I am concerned to raise with this inquiry the consequences of the explicit permission written into the Act, to discriminate against the chronically ill in insurance.

My concerns are set out in:

1. a paper I wrote on the Act in 2000 published by the Australian Consumers' Association.

2. a memo sent in Feb. 2002, to my Vice Chancellor at Monash University to gain support from the university for disabled staff.

3. a memo in response to my memo (@ 2. above), from Employee Relations at the university, declining to assist.

In support of these materials I draw your attention to the article by Peter Botsman in yesterday's [10.07.03] Australian, p.11 entitled "New work strategy for disabled". A breakout stated: "The bottom line is, people with a disability make extremely good employees."

This quote might have been continued with "... and extremely exploitable ones". The extent of the exploitation can be gleaned from the first (my) memo. Further I refer you to a much earlier (1981) paper I wrote in New Doctor [#21] entitled "The Hidden Majority: The Plight of the Non-Visible Disabled", pp37-40.

I look forward to questions and discussion at the hearing on 22 July.

Yours faithfully,

Frank Fisher
[A/Prof. & Director, Grad. School of Environ'l Sc.]

***Consuming Interest* [Aust. Consumers' Assoc'n], Winter 2000:24-6.**

How the Disability Discrimination Act of 1992 discriminates against the chronically ill.

A/Prof. Frank Fisher
Graduate School of Environmental Science*
MONASH UNIVERSITY, CLAYTON, Vict., 3800

It is not widely understood that discrimination against the chronically ill is now legally sanctioned.

C.f. the Federal government's *Disability Discrimination Act of 1992* [DDA]:

> **§46.(1)** This Part does not render it unlawful for a person to discriminate against another person, on the ground of the other person's disability, by refusing to offer the other person:
> (a) an annuity; or
> (b) a life insurance policy; or
> (c) a policy or insurance against accident or any other policy of insurance; or
> (d) membership of a superannuation or provident fund; or
> (e) membership of a superannuation or provident scheme;
> if:
> (f) the discrimination:
> (i) is based upon actuarial or statistical data on which it is reasonable for the first-mentioned person to rely; and
> (ii) is reasonable having regard to the matter of the data and other relevant factors; or
> (g) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained - the discrimination is reasonable having regard to other relevant factors
>
> **(2)** This Part does not render it unlawful for a person to discriminate against another person, on the ground of the other person's disability, in respect of the terms or conditions on which:
> (a) to (e) in **(1)**
> is offered to, or may be obtained by, the other person, if:
> (f) to (g) in **(1)**

The immediate consequences of this nasty exception to the otherwise benign intent of the DDA are that:

1. people who live with some chronic condition and its treatment, i.e. people labeled chronically ill, are excluded from a range of actuarial-chart-based insurances such as life insurances and superannuation schemes that incorporate life insurance, travel insurance, home loan insurance and insurance that covers for loss of income.[1]
2. people who do not have chronic diseases gain insurances such as those in 1. for lower premiums than were all Australians given equal opportunities to insurance. In other words fit youth say, are subsidised by exclusion of the disabled.
3. insurance providers gain business that may have been foregone were premiums higher.

For those of us who fall outside the insurable range the consequences are themselves disabling, i.e. restricting and demeaning. Some of these consequences will be detailed below along with the fate of various attempts made to overcome this discrimination which while now official has always existed.

Insurance is a business designed to turn a buck out of a certain level of "private socialisation" of risk. Being private implies that business erects its own entry conditions. Until explicit national legislation requires it, the business is not obliged to adhere to United Nations' protestations of the sanctity of human rights that expect disabled people to be considered as fully human. Therefore, to the extent that "high-risk" groups are not beneficial to the profitability of insurers, nothing other than "good form" (doing the "right thing") requires entry criteria to include them. To their credit, some companies do optimise the situation by creating special loadings

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[1] **For definition of chronic illness see e.g. C. Walker, *Meanings of Chronic Illness*, Chronic Illness Alliance/Health Issues Centre, Melbourne, 1999.**

through which the less benighted individual can gain cover by paying an additional premium. The fully-benighted however, remain outside by virtue of the inexorable logic of the actuarial chart.

Private socialisation of risk therefore simply excludes or loads high risk categories. In addition to the material restrictions this places on the really sick the wider denial involved in classifying large numbers of humans as “high and low risk” involves accepting a particularly crude and ironic approach to each other. Many of the most memorable of humans down the ages have been today’s uninsurably disabled … and yet society supported them.[2]

Aside from direct exclusion from many activities, the failure to gain “cover” for oneself adds another burden to that already borne by the chronically ill ***and all those who bother to associate themselves with them***. Aside from impaired access to services, knowing that one is essentially a ward of the state, or of others’ largesse, is demeaning. The conventional response to this situation is that these people must either dramatically constrain their expectations and/or construct other means of securing what insurances would normally provide. The irony in the latter response is that if the message in the box below actually gets out, the expectations that support the need for insurance are at risk of evaporating and with them the business itself.

The unconventional approach, which it has been my great good fortune to discover
is that
most things that insurances provide are chimerical and disentangling oneself from them is profoundly liberating.

There is however, another nastier side to all this. One can transcend material demeanment personally but it is quite another thing to overcome it in the eyes of society not familiar with the criteria of personal enlightenment by which sick people may come to assess themselves. Exclusion from superannuation once meant exclusion from certain jobs altogether and at a minimum, exclusion from employer contributions to it. This implies a triple burden: sickness, self-insurance and restricted or reduced employment. These burdens imply an exquisite and permanent increase in stress arising as much from the recognition that one is a lesser class of being as from the obvious insecurities arising from reduced income. That itself adds to the misery of the dis-ease. By contrast, recent years have seen a dramatic improvement in recognising that ***being in control of one’s life*** is itself a primary determinant of health![3]

The social restrictions associated with the failure to gain home loan and salary replacement insurances simply exacerbate the failure to access life insurances and super.

While failure to gain travel insurance is quintessentially a middle class concern it contains some illuminating twists. Travel has become the modern status symbol for those seeking to avoid the trappings of conspicuous consumption - with ironic consequences for the environment. For academics in a small country far from the centres of intellectual activity however, travel is often the only way to access one’s disciplinary peers. Without insurance, travel for the chronically ill is essentially impossible, particularly if one does not have private health insurance. Private health insurance will not cover pre-existing conditions for the first year of membership and there are (or were, until recently) only four countries on Earth offering reciprocal rights with Medicare: Sweden, Holland, UK and NZ.

Some years ago when I put this situation to a highly placed officer of the Life Insurance Federation of Australia, I was told that were s/he in my situation s/he would not admit to a medical condition, i.e. s/he would perjure her/himself. That is not an option for me.

The response of authority.

1. The Senate inquiry into superannuation [1992-3], faithfully registered my concerns in its final report and the parliamentary secretary to the Federal Treasurer honestly recognised the problem thus:

> “The intention of the DDA is to protect the community from ***unfair*** discrimination. The provisions of the DDA relating to life insurance and superannuation acknowledge that statistical and actuarial evidence can confirm that particular groups of people constitute a higher underwriting risk. I recognise that the chronically will fall into the

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[2] **See e.g. the benign fate of the village idiot in the famous 1980s Italian film: *Tree of Wooden Clogs*, not to mention such classics as Dostoevsky’s *The Idiot*. Note that it is precisely the accuracy of modern diagnostic techniques and the tools of statistics that give us the relatively new capacity of “legitimate exclusion” of whole classes of people from “A class livelihood” and its perks.**

[3] **See the work of Marmot and others in e.g. Dr. Norman Swan’s Health Reports of November 1999 - transcripts available from the ABC’s website.**

> ‘higher risk’ category and, therefore, may be unable to obtain insurance.
>
> To provide a ‘safety net’ for those ‘higher risk’ groups, the Government provides appropriate social services.”

31.3.1995 **(my italics)**

Honest thanks but, is that the best we can do?

2. Meanwhile the Human Rights and Equal Opportunities Commission responded this way:

> “... the DDA does not in fact render or recognise all discrimination in insurance as legal.
>
> Only those exclusions or distinctions based on disability [that] can be shown to be reasonable, based on actuarial evidence and/or other relevant factors, are excepted from the prohibition of discrimination by the Act.
>
> The best means to test whether a particular distinction or exclusion is reasonable, or whether it is unlawfully discriminatory, is to use the mechanism provided by the Act to make a complaint.”

3.11.1999 **(my parentheses)**

Precisely, and of course there is no need to (make a complaint), for the very existence of the actuarial chart is the problem! Nevertheless, in the same letter I was chastised by the President with:

> “... your concern regarding lack of various forms of insurance cover for people with chronic illnesses is not, in fact, “essentially a political issue” nor nominally outside the Commission’s brief ...”

Curious then that the Treasurer’s own office could see the problem but not HREOC, despite repeated representations, which now simply go unanswered. I have been reduced to a pest, and a sick pest at that.

The response of the industry.

At best the insurance industry is willing to create certain “B class life” categories, insurable for higher premiums. In individual cases it might also wedge a borderline individual into an existing scheme for a loaded premium.

My only success in leveraging this entrenched situation came when, in the 1980s, my university joined the national universities’ super scheme. With the assistance of the academics’ union, a temporary “window” for disabled academics on staff at the time was created and these fortunates now have full super: no loading, no demeaned category. The second box (above) notwithstanding, it is not difficult to imagine how much easier it is to work under such circumstances!

A Proposal.

Essentially the only way of overcoming the problem outlined is delete chronic disease from the insurance actuary’s armory.

Beyond that lies the much weaker option of establishing a private fund through some generalised body such as the ***Chronic IllnessAlliance*** and sourced by the contributions of the chronically ill themselves and their “healthy” families, friends and sympathisers. Assistance from the Federal Government might be expected in line with the social service savings to be made by the consequential outcome of security-in-depth: maintenance of the chronically in gainful employment and psycho-social independence. An existing public-spirited institution might kick it off: Bendigo Bank, are you listening??

ACKNOWLEDGEMENTS: For wise comment, thanks to Bebe Loff, Board member Health Issues Centre; Ed Lockhart, CEM, Monash Uni. and the editor of *Consuming Interest*.

* **The author is a board member of the Health Issues Centre**

Memorandum

Subject: **Support for disabled staff where social Infrastructure fails**

To: Associate Professor Frank Fisher
Director, Graduate School of Environmental Science
School of Geography and Environmental Science

Thank you for your previous memos. Professor Darvall has asked me to respond on his behalf. Please accept my apology for not responding earlier.

Your suggestion that central administration support via a special fund be available to faculties and departments wishing to allocate resources to staff with disabilities has been carefully considered, but at present no change to the current arrangements is contemplated. As you are aware, the University is committed to ensuring equal opportunity for staff with disabilities, including those with a chronic illness. The issues you raise with regard to the specific problems that some chronically ill staff must face with regard to overseas travel demonstrate the enormous complexity the University faces when considering special accommodation for the individual needs of staff with disabilities.

It is for this reason that each case must be considered on its merits by the faculty or department in question. Financial constraints are real, whether they are felt at the local level in faculties and departments, or by central administration. It follows that removing the consideration of such issues from faculties and departments may not assist in the resolution of such issues.

With regard to the issue of travel insurance, the University is faced with a difficult choice between allowing you to travel uninsured, effectively at the (unquantifiable) risk of the University, or encouraging you to find ways to interact with your colleagues that don’t involve travel. Accepting such an uncertain and unquantifiable risk could be seen as an irresponsible use of the University’s limited resources, and could establish a dangerous precedent. Determining the level of risk involved is beyond the competence and capacity of the University. Establishing such a precedent would put the University in the position of being obliged to underwrite similar unquantifiable risks in similar circumstances on equitable grounds. Accordingly, the University cannot allow university staff to travel in their capacity as employees of the University where they cannot be appropriately insured.

Any staff member in your situation should raise these concerns with their manager to explore any available and achievable reasonable accommodation. However, these must be affordable, given the University’s limited resources. It may be that in your case the best the University can offer is alternative means of maintaining contact with overseas colleagues that do not involve travel, for example, videoconferencing, participation in conferences by proxy and other approaches that are no doubt well known to you.

Of course, any staff member who believes that their needs for special accommodation are not being fairly considered can access the University’s Discrimination and Harassment Grievance Procedures, which provide a number of options for action or complaint. You have said in your memo that the Dean, Faculty of Arts is sympathetic, but it may be that Equity and Diversity can offer some novel suggestions that neither you nor he has considered but which meet some of your concerns.

I acknowledge that your situation is difficult, and I assure that you that the University wants to find solutions to your problems. While it is not always possible to find solutions that satisfy all stakeholders, I remain hopeful that some reasonable solution to yours remains undiscovered.

Andrew Picouleau

Date: 27 November, 2002

Employee Relations & Consultancy Branch
Student & Staff Services Division
Monash University, 710 Blackbum Road, Clayton Victoria 3168 Australia
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Memo:

To: **Prof. D. Robinson, Vice Chancellor**
cc.: **Prof. H. LeGrand, Dean, Arts**
Prof. N. Tapper, Head, Geog. & Eny. Sc.
Ms. Amber Collings, Disability Liaison Officer
Ms. Kay Gardner, Manager Equity & Diversity Centre
Prof. A Crook Deputy Vice Chancellor
Ms. Dale Halstead , N.T.E.U.
Chair, M.U.A.C.P.D.

From: A/Prof F. Fisher, Geog. & Env. Sc. & academic member M.U.A.C.P.D. (Clayton Campus)

re: **support for disabled staff where social infrastructure fails**

I write to ask you to consider authorising Central Administration support (a special fund say) for the University's disabled staff who seek to share University resources to perform their duties.

While there are various obvious situations where additional resources can facilitate access of disabled staff to existing university teaching and support mechanisms, there are some that are not at all obvious.

The situation of concern to me here is **study leave and more generally, *travel* outside Australia -**a well-obscured example of an area of university life where special support for chronically ill and disabled staff [CIDS] is necessary but not forthcoming from the departments. In my experience there are currently no departmental resources for such assistance, nor requirements for departments to secure such enabling resources.

Currently CIDS are effectively unable to leave Australia because, under the Disability Discrimination Act of 1992, they qualify for discrimination in insurance. In the present case this means that health, travel and loss of income insurance are unavailable to them (see attachment).

Grounds for support: 1. "natural justice" viz. equity between staff
and more importantly
2. an expectation of institutional commitment to staff who have, for their part, demonstrated a commitment to the institution [criteria to be established].

Equity: The present situation of discrimination effectively commits the CIDS to supporting other staff who take study leave outside Australia simply because we:
1. "are around" and by dint of "being there" fill in for others
and
2. may feel a need to build good will for the time(s) when we will need all the goodwill we can get.

Over time these can result in extensive support for the administrative home department of the disabled.
[My case: * 4 months OSP in 24 years - all spent in Melbourne.]

Institutional commitment. To the extent that a staff member demonstrates a capacity to do the in-house work required and a complementary commitment to her/his host organisation, a complementary commitment to her/him might be expected.
[My case: * 24 years' service.
* Virtually no leave (rec., *sick* or long service) taken (i.e. I have forfeited 300+ days of rec. leave and have continued working through virtually every episode of my complex condition).
* director of a large graduate program for 10+ years.]

Consequences: This demeaned situation implies that CIDS are constrained to intellectual isolation.

[My case: working for a graduate program based on an unusual suite of core subjects that I have developed and taught in isolation since 1980. I have never been able to work with any of my peers (all overseas) despite repeated invitations. This includes a long-standing offer by the Open Uni. In UK to transform my courses to Distance Ed. mode - if I could just make it to the UK.]

I look forward to your response.