

Footscray Community Legal Centre Inc.

ABN 57 056 348 794 Reg No. A0020395F

9th February 2004

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



Dear Sir/Madam,

Re : Submission to the Inquiry into the provisions of the Disability
Discrimination Bill

The Footscray Community Legal Centre provides legal and financial counselling assistance and community legal education within the City of Maribymong in Melbourne. The Centre also engages in law reform and contributes to policy debate on issues relevant to the community in which we are based.

Illicit drug use is a factor in many legal and financial issues which people present with to the Centre. Some seek assistance with specific drug related charges but in the majority of cases the drug use has impacted more indirectly upon them. Often that results in increased pressure and stress which compounds drug use.

The Legal Centre also provides an outreach service to a local drug treatment program. Each individual's circumstances of drug use are quite distinct and the appropriateness/relevance of treatment or type of treatment therefore varies significantly.

We are aware of the limited treatment options and places for people wanting to address their drug use as a result of government resources being directed in the main to law enforcement.

We are also aware of stereotypes of drug users which exist in the community leading to discrimination and consequent reluctance of drug users to identify themselves for treatment and other purposes.

Access to housing, employment and other services free from discrimination is crucial in maintaining individual and community safety. Well being and in some circumstances treatment prospects, are enhanced by these basic supports.

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The Footscray Community Legal Centre strongly opposes the Bill to amend the Disability Discrimination Act (Commonwealth) ("DDA") so as to allow discrimination on the basis of drug addiction.

The Bill is inconsistent with our International Human Rights Obligations and with the objects of the Disability Discrimination Act. The Bill creates discrimination itself by creating a distinction between people addicted to drugs who are and are not receiving treatment which is arbitrary and unworkable.

We are very concerned that the impact of the Bill will be to undo the progress which has been made in relation to harm minimization and community safety as a result of people's reluctance to identify as drug users.

We believe that great harm will also be done by the justifiable anger and frustration that drug users and agencies working on these issues will undoubtedly feel. The Bill is a major step backwards in drug law and policy and will create unnecessary rift and division at a time when the opposite is required.

The Bill is not required for the purposes set out by the government due to the existence of other relevant legislation and policy, and will exacerbate uncertainty in relation to the law.

We make the following points in support of our position and acknowledge that we are adopting many of the arguments made by the Homeless Persons Legal Clinic, Melbourne and the Disability Discrimination Legal Service Melbourne:

1. The proposed amendment is contrary to Australia's obligations under International Human Rights Law including under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, in relation to :
 - the right to freedom from discrimination on the ground of disability or any other status
 - the right to equality before the law; and
 - the right to equal protection of the law without discrimination.
2. The Bill is inconsistent with the United Nations Declaration and Guiding Principles of Drug Demand Reduction which requires that legislation and programs to reduce the demand for drugs:
 - respect human rights and fundamental freedoms and the principles of the Universal Declaration of Human Rights, including the right to freedom from discrimination
 - promote individual health and well being
 - promote social integration; and
 - develop and sustain supportive environments.

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3. The Bill is contrary to the purposes of the DDA. It creates rather than eliminates discrimination.
4. The Bill will not achieve the object of "encouraging people to take responsibility for their own actions by undergoing treatment" because:
 - drug addiction may impair a persons capacity to take responsibility or undergo treatment
 - Treatment is not appropriate, affordable or accessible for many people. Treatment services are not sufficient to meet demand in any event. A very small percentage of funds in the pool of money allocated to illicit drug issues is allocated to treatment.
 - Treatment which is compelled or coerced is less likely to be successful
 - The increased risk of discrimination which this legislation would allow may result in less people seeking treatment for fear of stigmatization. A person may fear their name being recorded with a treatment agency based on their being identified as an illicit drug user and suffering consequent discrimination in areas such as housing or employment.
 - The definition of what constitutes "treatment" will be vexed and will create complex litigation at cost.
5. The Bill is not necessary or appropriate to achieve the object of "keeping the work and social environment safe from other people's behavior because:
 - Under existing legislation it is already lawful to discriminate against a person on the ground of drug addiction if that discrimination is necessary to ensure that the requirements of a job are fulfilled, unjustifiable hardship is avoided, or in the interests of workplace and community safety. Occupational health and safety laws and standards are the appropriate tool to ensure occupational health and safety laws and standards.
 - The Bill may in fact promote unsafe injecting behavior as users become reluctant to identify themselves as drug users by presenting to needle exchanges or other harm minimisation programs.
6. The Bill will not "give certainty to individuals and organizations covered by the DDA". Key terms in the Bill such as "addiction", "program", "services" or "treatment" are inherently complex and inappropriate to be included in the legislation. There is no doubt that litigation will ensue at great cost and that long term uncertainty in relation to the Act will occur.
7. Despites assurances by the government to the contrary, the Bill will impact negatively on associates of people with drug addictions. Partners and children will be directly effected by discrimination which results in loss of job or home.

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8. It is not appropriate to distinguish between congenital and acquired disability as the Bill does.
9. Drug addiction, poverty, mental illness, disadvantage and social exclusion are often interrelated. The Bill will perpetuate these connections and conditions by allowing discrimination in areas of life where most support and assistance is required eg housing, access to services and work.
10. Because of the strong law enforcement and criminal emphasis placed upon illicit drug issues our prisons are overflowing with men, women and children with drug addiction or past drug addiction. The difficulties these people face in reintegrating into the community and discrimination they encounter is well documented. The Bill will compound those difficulties by potentially further increasing risk to life post release through reluctance to identify, and by increasing the likelihood of reoffending due to reluctance or inability to access basic supports.

We would be happy to discuss our submission further if required.

Yours faithfully,
FOOTSCRAY COMMUNITY LEGAL CENTRE INC.

Per:



Shelley Burchfield
SOLICITOR