



Shoalcoast Community Legal Centre Inc

Legal Advice & Advocacy

ABN 85 989 128 796

4 February 2004

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



Dear Sir / Madam,

Re: Disability Discrimination Amendment Bill 2003

Shoalcoast Community Legal Centre is a non-profit association providing free legal advice, case-work and legal education to disadvantaged people residing in the Shoalhaven and the New South Wales far south coast. We wish to make the following submission to the inquiry into the Disability Discrimination Amendment Bill.

We believe that the proposed amendments to the Disability Discrimination Act are draconian, regressive, and potentially damaging to social cohesion and community wellbeing. The Bill seeks to legitimise stigmatisation of and prejudice against a group of people – being a significant portion of the Australian community – who are already struggling with the manifold disadvantages associated with drug dependency. Our specific concerns are as follows:

(i) The existing provisions of the Disability Discrimination Act do not prohibit an employer or service provider acting detrimentally against a drug user on reasonable grounds – for example, that the employee is unable to perform the inherent requirements of the job, or that as a tenant a drug user has defaulted in rental payments. Anti-discrimination legislation prohibits only discriminatory conduct which is unreasonable or unjustifiable; and allows an exception to the unlawfulness of such conduct if “unjustifiable hardship” would be encountered by the discriminator in acting in a non-discriminatory way. Thus there should be no practical need for the proposed enactment.

(ii) By legitimising discrimination on the grounds of drug addiction in all areas covered by the Act, the proposed law subjects drug dependent people to potential detriment, prejudice and arbitrary treatment in a comprehensive range of contexts.

A person with a drug addiction may be unfairly discriminated against in connection with employment, education, accommodation, sport, club membership, access to public premises, provision of goods and services, dealings in land, provision of information, and administration of Commonwealth laws and programs. Clearly these "areas" cover a broad sweep of the aspects of an individual's ordinary daily existence and participation in community life. Drug dependent people are already likely to be experiencing hardship in many aspects of life, and it is widely acknowledged that recovery from addiction goes hand-in-hand with adequate housing, social services, health care, community support, self-respect and dignity. The proposed amendments fly in the face of this understanding.

(iii) Detrimental actions such as rejection of a housing application, unfair dismissal from employment or denial of access to government programs will frequently affect not just a drug dependent person but also his/her family and children.

(iv) In the Second Reading Speech to the Bill the Attorney-General asserts that the government is committed to the treatment and rehabilitation of drug addicted people, and hence the Bill retains the protection of anti-discrimination law for people "undergoing a program, or receiving services, to treat the addiction". This provision fails to recognise that drug treatment programs across the nation are under-resourced, and thereby creates a potentially arbitrary distinction between the person who has been sufficiently fortunate to secure counselling or a bed in a detoxification unit, and the person who is unable to access treatment as at the date of discrimination.

(v) The absence of any definition of the words "program", "services" or "treat" may prove problematic. The Attorney-General states that the provision is deliberately non-specific so as to be broad in scope; however, the legislation is likely to engender extensive litigation in attempts to resolve whether a person was or was not genuinely receiving treatment on the particular date he/she was subjected to discrimination.

(vi) "Addiction" is not defined in the Bill and is indeed difficult to define. The definition of "disability" in the Act, meanwhile, extends to a disability condition "which is imputed to a person". Thus the existing legislation prohibits a person from discriminating against another person on the basis of a belief, perception or assumption that the other person has a particular disability. For instance, it is unlawful disability discrimination for an employer to subject an employee to detriment on the basis of an assumption that the employee is a drug addict, even if that assumption is wrong in fact. The Attorney-General in his second reading speech stated that this "extended meaning" of disability does not pertain to the Bill, which applies "only when the addicted person actually has an addiction as the time of the discrimination." However, the provisions of the Bill itself do not make this clear: containing no expressly amended definition of disability in order to remove "imputed" drug addiction from the scope of the new law. Consequently it is unclear whether employers and service providers will be free to discriminate on the basis of their own erroneous perceptions of the nature and manifestation of addiction. It is difficult also to envisage how the judicial process will determine the distinctions between drug experimentation, drug use, and drug addiction.

(vii) Anti-discrimination laws were enacted to counter the impact and prevalence of prejudice in our society. This Bill effectively sanctions prejudice against a severely disadvantaged group in the Australian community, many of whom have become drug dependent in association with pre-existing social deprivation, abuse, discrimination and prejudice. By allowing stigmatisation and denial of access to community resources the proposed law runs counter to any stated government objective to address the problem of drug abuse in society. The proposed law is further inconsistent with the fundamental concept of the law being a mechanism for redress of power imbalances in society. It is also likely to breach many of Australia's international human rights commitments, including those pertaining to housing, education, health-care and other basic social services, equality before the law and freedom from discrimination, and the rights of children.

Thank you for your consideration of the matters we have raised.

Yours faithfully,



Shoalcoast Community Legal Centre Inc.

Per: Meredith McLaine

Solicitor