

**A SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL COMMITTEE**

**Inquiry into the provisions of the Disability Discrimination Amendment Bill 2003**

from the Students' Representative Council of the University of Sydney (SRC)

*Prepared by the Welfare Research Department ~ Presented by Felix Eldridge, President*

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The SRC makes this submission to the Senate Committee as many SRC members will be either directly or indirectly adversely affected by the proposed changes to discrimination laws for users of illicit drugs. Some students are users themselves and others have parents, siblings and/or friends who are users who would be adversely affected should these changes be introduced. The SRC is also concerned about the impact of the changes on the wellbeing of the community in general. We accordingly respectfully request that the proposed changes to the Disability Discrimination Act (DDA) be rejected.

Anti-discrimination laws are present to protect everyone's right to being treated fairly. This is in keeping with article seven of the Universal Declaration of Human Rights where "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."<sup>i</sup> It does not make an exception for people that may appear morally repugnant to some conservative members of the community or do not fulfil certain 'conditions'. These human rights are granted by virtue of being human rather than having to be earned by attending a particular treatment, or adhering to any other 'desirable' activity or lifestyle, as suggested in the proposed amendments to the DDA.

The proposed changes to the DDA lack clarity. There are no definitions for terms including "addiction", "drug addict", "program", "service" or "treatment". These key terms, where left ambiguous, could bring a great deal of confusion and misinterpretation to the Act. For example, if a person is not using the substance at that time, is that person still considered an addict? Colloquially, when someone is addicted to alcohol they are considered an addict of alcohol even in a period of their life when they are not using alcohol. The alcohol addiction is considered to be a life-long condition. However, it is considered possible to purge a nicotine addiction. After a period of time where the person has not consumed nicotine that person is no longer considered an addict. With illicit drugs there is no set understanding of which standard would be used. If a drug user has not been using drugs for a number of years will it still be possible for that person's employer to legally discriminate against them on the basis of their previous drug addiction?

Similarly the ambiguity of the language in the proposed amendments affects the conditions under which an addict or user would be able to "earn" the right to being protected by the Act; a process that the SRC objects to as a principle. This is a problem, for example, where it requires the person to be undergoing some form of treatment or be enrolled in a program. There are a host of difficulties related

to 'earning' protection. Publicly available programs have extremely long waiting lists. Privately available programs are very expensive. At what point is the person considered to be "in" the program – while on the waiting list or only after they have begun the program? What constitutes treatment for addiction? Is it only government registered treatment programs that will be accepted or will it be extended to include non-western medicinal treatments like acupuncture, meditation or 'cold turkey'. The Attorney General stated in his press release of 3<sup>rd</sup> December, 2003, that "This will be interpreted widely to ensure any genuine attempt to address an addiction will be sufficient to maintain protection from discriminatory acts."<sup>ii</sup> However, there are no definitions of what is considered "genuine" anywhere in the Act. It is not that the SRC is asking for definitions to be added, but rather that the SRC believes that the amendments make the Act unworkable and potentially open to unfair use of discrimination.

The Anti-Discrimination Act works on presumptions of characteristics rather than actual characteristics. For example, if a woman is treated unfairly because she is perceived to be pregnant, the Act does not distinguish whether she is actually pregnant or not. With the Act forcing addicts to "earn" the right of anti-discrimination protection, will discriminators be exempt from the Act simply because they can show that they suspected that a person was a drug addict? If this is the case what will be considered as sufficient reason for suspicion? This area would overlap with racial discrimination where certain racial stereotypes could be introduced as grounds for suspicion. People from low socio-economic groups may similarly be presumed to be drug users. There is a real chance that the proposed changes to the Act would inadvertently create a 'back door' to other forms of discrimination. Where people are willing to accept these negative stereotypes, would the government make it possible for people who are not addicts, but who belong to these groups, to join programs or receive treatment, to benefit from the protection of the Anti-Discrimination Act? If this section of the Act does indeed work on characteristic rather than the perception of characteristic the onus of proof appears to have moved from the accuser to the accused.

The proposed changes to the Act talks of users of drugs as being addicts. However, these two terms are not interchangeable. Consider, in the context of alcohol, the difference between a user, for example someone who enjoys a glass of wine with their dinner, and an addict, for example an alcoholic who is unable to begin their day without having a drink and maintaining a feeling of intoxication throughout the day. The Act is unclear about whether it would allow an occasional drug user to be discriminated against. What program would the government propose to be appropriate for someone who takes a tablet of ecstasy before a dance party as a once a year event?

Reinforcing the concept that a drug user is an unsatisfactory member of society will not assist attempts to encourage users to stop using. Drug users will develop a strong stigma that will force them to keep their activities as secret as possible. They would become less likely to use safe drug practices (like using clean needles each time) and more likely to cause themselves harm. They would be less likely to attempt rehabilitation programs and treatments as failure of these treatments would have identified them as users without being able to claim the safety net of the Anti-Discrimination Act. There is a real concern that novice users would not be deterred from further use but rather driven underground to become long-term addicts.

Drug users already suffer from a society that is less than supportive. People hide behind drugs for a number of reasons and addressing those causes would be more effective than punishing the people that are already suffering. Where a person is forced into a treatment, either directly or indirectly, it is unlikely that the program will be successful. These treatments will merely become a routine that is an expense to the community with little to no positive effect.

It is a naive assumption that the changes to the Act would only affect the drug users. Discrimination to a person has emotional and physical consequences on all those people around them. For example, where a person is evicted from their home because they are perceived to be a drug user, the other people who were living there are also affected. In the case of students this may be a parent or other relative who is providing accommodation. Similarly it may be a share house with other students, where only one student is on the lease, as the other students did not yet have the financial and rental history necessary to be considered by a real estate agent as an appropriate tenant. The act of discrimination, while not perpetrated on them, has direct impact on their ability to secure a home. Without (negative) incentives to behave reasonably it is likely that unscrupulous business operators would take advantage of the gap in the DDA left by the proposed changes. Thus raising the likelihood of its occurrence.

Similarly, where a person is financially responsible for another, discrimination can also affect someone other than a drug user. For example, where a student is financially dependent on a parent, the student's ability to continue studying is contingent on that parent's ability to maintain employment. Where an employer is able to sack that parent without reason other than drug use, the student's physical wellbeing is at serious risk. These examples pay no mind to the emotional trauma that would accompany such situations of uncertainty.

Attorney General Phillip Ruddock sees the proposed changes to the legislation as being “about striking an appropriate balance between the rights of individuals to conduct their lives as they see fit, and the rights of others to live, work and associate in a safe, secure environment.”<sup>iii</sup> However, the National Occupational Health and Safety Commission is still “Australia’s national body that leads and coordinates national efforts to prevent workplace death, injury and disease in Australia”<sup>iv</sup>. The NSW police force still carries the goals of “preventing, detecting and investigating crime; monitoring and promoting road safety; maintaining social order; and performing and coordinating emergency and rescue operations.”<sup>v</sup> Violent and unsafe behaviour is not accepted under the Act as it currently exists.

The government not only has the resources, but also the responsibility to provide that safe and secure environment that they speak of, to all people, not just those they select. Perhaps a more appropriate solution would be to increase funding in the areas of work safety and community health programs.

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<sup>i</sup> The General Assembly of the United Nations (1948) Universal Declaration of Human Rights [internet] The United Nations. Available from: <<http://www.un.org/Overview/rights.html>> [Accessed 7<sup>th</sup> February, 2004]

<sup>ii</sup> Ruddock, P. (2003) Press Release 3/12/03 [internet] Attorney General Office. Available from: <<http://www.ag.gov.au/www/MinisterRuddockHome.nsf/Web%2BPages/5F8AF7F75C229CE1CA256DF100040D5D?OpenDocument>> [Accessed 8<sup>th</sup> February, 2004]

<sup>iii</sup> ibid

<sup>iv</sup> The National Occupational Health and Safety Commission (2002) About the NOHSC [internet] Available from: <<http://www.nohsc.gov.au/AboutNohsc/>> [Accessed 8<sup>th</sup> February, 2004]

<sup>v</sup> NSW Police Department (2002) Available from: <<http://www.police.nsw.gov.au/about/About.cfm>> [Accessed 8<sup>th</sup> February, 2004]