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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**DISABILITY DISCRIMINATION AMENDMENT BILL 2003**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
the Hon Philip Ruddock MP)

## **DISABILITY DISCRIMINATION AMENDMENT BILL 2003**

### **OUTLINE**

The object of this Bill is to amend the *Disability Discrimination Act 1992* (DDA) to remove the prohibition on disability discrimination on the ground of a person's addiction to a prohibited drug.

The Bill is intended to apply as an exemption to all types of prohibited discrimination under the DDA.

Prohibited drugs are the drugs prohibited under regulation 5 of the *Customs (Prohibited Imports) Regulations 1956*. The Bill will not apply to legally authorised drug use.

The Bill will not affect the protections from disability discrimination that are presently offered under the DDA to people with other disabilities (other than a presently existing drug addiction). The Bill will not apply to people who are receiving treatment for their drug addiction, and nor will it apply to people who are associates of other people addicted to prohibited drugs.

The Bill also makes consequential amendments to the *Workplace Relations Act 1996*, to include reference in section 170CK of that Act to the new section 54A of the DDA.

### **FINANCIAL IMPACT STATEMENT**

There is no expected financial impact of the provisions of this Bill.

### **NOTES ON CLAUSES**

#### ***Disability Discrimination Act 1992***

##### **Clause 1 – Short title**

This clause provides that the Act may be cited as the *Disability Discrimination Amendment Act 2003*.

##### **Clause 2 – Commencement**

This clause provides that the amendments to the Act will commence 28 days after receiving Royal Assent.

##### **Clause 3 – Establishes Schedule of Amendments as follows:**

##### **Item 1 – Insertion of section 54A**

Item 1 inserts new section 54A in Division 5 of Part 2 of the *Disability Discrimination Act 1992* (DDA). Division 5 sets out forms of disability discrimination that are to be exempt from prohibition under Part 2.

Subsection 54A (1) removes the prohibition under the DDA on discrimination against another person on the ground of the other person's disability, if the disability is the other person's addiction to a prohibited drug, and if the other person is addicted to the drug at the time of the discrimination.

Subsection 54A (1) does not affect the meaning of 'disability' under the DDA. The definition of 'disability' under section 4 of the Act extends to past and future disabilities, and disabilities that may be imputed to a person. The amendment applies only if the person is addicted to a prohibited drug at the time of the discrimination, and so does not apply to remove any prohibition on disability discrimination against a person who has a past addiction to prohibited drugs.

The note to this subsection also clarifies that it does not affect the operation of prohibitions on disability discrimination under Part 2 on the ground of a disability that may be related to addiction to a prohibited drug, such as a medical condition like HIV infection or hepatitis C.

Therefore, the effect of the amendment is that it may be possible for a person to be lawfully discriminated against in relation to his or her current addiction to a prohibited drug, but unlawfully discriminated against in relation to his or her medical condition such as HIV infection or hepatitis C. This situation may arise if the person alleging disability discrimination has multiple disabilities, including addiction to a prohibited drug.

The amendment is not confined to one area of disability discrimination that is prohibited under the DDA, such as employment. It applies as an exemption to all areas of disability discrimination that are prohibited under Part 2, including work, education, access to premises, access to goods, services, and facilities, accommodation, land, club membership, sport and the administration of Commonwealth laws and programs.

Subsection (2) provides that the exemption does not apply to legally authorised use of a prohibited drug, or to discrimination against a person who is undergoing a program or receiving services to treat his or her drug addiction.

Paragraph (2)(a) applies to exclude from the operation of the exemption a person who may be using a drug that is included in the list of prohibited drugs described in subsection (3), but who is using the drug under authorisation by a law of the Commonwealth, or of a State or Territory. This could include a situation where a person is regularly using an otherwise 'prohibited drug' under a prescription that legally authorises that person's use of the drug. An example is where morphine is used under a prescription for palliative treatment of cancer.

The purpose of paragraph (2)(b) is to make it clear that a person who is receiving treatment for his or her addiction to a prohibited drug is not subject to the exemption. That is, the exemption operates in such a way that it remains unlawful to discriminate against a person receiving drug recovery treatment, to the extent that such discrimination is otherwise prohibited under the DDA.

Paragraph (2)(b) describes drug recovery treatment in fairly broad terms, as it is recognised that legitimate treatment of drug addiction encompasses a wide range of programs and services, some of which may not involve medical treatment. However, it is expected that the treatment would be in the form of a program or services that require a high degree of commitment to addiction recovery on the part of the person undergoing that treatment.

The amendment ensures that people who are taking responsibility for their addiction cannot be discriminated against. The protection is not limited to people actually undergoing a medically supervised (often residential) program, although it would cover that. The provision accepts that drug recovery treatment and services have a wide scope, providing the maximum benefit for people addicted to a prohibited drug.

It does not specify what type of program or services would qualify, so as to not limit the type of treatments or services that can be accessed, and to ensure that people who are attempting to put their lives back on track are not inadvertently left out.

For example, if a person attended an intensive clinic in a major city and returned to their home town, that does not mean they fall outside the scope of the protection when they complete the residential or intensive part of a program. This is because the protection extends to people who are “undergoing a program or receiving services to treat addiction to the drug”. The phrase “receiving services” is broad enough to cover regular visits to a counsellor, priest or doctor to support their efforts to address the addiction. The protection would not extend to sham treatments – but ultimately the Human Rights and Equal Opportunity Commission investigating a complaint would have to be satisfied that the treatment is bona fide – as is appropriate.

Subsection (3) defines ‘prohibited drug’ by incorporating by reference the drugs mentioned in regulation 5 of the *Customs (Prohibited Imports) Regulations 1956*. The regulation 5 list includes many substances that are commonly understood to be illicit drugs, as well as various kinds of compounds and derivatives of those substances, and other substances that contain those Scheduled substances.

If the definition of drugs under regulation 5 of the *Customs (Prohibited Imports) Regulations 1956* is amended, the definition of ‘prohibited drug’ in this item will also change automatically in accordance with those amendments, unless the DDA definition is itself further amended.

The exemption does not apply to an associate of a person with an addiction to a prohibited drug, so that an associate can rely on any protections they might otherwise have had, despite the amendment, from discrimination on the grounds of the other person’s drug addiction.

The item is intended to remove any prohibition under the DDA on discrimination against a person who has a current drug addiction. The DDA presently provides protection from discrimination for a person who is an associate of a person with a disability. The provisions of Divisions 1 and 2 of Part 2 generally make it unlawful to discriminate against another person on the ground of the other person’s disability or a disability of any of the other person’s associates. ‘Associate’ is defined in section 4,

for example, to include a spouse of the person, a relative, a carer or a business or sporting partner.

For example, the item does not make it lawful to discriminate against a person in the area of club membership on the grounds of that person's child having an addiction to a prohibited drug.

### ***Workplace Relations Act 1996***

#### **Item 2 - Subsection 170CK (2)**

Item 2 amends subsection 170CK (2) to include reference to the amendment provision inserted by Item 3 - subsection 170CK (4A).

#### **Item 3 – Insertion of subsection 170CK (4A)**

Section 170CK of the *Workplace Relations Act 1996* prohibits termination of employment on certain grounds. Paragraph 170CK(2)(f) includes 'physical or mental disability' as a ground of prohibited termination of employment.

Item 3 inserts subsection 170CK(4A), which qualifies paragraph 170CK (2)(f) by reference to the new section 54A of the *Disability Discrimination Act 1992* (DDA).

The effect of Item 3 is that the disability covered by section 54A of the DDA – namely, addiction to a prohibited drug in the terms of that provision – is not to be included in the reference to 'physical or mental disability' in paragraph 170CK (2)(f) of the *Workplace Relations Act 1996* as grounds for unlawful termination of employment under that Act.

This means that a person seeking remedies under section 170CK of the *Workplace Relations Act 1996* could not rely on his or her addiction to a prohibited drug (within the meaning of section 54A of the DDA) as grounds for a claim of unlawful termination of employment.