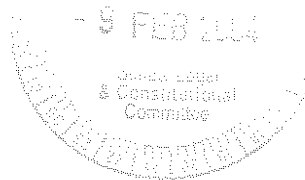




ILLAWARRA LEGAL CENTRE INC

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



To Whom It May Concern,

The Illawarra Legal Centre is a community legal centre providing free legal advice, community legal education, a tenancy service, a welfare rights service and financial counselling. One specific area of the law that our clients come into regular contact with is the area of discrimination.

We are gravely concerned at the proposal to amend the *Disability Discrimination Act*¹ to exclude drug addiction as a disability. The Illawarra Legal Centre is concerned about the impact which the proposed changes to the *DDA* could have on our clients and generally. It is envisioned that the impact of the proposed change will not only affect people who have an addiction to an illicit substance, but also to members of their family.

The Illawarra Legal Centre welcomes the opportunity to make submissions to the Senate Legal and Constitutional Committee, outlining the legal and broadreaching social issues which the proposed changes to the legislation will bring.

The proposed changes to the *DDA* will permit direct and indirect discrimination to members of the community who are in need of the current protections which the Act affords. We are concerned about the impact of the proposed amendment in terms of drug treatment, the impact on Centrelink benefits, the impact on employment, access to education and membership of clubs, provision of housing, and in general Australia's shift to a zero tolerance drug policy approach.

We believe it is likely that the impact of the proposed amendment on employment and housing will result in drug users being ostracised.

Restrictions on access to accommodation, education and employment will breach fundamental human rights relating to education, employment and housing.

The proposed amendment will make it legal to discriminate against an employee, a student, a tenant with an addiction to an illicit substance. If the protections of the *DDA* are removed then the possibility for a person to be victimised and discriminated against will increase significantly. The aim of both the legislature and the federal government should be to uphold the basic human right to be free from discrimination and for a person to develop to

¹ 1992 (Cth)

their full potential. Amending legislation to reinforce outdated and dwindling social values needs to be closely scrutinised.

International Conventions

The proposed changes will directly conflict with Australia's International Human Rights obligations as signatory to *International Covenant on Civil and Political Rights*, (*ICCPR*), *International Covenant on Economic, Social and Cultural Rights* (*ICESCR*) and the *United Nations Declaration of Human Rights*. There will undoubtedly be a negative impact on the highly regarded position of Chairperson which Australia currently holds on the United Nations Commission on Human Rights.

In particular, conflict will arise with Australia's obligation under article 17 of the *International Covenant on Civil and Political Rights*, which relates to unlawful interference with a person's privacy, family and home as well as unlawful attacks on the person's honour and reputation.

The *DDA* provides legislative assistance to those in the community who do not have the same opportunities due to a 'disability'. It aims to assist an individual by placing him or her on a level playing field. It does not provide any other rights to that individual. If the protection is removed by the amendment, Australia will not be fulfilling its international obligation pursuant to Article 26 of the *ICCPR*, which provides that all people are "equal before the law and are entitled without any discrimination to the equal protection of the law..." People with a drug addiction will not be equal before the law. They will be directly and indirectly discriminated against.

Article 13 of *ICESCR* relates to Australia's obligation to protect a person's right to education. If the proposed amendment is successful it may hinder a person's human right to education and also make it lawful to discriminate in the provision of education.

Recommendation 1:

The Australian Government should not defer from its international human rights obligations by continuing its support for the proposed amendment to the *Disability Discrimination Act 1992* (Cth)

Shift to 'Zero Tolerance'

The proposed amendment is a shift away from the effective policy model of 'harm reduction' to the more strict ideologically based position of 'zero-tolerance'. The 'harm reduction' model has provided positive programs for people who have an addiction to an illicit substance. It has been effectively employed in three main areas - the prevention of HIV/AIDS infection, the treatment of ongoing addictive behaviours and the prevention of harmful or excessive addictive behaviours². An example of the success of the harm reduction model in Australia is through the decrease in HIV/AIDS amongst injecting drug users through education and needle exchange programs.

A shift away from the harm reduction model is a disturbing shift in the Australian drug policy. The Illawarra Legal Centre argues very strongly against any shift away from recognition of drug addiction as a complex health and social issue. We believe that a change in policy will have serious consequences in the treatment of people with an addiction. Refusal to accept addiction as a complex social and health issue will lead to other negative impacts on society, which are discussed below.

The 'zero tolerance' approach has proven to be an ineffective way to stop people using drugs. It has a negative effect on how an individual uses drugs by creating an environment where systemic discrimination and prejudice are

² Marlatt, G., Tapert, S., " *Harm Reduction: Reducing the Risks of Addictive Behaviours*" in Baer, J, Marlatt, G, McMahon, R, " *Addictive Behaviours Across the Life Span-Prevention, Treatment and Policy Issues* ' 1993 (1st Ed) at 258.

a barrier to receiving assistance to overcome addiction³. The proposed amendment will create another barrier to accessing much needed treatment.

Recommendation 2:

That the proposed amendment to the *Disability Discrimination Act* 1992 (Cth) should not be adopted as it is a shift away from recognition of drug addiction as a complex health and social issue. The government should focus on assisting people with a drug addiction rather than advocating for a 'zero tolerance' approach.

Unintended Consequences

The Legal and Constitutional Committee must consider the social ramifications of the unintended consequences of changing the *DDA*.

A shift to the 'zero tolerance' model through the proposed amendment will see an increase in unsafe needle practices. People will perceive that attending needle exchange programs will place them at a higher risk at being identified as an addict and leave them exposed to discrimination on that basis. The proposed amendment will rid an individual of their human rights to protection from discrimination. It will also potentially see an increase in the number of people using contaminated needles, thus increasing the risk of HIV and Hepatitis B and C infections.

Recommendation 3

Advise against the proposed amendment, and call on the government to recognise the impact it may have on:

- Unsafe needle practices;
- Increase in HIV/AIDS, Hepatitis C, Hepatitis B infections;
- Increase in violent crime;
- Increase in homelessness;
- Increase in unemployment;
- Decrease in people seeking assistance for their illicit drug addiction;

There are three factors that are the basis for a drug being declared illegal. These are the perceived danger to the 'user', danger to others and danger to society⁴. The proposed amendment will see an increase in these perceptions as drugs and drug users are further demonised and ostracised.

At present the government expenditure on the zero tolerance approach is considerably unbalanced. According to recent statistics⁵, the government spends 84% of allocated funds on drug policing and enforcement (supply reduction), 6% on drug treatment (demand reduction) and 10% on drug prevention and research (harm reduction)⁶. These statistics reflect the social problem that exists within Australian society.

We submit that there is too much focus on policing users. Rather, the focus should be on assisting individuals with an addiction to illicit substances. We see the proposed changes to the *DDA* as both reflecting the government's resistance to a harm minimisation approach and focusing on policing and enforcement. We submit that the step towards the internationally outdated zero tolerance approach will serve more harm than good to members of Australian society. The detrimental effect that the proposed amendment will have on members of the Australian public cannot be dismissed or overlooked.

The harm to members of society presented by drug use will not diminish by changing the law in the proposed manner. The government's expenditure on the 'zero tolerance' drug policy needs to be critically analysed. The lack of government funds directed in this area serves one of the biggest barriers to treatment.

³ Wodak, A., "Chapter 11: Developing More Effective Responses" in Stokes, G., Chalk, P., Gillen, K., "Drugs and Democracy: In Search of New Directions" 2000 (1st Ed) at 185.

⁴ Gahlinger, P.M., "Illegal Drugs: A complete Guide to Their History, Chemistry, Use and Abuse" 2001 (1st Ed) at 13-14.

⁵ Wodak, above n5, at 184.

⁶ Wodak, above n5, at 184.

In order to have a degree of effectiveness with the approach to illicit drug use, from a financial position the evidence suggests that it is more economically viable to spend more money on harm reduction (treatment and research) than zero tolerance. For example The Rand Drug Policy Research Centre of Santa Monica published a survey on cocaine use in 1994. They discovered overwhelming evidence that every dollar (US) spent on cocaine treatment saved \$7.48 (US). However every dollar spent on customs and police work saved only \$0.52.

Recommendation 4

- Call upon the government to decrease the focus on policing users and to focus more on assisting users in their recovery process.
- The government needs to increase funding allocated to 'demand reduction' (drug treatment) and 'harm reduction' (drug prevention and research) approaches.
- The government needs to acknowledge that a mere change in legislation is going to increase the issues that arise with illicit drugs.
- Call upon the Senate Constitutional and Legal Committee to view the statistics in the area that highlight that it is a more economically viable option to direct funds in the direction of demand reduction and harm reduction.

A discussion about zero tolerance is not complete without a realistic statement about drugs in society. A society is always going to have members who use drugs. It is completely unreasonable to think that certain policy and legislative changes will assist in creating a drug free society. It will increase prejudice, poverty, and homelessness, crowding of gaols, pressure on the criminal justice system and a less safe society. People will be left to battle the demons of their addiction in the privacy of their street alley, rather than being assisted to overcome their addiction in a safe environment.

By eliminating drug addiction as a form of discrimination, many users may find themselves unemployed and so unable to support their habit without resorting to crime⁷. There may be an increase in street dealing, as users supplement their income in this way. This will result in an increase in the black market economy⁸. The potential financial gains from the selling of the illicit substances on the street may open the way for further corruption of officials and members of the police force⁹. These outcomes have a greater risk to the community than an employed individual who has a drug addiction.

It is intended that the amendment will "not affect the operation of this part in relation to a disability that is a medical condition (such as HIV infection or Hepatitis C) that may be related to drug addiction"¹⁰. The note does not specifically mention whether the protection is to an individual who has an addiction to an illicit substance. This could create the climate where it will be legal to discriminate against an individual based on their HIV status, due to the fact that the discriminator believes the person has an addiction to an illicit substance.

An increase in litigation is likely to occur in order to define the terms of the legislation. This will place pressure on the Court system by increasing waiting times for an individual to have a matter heard.

There may be a reduction in 'carer' payments, which would increase the financial and social impact on the public health system. There may be an impact on accessing sickness benefits and the Disability Support Pension. We submit that accessing these pensions is incredibly important to users as a form of financial assistance whilst seeking treatment for their addiction.

Recommendation 5

To consider the impact on Centrelink benefits, access to education, accessing employment and accessing housing.

⁷ Burrows, above n10, at 2.

⁸ Burrows, D., "Drug Law Reform Project- Harm Reduction Model" Redfern Legal Centre, May 1995 at 2.

⁹ Ibid at 3.

¹⁰ Proposed change to the *Disability Discrimination Act* 1992 (Cth) s 54A (1) Note

In relation to the addictive element of the proposed amendment, concern needs to be raised for casual users. It appears that the proposed amendment is worded in a way that a casual user will be affected. Thus the person does not have an addiction per se, unless the strict approach of the USA¹¹ is followed. The drug policy in the USA is based on the assumption that there can be no such thing as casual or occasional use of drugs. They perceive that any use equals abuse¹². We urge the Australian government not to adopt this outdated policy approach to drug treatment. If this approach is adopted, then a casual user will be affected in the same way as a person with an addiction to the illicit substance.

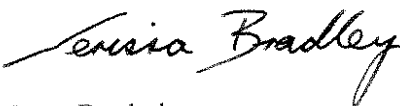
No need to change

The legislation as it stands, protects a person who has an addiction to an illicit substance from discrimination. To change the legislation will only serve to fuel the already negative stereotypes that exist within the community. The harm minimisation approach¹³ has been effective in assisting people with their drug addiction. Harm minimisation is defined as supply reduction, demand reduction and harm reduction. As mentioned above, the imbalance in government expenditure in these three areas, has lead to an ineffective approach. More funds need to be directed to the areas of harm reduction and demand reduction. Zero tolerance policies merely ostracise the individual further, hindering any future hope the person may have.

The points raised above are only some of the legal and non-legal ramifications for amending the *DDA*. The negative impact that the proposed amendment will likely have on the section of the community that is vulnerable to both direct and indirect discrimination cannot be underestimated.

We submit that there are more effective ways to assist people with an addiction on their road to recovery as opposed to ostracising users through unnecessary legislative changes. We call upon the Senate Legal and Constitutional Committee to consider the above points, in addition to the submissions that have been raised by other interested parties.

Yours faithfully

per 

Karyn Bartholomew
Principal Solicitor
Illawarra Legal Centre

¹¹ Marlatt, above n4, at 256-7.

¹² Marlatt, above n4, at 256-7.

¹³ Using these models has established programs such as needle exchange programs.