and Community Services Standards.

We produce detailed HCV information booklets, brochures and factsheets. *The Hep C Review*, our quarterly magazine, provides up to date information on clinical developments, political and legal issues, support services, membership information and other HCV-related news. *The Hep C Review* is also an important source of peer support, and is widely circulated in NSW correctional centres as well as within the broader communities affected.

Our website www.hepatitisc.org.au provides a range of general and detailed hepatitis C related information.

Our Medical Research & Advisory Panel, comprising of eminent clinicians, researchers and public health specialists, provides guidance and advice both in our resource development and in our education work.

Our resources are endorsed by the NSW Health Department and reviewed and updated regularly. They are distributed to people affected by HCV and to a wide range of health, welfare and education services.

Our *Hep C Helpline* is the free statewide, confidential and non-judgmental telephone information, support and referral service for people in NSW affected by hepatitis C, health workers and the general community. Our *Prisons Hep C Helpline* is an extension of the service for NSW prisoners, their families and corrections staff.

Our Education & Development team aims to support and build the capacity of health care and community organisations and workers who address hepatitis C care and prevention.

Our relevance in regards to the inquiry

We feel compelled to respond to the call for submissions given that injecting drug use is the primary transmission route for HCV as well as a range of other blood borne illnesses. Thus, the proposed changes to the *Disability Discrimination Act (DDA)* have a direct bearing on many people living with hepatitis C.

A summary of what does the Bill proposes.

The Federal Government's proposal is to modify the *DDA* to make it legal to discriminate against a person with dependence on illegal drugs, unless that person is on a program, or receiving services, to treat the dependence.

Prohibited drugs include cannabis, amphetamines, heroin, and cocaine.¹ The Bill applies to discrimination in all areas of life covered by the *DDA*, including employment, accommodation, education, club membership, sport, and access to goods, services, facilities and premises.

Our major concerns about the Bill

A number of legal, health and human rights organisations have expressed concern about the proposed amendments.ⁱⁱ We support their views and believe there are strong reasons why this Bill should not be enacted.

A. *Legal and Human Rights*

Our obligation to international human rights charters leads us, as a society, to take steps that help positively address the special needs of disadvantaged groups to make sure they have equal access to their rights and freedoms.ⁱⁱⁱ This does not mean providing special treatment – it means ensuring that their basic levels of human rights are protected.

This Bill allows discrimination to occur if a person is or is not seeking treatment and if they are “addicted” to an illegal or legal substance. The basic principles of non-discrimination will be undermined if human rights are made conditional.

This Bill is discriminatory to some drug users compared to others. While a person dependent on alcohol may behave in a way that makes them less able to perform the functions of their job than a person dependent on cannabis, this Bill will protect the alcoholic but not the user of cannabis.

B. *Medical and social issues*

This Bill is part of the Federal Government’s “Tough On Drugs” Policy, which aims to reduce drug use through “zero tolerance” policing. Such policies view drug use as personal, unacceptable behaviour, which can be prevented or cured through educating or punishing the individual.

Harm minimisation is supported by most health professionals, including medical and social researchers and medical practitioners. The harm minimisation approach acknowledges the fact that drug use is something that is unlikely to be eliminated from our society. It is based on the premise that legal and illegal drugs always being available no matter how tough the laws against drugs are. A main component of harm minimisation focuses on how best to assist people who use drugs to minimise harmful effects on themselves and on others. As an approach, harm minimisation advocates for treatment, medical and social services to be readily available and accessible.

Our organisation, like most of those working with hepatitis C prevention, fully supports harm minimisation. If this Bill becomes law, many drug users will be afraid to be seen using services such as needle and syringe programs and other health services for fear of being identified and then losing their jobs, housing or other services. The flow-on effect of this is that people who inject drugs may reuse needles, syringes and other injecting equipment and therefore may be less likely to approach health services to be tested for blood borne viruses. The flow on effect of this is that the risk of transmission of diseases like HIV/AIDS and hepatitis C will increase. This Bill, therefore, may increase the health risk to people who use drugs and in turn the community in general.

The impact of this Bill in our community will be far-reaching because it covers all illegal drugs, including cannabis. Without clear definitions of “addiction”, as opposed to use of a drug, this Bill could potentially affect anyone who ever uses an illegal drug. As nearly half of all Australians aged 14 years and over have used illegal substances at least once in their lives and around one in five males and one in seven females used at least one illegal drug in the 12 months before the 2001 National Drug Strategy Household Survey^{iv}, this Bill has grave implications for a substantial number of Australians.

C. *Effect on families of drug users*

This Bill states that it will “not affect persons who are the associates of a person with a “drug addiction” and that associates of a drug user retain any rights they would have to protection

from unfair discrimination under the *DDA*.”^v This means that someone could not be sacked from their job merely because their employer found out that their partner is a “drug addict”.

However, the partners, spouses and children of people with a drug dependence will still bear the consequences of indirect discrimination if their drug using, wage earning, family member unfairly loses their job or is evicted from the family home.

One of the key purposes of the Disability Discrimination Act is to help ensure that people with disabilities have the same fundamental rights as the rest of the community. However, this proposed Bill will help promote stereotypes, stigmas and prejudices attached to drug dependence. It will become quite legal to deny people who use drugs employment, housing, and other services simply because they use a particular drug rather than because of their work performance or personal behaviour. Stereotypes associated with drug use will dictate whether a person will find work or have a roof over their heads, rather than the actual behaviour of an individual.

D Legal issues

This Bill is extremely vague in its definitions and raises grave concerns in relation to the lack of clear guidelines necessary for interpretation and judgment of the DDA in any setting. It does not clearly define “addiction”, “drug addict”, “program”, “service” or “treatment”. If enacted, this Bill is likely to generate a great deal of litigation. Questions that arise when trying to interpret this Bill are:

- Can a person be “addicted” when not currently using?
- Would a person on a waiting list for a program be considered to be “on a program”?
- Would a person who has decided to stop using and go “cold turkey” be seen as “undergoing a program”?
- Does there need to be actual evidence of dependant illegal drug use or is suspicion and rumour enough?
- Who decides if someone is “addicted”?
- What is the difference between “addiction”, “dependence” and “use of an illegal drug”?

Will the Bill meet its’ objectives?

The Government has offered a number of reasons behind its proposed Bill:

The changes will encourage people to take responsibility for their own actions by forcing them to undergo treatment to gain the benefits of Australia’s anti-discrimination laws^{vi}

The Bill is necessary to keep the work and social environment safe from other people’s behaviour^{vii}

The Bill is a response to community concerns, particularly those of employers and business operators, to give certainty about where drug users stand in regard to the Disability Discrimination Act.^{viii}

With regard to the first point above, the experience of health and welfare organisations are that drug treatment is not available, accessible or appropriate for all people, particularly financially and socially disadvantaged people, or people who have an underlying mental illness. Many drug rehabilitation and treatment centres have long waiting lists that prevent people from seeking treatment when they need it.^{ix} In addition, many treatment centers do not take clients until they have been drug free for a period of time. Where does this leave people who require a program to help them stop *today*?

Evidence shows that treatment for drug dependence is less likely to be effective if it is involuntary, coerced or compelled.^x The best treatment outcomes are obtained in circumstances where drug users acknowledge a need to seek treatment and are directed towards the right sort of treatment.

If we accept the Government's rationale that people must take responsibility for self-inflicted harm, where does this stop? Should people with disabilities or conditions caused by the use of legally controlled drugs such as tobacco and alcohol, or as a result of dangerous behaviour such as high speed driving also be excluded from the anti-discrimination and human rights laws in Australia?

The second point makes reference to safety in the workplace and public places. The Disability Discrimination Act already gives significant protection to people in the workplace and social environment from risks posed by another person's disability.

By allowing sacking and evictions, etc. on the basis of an individual's dependence, rather than on the basis of actual risk or hardship, this Bill may lead to individuals concealing their dependence on drugs. This would make it harder to identify and assess real risks in work and public spheres.

The third point above focuses on alleged community/employer concerns arising from uncertainty about where people with drug dependence sit in relation to the Disability Discrimination Act (following the Federal Court "Marsden" case). This Bill does not define key terms such as "addiction", "drug addict", "program", "service" or "treatment" which means that employers, landlords, etc. will in fact be very unclear about whether they are permitted to discriminate or not.

Under the proposed changes, employers, landlords and service providers are encouraged to use suspicion as the primary guide to decision making. This is likely to generate considerable uncertainty and has significant privacy implications. Does this mean that every workplace will bring in compulsory drug testing? Or that Departments of Housing will ask prospective tenants to provide a negative drug test before being accepted for housing?

Summary

We have covered what we believe to be the main issues relating to the Disability Discrimination Amendment Bill. In summing up and closing our submission, we would like to propose a litmus test for this Bill:

Consider other current behaviours that are deemed socially unacceptable, (e.g. gambling addiction or drink driving) and apply similar sanctions to these groups of people. Would Australians as a whole be happy for those in our society who are addicted to gambling or those who have lost their licence through drink driving, to be open to summary sackings in the workplace and eviction from their homes – even though they were performing well at work and meeting their rental payments?

We propose that no Australian (indeed, individual irrespective of nationality) should be subject to such erosion of human rights and privacy.

Please do not hesitate to contact the Hepatitis C Council of NSW for clarification or elaboration on any part of our above submission.

Yours sincerely



Lynne Martin
(Acting) Executive Officer
Hepatitis C Council of NSW

[This submission is drawn from a discussion paper 'An Information Sheet on the Disability Discrimination Amendment Bill 2003', prepared by a coalition of community organisations: www.disabilitydiscrimination.info]

References

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- ^x Wild TC, Roberts AB, Cooper EL, "Compulsory substance abuse treatment: an overview of recent findings and issues", *European Addiction Research*, 2002 8 (2) 84-93; Freeman K, *New South Wales Drug Court Evaluation: Health, Well-Being and Participant Satisfaction* (2002) 3, [www.lawlink.nsw.gov.au/bocsar1.nsi/files/L14.pdf/\\$file/L14.pdf](http://www.lawlink.nsw.gov.au/bocsar1.nsi/files/L14.pdf/$file/L14.pdf); WANADA, *Submissions to the Community Drug Summit: Treatment for Drug Users and Reintegration of Drug Dependent People into the Community* (2001) 1, www.wanada.org.au/publicat/downloads/wanpub/5%20treatment.pdf.