



Submission to the Senate Legal and Constitutional Committee Inquiry into the Provisions of the Disability Discrimination Amendment Bill 2003

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Key Recommendations**Recommendation 1:**

The Disability Discrimination Amendment Bill 2003 (Cth) should not be enacted.

Recommendation 2:

The Australian Government should increase the resourcing of drug treatment programs for people with drug-related disabilities.

Recommendation 3:

That the Australian Government should lead the community in recognizing that drug addiction is a disability as defined by the World Health Organization, and that complex factors lead to such a disability including social exclusion, poverty, sexual and other abuse, mental illness, unemployment and poor education.

As a community we often fail children and young people. We fail them again when we do not approve of their coping strategies.

The Government is a leader in the community and this Bill will legitimate and encourage unfair discrimination that already does untold damage to this vulnerable group of people.

Background

In December 2003 the Senate referred the provisions of the *Disability Amendment Bill 2003* (Cth) to the Senate Legal and Constitutional Committee for Inquiry and report by March 2004. The Bill proposes to amend the *Disability Discriminations Act 1992* (Cth) such that it will be lawful to discriminate against a person on the grounds that the person is addicted to a legally prohibited drug, unless that person is receiving services to treat that addiction. In short, this Bill proposes to allow people with drug addictions to be discriminated against in the areas of housing, employment, club membership, land, sport, the administration of Commonwealth programs, and access to goods, services, facilities, and premises, unless they're in a treatment program that is approved and recognized by the Government.

This submission aims to:

- **examine the human rights implications of the proposed Bill**
- **briefly canvass the legal implications of the proposed Bill**
- **examine the implementation and other practical issues associated with the Bill**

Overview: Support and Accommodation Rights Service (SARS)

The Support and Accommodation Rights Service (SARS) is a program of the Council to Homeless Persons (Vic) that provides advocacy services to people who have a complaint about an aspect of the service they have received from a Victorian SAAP service. These services include crisis accommodation services, domestic and family violence services and other support and accommodation services utilized by people experiencing or at risk of homelessness in Victoria.

SARS is underpinned by the belief that all human beings are entitled to a basic suite of inalienable human rights, and that various structures in society and the Homelessness Service System (HSS) contain power imbalances. Advocacy is one means of addressing the imbalance between service

providers and service users in the HSS and this constitutes the bulk of our work. While some service user rights are articulated within the *SAAP Act 1994* (Cth) as well as the various International Treaties to which Australia is a signatory, it is our experience during over ten years of operation, that while many SAAP services work from a rights-based platform, there are still consistent and routine breaches of service users rights within the HSS. This is, of course, to say nothing of the rights violations that homeless people suffer *outside* of the homelessness sector itself.

Two primary assumptions underpin this submission and it is important to clarify them from the outset. It is our firm belief that:

- a) all people are entitled to a basic suite of human rights that are inalienable and non-negotiable. This includes the right to be free of discrimination on the basis of disability.**
- b) As defined by the World Health Organization (and various other expert medical bodies) drug addiction is a disability.**

Part 1: The Inalienable Nature of Human Rights

Aside from the many practical issues that would arise out of the adoption of the proposed Bill, of equal concern are the philosophical issues at stake. As we are sure the Committee is aware, Australia is a signatory to various Treaties and is bound by a number of International Laws that are underpinned by a belief in the *inalienable* nature of human rights. The potential legal implications of the proposed Bill will no doubt be canvassed with greater expertise and in more detail in other submissions, but laws aside, it is fair to say that the mark of a civilized and just society is the extent to which it protects the rights of all its citizens, and the extent to which all its citizens are viewed as equal before the law. We believe that this Bill compromises those rights.

There is little consistency or agreement in philosophical discussions about law and politics and yet it seems that there is almost total agreement by a range of parties interested in human rights that such rights are *universal* and *inalienable*.

Human Rights cannot, as this Bill suggests, be traded for other things.

Any right that can be traded was not a real right in the first place.

While it might be possible to agree that it is desirable for people with substance abuse problems to seek treatment, the fact remains that while a range of decisions and behaviors may or may not be desirable, they cannot be enforced by taking away someone's human rights. Would it, for example, be appropriate to take away a woman's right to be free of violence by excluding her from future support if she returned to a violent partner? Would it be acceptable to deny a person with mental illness housing on the basis that he was not seeing his psychiatrist regularly? Would it be reasonable to deny an alcoholic treatment for liver cancer on the basis that s/he chose to drink alcohol in the first place? We do not believe that any fair or reasonable person would suggest that any of these courses of action was appropriate or just. While it might be desirable for the woman to leave her violent partner, for the person with a mental illness to see his psychiatrist, for the alcoholic to stop drinking, or for someone with a drug addiction to seek treatment, this

cannot be enforced by removing the basic human rights to which we're all entitled. Not only would it be *practically* disastrous, it undermines the concept of inalienable human rights in the first place. History shows us that The State has traded rights before (often with the "best interests" of the group in mind) with disastrous consequences.

Part 2: Legal Implications and Concerns

2.1 Replication of other laws

While SARS does not claim specialist legal knowledge, it is our understanding that:

- the “protections” the proposed Bill aims to offer various groups in the community are already afforded both within the existing *Disability Discrimination Act 1992* and various other pieces of State and Commonwealth legislation
- that workplace and community safety are already protected under existing workplace, occupational health and safety and criminal laws
- that the DDA was never intended as a mechanism to punish dangerous or criminal behaviors and that these are more properly dealt with through the criminal justice system

2.2 Housing and the law

Of particular relevance to our work at SARS is the effect that this Bill would have on housing in that the proposed amendment would make it legal for a landlord to discriminate against people with drug addictions unless they’re in officially recognized drug treatment programs. Our concerns regarding this are as follows:

2.2.1 Landlords are already protected

Landlords do not require any further power to evict tenants who may display behaviors that are stereotypically associated with substance abuse issues. For example, the *Residential Tenancies Act* makes it possible for *any tenant* in Victoria to be evicted for: failure to pay rent; damage to property; disturbing the peace; neighbor complaints; or, using the premises for illegal activity. The RTA (and equivalent legislation in other states) covers all of these behaviors regardless of who or why a person displays them.

2.2.2 People with drug addictions are already routinely discriminated against

Our experience working with people who use the HSS shows that people experiencing homelessness – many of whom have substance abuse problems – are consistently and routinely discriminated against. Many of our clients are discriminated against on a daily basis, and particularly in relation to landlords, with dire

consequences. We would like to see greater protection from discrimination afforded to people with disabilities, not less.

2.2.3 Why is the Bill necessary?

The Bill aims to remove the obligation of the community to treat people with drug addiction-related disabilities equally. While the philosophical premise of this is fundamentally flawed, we would also ask why the Bill is even necessary in the first place. Where are the landlords and club owners and employers who are affording “special rights” to drug users? Where are the cases clogging up the courts of people with addiction-based disabilities alleging discrimination? The fact is that people with drug addictions constitute one of the most marginalized and disempowered groups in the community. Sadly, the right that this Bill aims to remove is not a right that many of them even know they have.

2.2.4 Housing is an essential part of any recovery process from drug addiction

Many years of research in the area, assumed wisdom, and commonsense all suggest that without housing, recovery from any substance abuse problem is practically impossible. Evicting someone or refusing them housing in the first instance on the basis that the person has a drug addiction will simply make it even more impossible for that person to recover from their addiction.

Particularly in relation to housing (and also employment) the effects that such discrimination would have on the partners and children of people with addictions are similarly profound.

2.2.5 Service provision and the law

Another cause for concern presented by the proposed Bill is the intention to legalize discrimination against people with drug addictions in the provision of goods and services. This presents a number of practical problems (principally to do with the ability of service providers to make judgments about who is an “addict” and who isn’t) but it will also make the process of recovery from drug addiction even more difficult. People with drug addictions need services like everyone else. If their behavior is inappropriate, that is one thing. However, to be refused a service simply because it is

assumed that they fall into a particular category of “addict” is quite another.

It is important to point out that this type of discrimination already exists both within the HSS and outside it. Many of our clients are repeatedly refused service provision on the basis that they “look like” drug addicts. In some cases, as in “Jane’s” example highlighted below, this assumption is false. In other cases where the person does in fact have an addiction-related disability, s/he is already often refused services that are essential to their health, well-being and recovery.

A number of our clients, for example, are women escaping domestic violence who are also known to have drug addictions and may experience exclusion from a range of family violence refuges. Domestic violence and drug addiction often coincide and there must be a recognition of the fact that people with drug addictions rarely have such addictions in isolation, their needs are usually multiple. This Bill would encourage such damaging and short-sighted policies of service exclusion even further, potentially leaving women escaping such violence in a hopeless situation, and one that reduces their chances of recovering from drug addiction *or* escaping violence.

Example:

“Jane” is an articulate young homeless women with a medical condition that periodically causes her extreme lethargy, skin irritations and weight loss. Jane approached SARS stating that she had met a rooming house manager for some accommodation and that despite his reassurances to the contrary on the phone, once he’d looked her up and down, said they only had accommodation for 2 weeks. Jane said that such treatment made her feel “like dirt”.

Part 3: Implementation and other Practical Issues

Given the undermining of the very notion of human rights that this Bill represents, the implementation and practical problems associated with it are arguably secondary. However, it may be useful for the Committee to have an understanding of how this Bill will effect the work of services in the field and ultimately of course, individuals with addiction-based disabilities themselves. Part 3 of our submission canvasses such issues.

3.1 Privacy

It is fair to say that privacy is one of the most significant issues of our times. Advancements in technology and recent world events have placed the issue of the collection, storage and use of personal information at center-stage. The proposed Bill has important privacy issues that are of great concern.

3.1.1 Collection of data

For this Bill to have a practical effect, there needs to be some means of determining who is an “addict” and who isn’t. Assuming that this information is highly unlikely to be provided willingly, important questions arise as to how landlords, employers, service providers and the like will gather such information. In some extreme cases drug addiction may be “obvious”. However, in the vast majority of cases, it is practically impossible to establish without medical testing. Are we to assume then that:

- medical records (including admission to treatment programs) will be accessed by landlords, employers and the like in order to establish that a person is an addict
- that drug testing of potential tenants and employees will be an option
- that data-bases will be set up that record “known drug addicts”

All of these scenarios either constitute either an outright violation of the right to privacy or lend themselves to significant breaches of that right.

It may interest the Committee to know that many of the people who use our service do so because of existing breaches of their privacy. It is well known that within the HSS there is a system of “blacklisting” certain service users who are alleged to have displayed inappropriate behaviors. This system is informal and

service users are often at the mercy of the “backlist” without knowing that they are on it, and/or with virtually no means to remove themselves from it. If the proposed Bill is adopted, the potential for such a “drug addict” list to develop is high.

Another such list – or in this case database – that has a profound effect on homelessness in Victoria is the database of “bad tenants” used by private real estate agencies in Victoria. Again, private rental tenants have limited means of knowing if they’re on the list and limited means of challenging the listing or being removed once they’re on it. A rental infringement they may have incurred when they were 19 could see them effectively barred from private rental when they’re 35. A legitimate claim they made against their landlord for unfit premises could have them marked as a “difficult” tenant. There is nothing to suggest that such a formal or informal system of exclusion would not operate for people with drug-based disabilities if this Bill is passed.

3.1.2 Storage of data

One of the primary indignities that people experiencing homelessness suffer is the loss of their right to privacy. This ranges from having to tell their “story” over and over again, to the consistent and often inappropriate sharing of their personal information between workers and agencies in the field. In theory, all SAAP agencies are bound by data collection policies and procedures, but in reality, this is certainly not a strength of the HSS. One could also assume that this is the case beyond the HSS where sensitivities to the plight of homeless people and people with drug addictions is arguably even less. If this Bill is passed, how will the Commonwealth control the storage of data about “drug addicts”? We suggest that it can’t and that this will lead to routine breaches of the right to privacy.

3.1.3 Use of data

Of course, assuming that it is possible to collect and then store the data, how will its use then be regulated? Given that this Bill aims to cover virtually the whole community, who will be allowed to use the data? Unless we assume that drug addicts are easily identifiable (which, contrary to popular opinion, is not the case) how will the customer-service person be able

to decide that s/he is dealing with an addict? How will the landlord get access to this information? The most likely holders of this information are medical and perhaps legal professionals who are bound by their own ethics and laws to keep such information confidential.

Of further concern in relation to the use of such data is its potential *mis-use*. There are a number of elements to this but perhaps of most concern is the potential for landlords, employers and other service providers to use the Bill as an excuse to discriminate against someone, when in fact, the basis of the real discrimination is something else altogether. If, for example, someone is denied housing on the basis of his/her Aboriginality but this person also has a registered drug addiction, this Bill will potentially provide an easy “out” for the landlord. The instance of drug use among groups protected by the DDA is higher than among the general population for a range of reasons, and this Bill could effectively undermine their protection under the Act altogether.

3.2 Harm Minimization

Harm Minimization and Harm Reduction strategies¹ are widely accepted medical and socio-psychological strategies that acknowledge that the road to recovery for any “addict” is a long one. Drug addiction is characterized by intermittent periods of relapse, and harm minimization and reduction strategies aim to minimize the harm caused by addiction to the person and those around them. We have grave concerns that this Bill will directly undermine such strategies.

As has been mentioned above, a central issue for many people experiencing homelessness (and especially for people with drug addictions who are perhaps doubly stigmatized) is privacy. If there is *any concern* that medical and other information that classifies a person as a “drug addict” will be collected or potentially available, many drug users will be extremely reluctant to access treatment and other services.

Moreover, aside from “official disclosures” of the sort mentioned above, there will be real concerns among drug users that they may be accidentally seen accessing such

¹ Such strategies have important differences that this submission will not canvass due to time and space constraints.

services and consequently stay away from them. Many such scenarios are likely: the boss's secretary who sees a co-worker coming out of the "methadone chemist"; the landlord who sees a tenant accessing a needle-exchange program; or, the corner deli owner who sees syringes in someone's bag. Not only could these examples potentially lead to *false* assumptions about drug use and addiction, they will make people reluctant to access the very treatment the Bill claims to encourage. The health and social consequences are potentially disastrous.

3.3 Stimulating Demand for drug treatment programs

If we are to accept one of the stated intentions of the Bill - to get people with drug addictions into treatment - we must honestly look at the current provision and availability of such treatment in the community. In short, any worker in the field and any user of illicit drugs will tell you that there is no need to stimulate demand for detoxification and treatment programs - our medical system is already failing to meet such demand.

Treating drug addiction, both as a social and personal problem, is a complex thing. If we truly want more people in recovery, we have to invest resources in, and have the political will to change, current treatment systems. There is no other way. Trading off people's rights, or coercing them into treatment, simply will not work.

3.4 Defining "addict"

As was mentioned above, drug addiction is characterized by a cycle of "relapse and remit". This alone makes defining "addiction" extremely difficult. Most famously, there is the Alcoholics Anonymous model which suggests that once and alcoholic always an alcoholic. Will such a model apply to someone who has been a heroin addict? How will the limits of addiction be set? Will they be based on time since the last "hit", or time since one was last "busted"? What about the nature of the substance? Will Australia's estimated 200,000 marijuana smokers be considered addicts or are "addicts" only users of hard and more frightening drugs like heroin. We're sure the Committee is aware that it is widely accepted the drug and alcohol field and beyond that legal drugs like tobacco and alcohol cost Australian society and the Australian tax-payer far more (both socially and financially) than illegal substances. Why then are these "addicts" not targeted for treatment programs in this Bill?

3.5 Defining “treatment”

Finally, we have significant concern about how “treatment” will be defined. Given the lack of availability of “official” treatment programs, will someone on a treatment program waiting list be considered to be in treatment? Furthermore, will various self-treatment methods including self-medication, “cold turkey”, withdrawal with the assistance of family and friends and other non-official methods be considered treatment? One can only assume that they will not be considered “treatment” given the practical impossibility of proving them. This is highly problematic given that such treatments are often effective and more appropriate for particular individuals than officially recognized treatment facilities

Conclusion

We believe that this Bill will potentially further marginalize people with drug-related disabilities and fails to take into account the complex social and psychological problems that drug addiction presents to the community. Drug addiction is easily misunderstood as a purely personal “failure” on the part of particular individuals rather than something that is inextricably linked to poverty, homelessness, mental illness and histories of abuse and neglect.

People with drug-related disabilities are routinely discriminated against within the HSS and the general community and require greater protection from such discrimination - not less - if they are to address their addiction issues. The right to be free of discrimination is a fundamental human right to which we should all be entitled and is one that very few drug users even know that they have. The sad truth is that people with drug-related disabilities already struggle to access basic goods and services every day of their lives. Any legitimating of such discrimination will harm them and the community even further.

We urge the Government to reconsider this Bill and to not enact it. It undermines the very rights that our country is built on and is not practically possible to implement in any case. If the Government’s aim is to get more people with drug addictions into recovery, this is not the way to do it. Greater resourcing of treatment services and an examination of the underlying causes of drug addiction is the only way forward.

We would welcome the opportunity to address any of the issues raised in this submission to the Committee in person, and we are happy to respond to any questions the Committee may have about our submission.