

## **AFAO Briefing note on the Disability Discrimination Amendment Bill 2003**

The Australian Federation of AIDS Organisations (AFAO) represents Australian HIV community based organisations at a national level. Our membership includes State and Territory AIDS Councils, the Australian Injecting and Illicit Drug Users League, the National Association of People Living with HIV/AIDS (NAPWA) and Scarlet Alliance, the national organisation representing sex workers. Amongst AFAO's activities is the provision of HIV policy advice to the Commonwealth government, advocating for our member organisations, developing and formulating policy on HIV/AIDS issues, and promotion of medical and social research into HIV/AIDS and its effects.

AFAO opposes the Disability Discrimination Amendment Bill 2003 on the following grounds:

### *The Bill undermines the achievement of public health objectives*

Australia's National HIV/AIDS Strategy and National Hepatitis C Strategy have been built on a partnership model. This model seeks to maximise public health outcomes through government and the health sector working in partnership with the communities most affected or at risk of blood borne viruses. The Bill runs counter to this model. By exempting people who inject drugs from legal protections from discrimination, the Bill will add to the stigma associated with drug use. The Bill is likely to alienate people who inject drugs from health and support services and will thereby erode the partnership approach that has formed the foundation of national health promotion policy.

The National HIV/AIDS Strategy has been very successful in preventing HIV taking hold within injecting drug user populations. This stands in contrast to the experience of the USA and many European countries, where HIV became established amongst people who inject drugs early in the epidemic and resulted in significantly higher ongoing rates of HIV prevalence. Australia's success has been achieved through adoption of harm reduction approaches to service provision, provision of peer based education, and efforts to combat stigma and discrimination impacting on people who inject drugs.

Australia's Hepatitis C Strategy, which commenced in 1999, faces considerable challenges in promoting testing and treatment amongst drug users, who represent 90% of hepatitis C infections. To encourage uptake of testing and treatment, preventing discrimination has been adopted by the Hepatitis C Strategy as one of four priority areas for action. This action area is guided by the principle that "policies designed to eliminate patterns of discrimination, isolation and stigma experienced by people affected by hepatitis C must underlie activity at all levels of the partnership" (National Hepatitis C Strategy 1999/2000-2003/2004 p.48).

It is in this context that we consider the Bill to place our public health strategies at serious risk.

People who use drugs are a highly stigmatised group in society. This Bill will only add to their social marginalisation. The message sent by the Bill to the public is that it is legitimate to discriminate against people who use drugs no matter what the circumstances. This will promote judgmental attitudes towards people who use drugs based on myths, fears and stereotypes. Fear of the stigma associated with being identified as a drug user is a major disincentive to accessing health and support services, including drug treatment services, needle exchange services, peer education services and testing and treatment for HIV and hepatitis C. The Bill will only compound this stigma, making people who use drugs reluctant to present to services for fear that, as soon as they are identified as a drug user, their job, home and education could be jeopardised. This will particularly be the case for accessing

workplace drug use support programs, which people who use drugs will be unlikely to access at all for fear that they will have no redress if discriminated against by their employer or other employees.

*The Bill will exacerbate HIV and hepatitis C discrimination*

The Bill includes a note that states that the amendment does not affect the operation of the Disability Discrimination Act (DDA) in relation to a disability that is a medical condition such as HIV or hepatitis C that may be related to drug use. This note does not adequately address the concern that the Bill will result in people who use drugs being at greater risk of discrimination associated with their actual or assumed HIV or hepatitis C status.

In many cases it is very difficult or impossible to neatly separate discrimination on the ground of HIV or hepatitis C status from discrimination on the ground of drug use. The National Hepatitis C Strategy notes that “the association of hepatitis C with drug use is reported as the single most common cause of discrimination, stigma and isolation experienced by people affected by hepatitis C” (National Hepatitis C Strategy 1999/2000-2003/2004 p50).

The Bill would make it easy for an employer who is wanting to sack an employee because of fears about the employee’s hepatitis C status to simply state the employee’s status as a drug user as the grounds for dismissal. It will then be necessary for the employee to prove that it was their HIV or hepatitis C status that was the real reason for the dismissal. The reality is that it will be difficult or impossible for an employee to prove this in most cases. There will be no opportunity for the employee to address the myths and irrational fears about hepatitis C and/or HIV that may have motivated the discrimination. The employee will be left without any remedy against workplace prejudices that are often based on a combination of misconceptions about drug users and blood borne viruses. The same considerations will apply to people who use drugs seeking non-discriminatory access to accommodation, education or access to other services.

*The Bill is unnecessary to address safety concerns*

The Government’s second reading speech stated that the Bill was being introduced to addresses the concerns of employers and business operators that the DDA, as it stands, compels them to employ and provide services to people who use drugs despite risks to others that may arise as a result. These concerns arise from a fundamental misunderstanding of the DDA and are without foundation. The DDA does not guarantee an absolute right not to be discriminated against, and already contains significant defences available to employers, service providers and accommodation providers that take into account safety concerns.

The DDA does not require employers or service providers to not discriminate against someone if this would result in a safety risk. For example, an employer can lawfully discriminate against a person provided that the person is unable to properly perform the functions of the job, including ensuring the health and safety of others (the section 15(4) ‘inherent requirements’ defence has been interpreted by the Courts in this way).

The Bill is unnecessary and damaging. Rather than legislation that effectively penalises drug users, the Government should be investing in strategies to encourage drug users to access treatment and support, such as expansion of drug treatment services, education to counter discrimination and stigma, and support for peer education services and the work of drug user organisations.