Inquiry into the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019

Submission to Senate Standing Committee on Community Affairs

25th September 2019

Introduction

Our mission

Penington Institute actively supports the adoption of approaches to drug use which promote safety and human dignity.

We address this complex issue with knowledge and compassion. Through our analysis, research, workforce education and public awareness activities, we help individuals and the wider community.

Our history

Launched in 2014, Penington Institute, a not for profit organisation, has grown out of the rich and vibrant work of one of its programs, Anex, and its 20 years' experience working with people and families directly affected by problematic drug use.

Penington Institute is inspired by and named in honour of Emeritus Professor David Penington AC, one of Australia's leading public intellectuals and health experts.

Our vision

Our vision is for communities that are safe, healthy and empowered to manage drug use.

Our understanding

Drug use trends, drug development and markets historically move faster than research and policy responses. With our outreach to the front-line we are well-placed to know and understand the realities of how drugs are impacting communities – well before the published literature surfaces significant issues.

We combine our front-line knowledge and experience with our analysis of the evidence to help develop more practical research and policy, support services and public health campaigns. Our strong, diverse networks provide an excellent platform for building widespread support for effective initiatives.

Our activities:

We:

- Enhance awareness of the health, social and economic drivers of drug-related harm.
- Promote rational, integrated approaches to reduce the burden of death, disease and social problems related to problematic substance use.
- Build and share knowledge to empower individuals, families and the community to take charge of substance use issues.
- Better equip front-line workers to respond effectively to the needs of those with problematic drug use.

Our purpose is framed by our knowledge that we need to look at more effective, cost-efficient and compassionate ways to prevent and respond to problematic drug use in our community.

Our submission

Penington Institute welcomes the opportunity to make a submission to the Community Affairs Legislation Committee on the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019. Penington Institute would further welcome the opportunity to give evidence as necessary at public hearings on this Bill.

Penington Institute has made previous submissions on this topic. In April 2018, Penington Institute made a written submission to the Senate Standing Committee on Community Affairs (submission no. 39)[1] on the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018. Following this written submission, Penington Institute's CEO John Ryan spoke at a public hearing in Bankstown, Sydney on 23 April 2018.

The position of Penington Institute has not changed since April 2018, indeed, evidence against drug testing of welfare participants as effective and evidence-based policy has strengthened in the last 18 months. The position of Penington Institute, along with other experts in the medical, alcohol and drug, and social services fields is that this legislation should not be implemented. Further detail for the rationale and evidence behind this position is provided below.

Effectiveness of the proposed legislation to achieve its stated aims

The stated policy endpoint by the Morrison government is that this will "identify and encourage people with substance abuse issues to get treatment, rehabilitate and make them job ready".[2] The measures proposed in this Bill are not supported by a convincing evidence base or by expert opinion, and are unlikely to achieve this policy goal.

A position paper from the Australian National Council on Drugs (ANCD) from 2013 examining the costs and benefits of drug testing people who receive income support payments is clear:

> "There is no evidence that drug testing welfare beneficiaries will have any positive effects for those individuals or for society, and some evidence indicating such a practice would have high social and economic costs."[3]

When devising solutions to alcohol and other drug use it is important to consider what is causing substance use and an inability to find employment amongst those receiving income support payments. The ANCD found no clear evidence that drug use is a barrier to employment for a "significant proportion of people" and listed a range of reasons that are no less significant a factor. These include transport problems, mental or physical health problems or discrimination.[4] These factors, which are mostly outside

[1] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DrugTestingTrial/Submissions

[2] Anne Ruston media release 6 September 2019: https://www.anneruston.com.au/media_release_drug_testing_trials_to_help_welfare_recipients_become_job_ready

[3] Australian National Council of Drugs Position Paper, (2013), see https://www.drugsandalcohol.ie/20368/1/ANCD_paper_DrugTesting.pdf

[4] Ibid.

of the control of any one person on income support, are far harder to solve and simply drug testing those who are unable to find employment will do nothing to address these barriers to employment. This is why the ANCD concluded that drug testing people who receive income support payments is based on a "faulty rationale and incorrect assumptions" about the people who use drugs and the effects of testing.[5]

Furthermore, Australia can look to two international examples of similar drug testing programs, for evidence of effectiveness. These are in the United States and New Zealand.

Drug testing of welfare recipients has been tried in the United States over the last eight years and the results demonstrate that there is no convincing evidence base supporting Australia's drug testing reforms. At least 15 states have passed legislation on drug testing or screening for public assistance applicants or recipients.[6] One of the most prominent examples took place in Florida, where more than 4,000 people receiving income support payments were drug tested over four months in 2011.[7] Less than three percent per cent of participants tested positive with the most prevalent drug being cannabis.[8] The cost of this program was $45,000 more than the state would have paid in benefits to those whose payments were discontinued after testing positive.[9] It was publicly reported that this figure didn't include court fees and thousands of hours of staff time dedicated to implementing the policy.[10]

New Zealand instituted a trial of drug testing welfare recipients as a pre-condition of entry into certain jobs in 2013. A February 2019 report[11] by the Government-convened Welfare Expert Advisory Group has recommended the removal of this policy, following a detailed review of effectiveness.[12] Specific concerns included:

- Drug testing instruments do not produce reliable estimates of use, due to metabolism and different responses to drug types by individuals
- Drug testing cannot distinguish between occasional substance use and those with a substance use disorder
- A positive drug test cannot assess whether a person is intoxicated or impaired.

[5] Ibid.
[6] National Conference of State Legislatures, (2017), "Drug Testing for Welfare Recipients and Public Assistance", see http://www.ncsl.org/research/human-services/drug-testing-and-public-assistance.aspx
[7] ABC Fact Check, (2017), "Fact Check: Is there evidence that mandatory drug testing of welfare recipients can help drug users get off welfare?", *ABC Online*, see http://www.abc.net.au/news/2017-09-18/fact-check-mandatory-drug-testing-for-welfare-recipients/8948840
[8] Ibid.
[9] Ibid.
[10] Brittany Alana Davis, (2012), "Florida didn't save money by drug testing welfare recipients, data shows", *Herald Tallahassee Bureau*, see http://www.tampabay.com/news/courts/florida-didnt-save-money-by-drug-testing-welfare-recipients-data-shows/1225721
[11] Welfare Expert Advisory Group (2019) Restoring Dignity to Social Security in New Zealand: http://www.weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf
[12] Ministry of Social Development (2019) Obligations and Sanctions Rapid Evidence Review Paper 4: Drug Testing Obligations and Sanctions: https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/weag-report-release/obligations-and-sanctions-rapid-evidence-review-paper-4-drug-testing-obligations-and-sanctions.pdf

The initial trial in New Zealand cost more than $1 million, which detected 22 positive results in a sample of 8,001 welfare recipients.[13] In the year to 2017/2018 financial year, 47,115 beneficiaries in New Zealand were referred to jobs that required drug testing, and 170 failed tests[14] - a positive detection rate of 0.4%, from an estimated cost of over $5.5 million. There is no evidence to suggest that this trial improved employment outcomes for those who were receiving unemployment benefits and who also had substance use issues.

Further a 2018 international review[15] of drug testing programs assessed the policies against three primary outcomes:

1. Does it meet its aims? (i.e. is it successful?)
2. Are the aims sufficiently important to justify the costs and burdens? (i.e. is it a proportionate response?)
3. Is the policy more costly and burdensome than feasible alternatives? (i.e. is it a necessary response?)

The review concludes that drug testing programs for welfare recipients are unlikely to meet their stated aims, or where they do meet them, do not meet the requirement to be proportionate and necessary.[16] This is in part due to the high-cost of these programs and the availability of more effective and lower-cost alternatives.

Negative consequences of drug-testing reforms

While the stated aim of this legislation is to assist people to gain paid employment, it has the potential for severe unintended harmful consequences, that outweigh any potential benefits. These are described below.

Conflation of substance use and substance use disorders

As the New Zealand review correctly identified, a positive drug test cannot differentiate between occasional substance use and a substance use disorder. The 2016 National Drug Strategy Household Survey showed that 43% of Australian's self-report illicit drug use in their lifetime, but only 16% have used illicit drugs in the last year, 9% in the last month, and 6% in the last week. [17] This highlights that not all drug use is regular drug use, and that drug use does not infer a substance use disorder. Indeed, of those 16% of people reporting use of an illicit drug in the past year, only a small proportion of those report that they cannot cut down or stop even if they want to (estimates range from 2% to 44% depending on drug type).[18] Furthermore, of the 16% of people reporting use of an illicit drug in the past year, less than 10%

[13] https://public-health.uq.edu.au/article/2017/09/evidence-or-against-drug-testing-welfare-recipients
[14] https://www.tvnz.co.nz/one-news/new-zealand/beneficiaries-failing-drugs-tests-still-hit-sanctions
[15] Walker, M. J., & Franklin, J. (2018). An Argument Against Drug Testing Welfare Recipients. Kennedy Institute of Ethics Journal, 28(3), 309-340.
[16] Ibid
[17] AIHW (2017) National Drug Strategy Household Survey 2016
[18] Ibid

in any drug group reported that they missed at least one day of work in the last three months due to their illicit drug use.[19]

These data highlight that it is important to focus treatment interventions on those with substance use issues or disorders, not just those who use drugs. A 2014 study by the National Drug and Alcohol Research Centre estimated that approximately 200,000 people receive alcohol or other drug treatment in Australia in any given year.[20] This is less than 1% of the Australian population, but even then, there is insufficient capacity in the treatment system for substance use disorders, with the study concluding that unmet demand for alcohol and drug treatment is conservatively estimated to be between 200,000 and 500,000 people.[21]

The Bill will require that recipients who test positive to a second drug test during the trial period be referred to a suitably qualified health professional for assessment of their drug use issues and recommendation of treatment appropriate to their circumstances, which will become part of their Job Plan. However, by mandating assessment and treatment for people who do not necessarily have a substance use disorder, this reduces capacity in the treatment system even further for those who do have legitimate and significant treatment needs. Even with the additional $10 million to provide treatment support in the trial locations, this is unlikely to be available in time for the trial commencement, and will not be effectively utilised in providing services to people who do not have substance use disorders.

Unaddressed mental health issues

There is a complex relationship and intersection between substance use and mental health, and there is a wealth of research pointing to the finding that people with substance use problems are more likely to have mental health issues such as depression or anxiety.[22] Some studies have found that half of adult respondents with a substance use disorder have mental health problems.[23] Others have identified a "significant association" between anxiety and mood disorders and substance use (independent of intoxication and withdrawal).[24] Substance use can exacerbate or even cause mental health problems and it can be difficult to distinguish whether one causes the other or whether common underlying factors contribute to both. There is considerable evidence that in many cases the problems are co-occurring and that drug use is a result of people "self-medicating".[25]

Illicit drugs that will be subject to this trial, including heroin or cannabis, are often used for self-medicating purposes. The Centre for Mental Health Studies has said, in relation to the high level of substance use among people with depression:

[19] Ibid
[20] Alison Ritter, Lynda Berends, Jenny Chalmers, Phil Hull, Kari Lancaster and Maria Gomez, (2014), "New Horizons: The review of alcohol and other drug treatment services in Australia", *National Drug and Alcohol Research Centre*.
[21] Ibid
[22] Katherine M Harris and Mark J Edlund, (2005), "Use of Mental Health Care and Substance Abuse Treatment Among Adults with Co-Occurring Disorders", *Psychiatric Services*, 56(8), 954-959.
[23] Harris and Edlund *op cit*.
[24] Bridget F Grant, Frederick Stinson and Deborah Dawson, (2004), "Prevalence and Co-occurrence of Substance Use Disorders and Independent Mood and Anxiety Disorders", *Archives of General Psychiatry*, 61(8), 807-816.
[25] Katherine M Harris and Mark J Edlund, (2005), "Self-Medication of Mental Health Problems: New Evidence for a National Survey", *Health Services Research*, 40(1), 117-134.

> "People with depression often respond to everyday situations with a negative interpretation. Symptoms of depression also include low mood, loss of interest in activities, people or places and loss of energy which makes them feel terrible about themselves and the world they live in. Many people then turn to alcohol and drugs for temporary relief."[26]

Living with mental health issues and co-occurring substance use problems can make obtaining and keeping a job very difficult. People in this position are likely to be disproportionately represented in the population of Australians receiving income support payments including Newstart Allowance and Youth Allowance. The use of alcohol or other drugs is not necessarily causing unemployment or under-employment for people on income support. Many of these people are existing within an environment, often characterised by financial disadvantage and complex mental health needs, that drives their substance use. By drug testing and punishing non-compliance, rather than addressing complex health needs, the measures in this Bill could be missing the underlying causes of both unemployment and substance use.

Increased stigmatization

Penington Institute believes that this Bill could stigmatise people who are disproportionately more likely to have complex mental health needs, a history of financial disadvantage and who may be self-medicating with alcohol and other drugs.

Alcohol is not a component of this trial. This drug, unlike the "testable drugs" outlined in the Bill, is legal across Australia. However, it is the drug that causes the most damage to Australian society.[27] Alcohol is not included because as a legal drug it does not hold the same stigma as illicit "testable drugs" like heroin or cannabis.

The impact of stigmatising people who are receiving income support and who use drugs could prove profound. Increased stigma has the potential to provoke anxiety that may well exacerbate the use of drugs. In addition to causing major stress for people with a substance use problem,[28] there is also compelling evidence that stigmatisation hinders people in seeking professional help including treatment for alcohol and other drug problems.[29]

The social exclusion resulting from stigma can be considered a significant health risk factor in its own right and one that can act to restrict access to services. The pervasive fear of being judged, something that mandatory drug testing will only make worse, can lead individuals to avoid all forms of contact and

[26] Kay-Lambkin, Centre for Mental Health Studies at the University of Newcastle, 2004, quoted in Families and Friends for Drug Law Reform, *Submission to the Select Committee on Mental Health inquiry "*A national approach to mental health – from crisis to community".
[27] Bonomo, Y., Norman, A., Biondo, S., Bruno, R., Daglish, M., Dawe, S., ... & Lubman, D. I. (2019). The Australian drug harms ranking study. Journal of Psychopharmacology, 0269881119841569.
[28] Hatzenbeuhler, M., Phelan, J., & Link, B, (2013), "Stigma as a fundamental cause of population health inequalities", *American Journal of Public Health*, 813-821.
[29] James D Livingstone, Teresa Milne, Mei Lan Fang and Erica Aman, (2012), "The effectiveness of interventions for reducing stigma related to substance use disorders: a systematic review", *Addiction*, 107(1): 39–50.

assistance.[30] Australia's National Drug Strategy acknowledges this, noting that any policy response must not "unintentionally further marginalise or stigmatise people" at risk of drug-related harm.[31]

This concern is backed up by experience of these programs in the United States, highlighting that the drug testing schemes discouraged voluntary attempts to access treatment. As one policy expert noted:

> "If people are afraid they'll lose their benefits if they admit to using drugs, it makes it hard for them to say, 'Hey, actually I have this issue'".[32]

Stigma pushes problematic drug use to the margins of society and discourages active attempts by people using drugs at getting help when they need it. The United States' experiments made people using drugs less willing to disclose their usage and kept them from connecting with treatment of their own violation.

Switching to more dangerous drugs

Another concern held by Penington Institute is that this Bill may encourage some people to adopt more harmful substance use practices. The "testable drugs" featured in this Bill include opioids (such as heroin), methamphetamine (which includes crystal methamphetamine or "ice") and tetrahydrocannabinol or THC – the cannabinoid in cannabis that causes people to feel "high". The types of testing to be used will include samples of saliva, urine or hair.

The Bill's explanatory memorandum provides that participants "will be randomly selected to undertake a drug test" so there will be uncertainty as to the likelihood of being tested. This leaves the system open to evasion from trial participants. Some may avoid taking the test which leaves them susceptible to punitive measures including suspension or cancellation of payments. Others may instead opt to change the nature of their drug-taking habits to avoid detection to the detriment of their own health as some drugs stay in a person's system far longer than others and are therefore easier to detect through random testing.

In the United Kingdom, random mandatory drug testing of up to 10 per cent of some prison populations takes place each month.[33] If a test comes back positive, days can be added to an inmate's sentence and the penalties are much harsher for some drugs like heroin compared to others like cannabis.[34] However, opioids remain in blood, urine and saliva samples for a much shorter period than cannabis and are therefore less likely to be detected.[35] Whilst heroin only stays in the system for approximately three days, cannabis can last as long as 14 days.[36] As a result of this scheme a perverse outcome has resulted; people in prison are switching from using cannabis to injecting opioids, despite the harsher penalties if detected[37]

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[30] Hatzenbeuhler, Phelan and Link *op cit*.
[31] Australian National Drug Strategy, see http://www.nationaldrugstrategy.gov.au/.
[32] Bryce Covert, (2015), "What seven states discovered after spending more than $1 million drug testing welfare recipients", *Think Progress*, see https://thinkprogress.org/what-7-states-discovered-after-spending-more-than-1-million-drug-testing-welfare-recipients-c346e0b4305d/
[33] *The Economist*, (2002), "The prisoner's dilemma", see https://www.economist.com/node/1046766
[34] Ibid.
[35] Nicola Singleton, (2008), "Policy forum: The role of drug testing in the criminal justice system", *Drug and Alcohol Today*, *Forensic Research & Criminology International Journal*, 8(3).
[36] O'Hagan and Hardwick *op cit*.
[37] Andrew O'Hagan and Rachel Hardwick, (2017), "Behind Bars: The Truth About Drugs in Prisons", *Forensic Research & Criminology International Journal*, 5(3).

Although difficult to precisely measure, the scheme is inadvertently promoting the use of "harder" drugs such as heroin.[38] One study of prisoners subject to mandatory drug testing found 98 per cent of those surveyed believed that mandatory drug testing encouraged people to use heroin.[39]

In these same prison populations this has also driven some people to use synthetic cannabinoids,[40] which can prove far more hazardous to a persons' health.[41]

Systematic research in Australia has found that the evidence for efficacy of workplace drug testing is limited, with no strong evidence base for the claim that testing acts as a deterrent for employee drug use.[42] The lead author of this study later concluded that, in relation to drug testing, *"responses need to include strategies to minimise the risk of unexpected negative outcomes known to be associated with testing. One unexpected negative outcome is that, rather than changing their behaviour to reduce drug use or related risk of harm, the target group may simply change their behaviour to avoid detection. When this occurs, drug testing programs are more likely to have counter-productive consequences"*. [43]

The problem is that the drugs that are more easily "flushed out" of the system, including heroin or methamphetamine, are more addictive and far more likely to cause a fatal overdose or serious harm, compared to drugs such as cannabis. The public health outcomes could prove devastating if participants in this Bill's drug testing scheme were to adopt a similar approach as prisoners in the United Kingdom, and switch to using more harmful drugs in order to avoid detection.

Alternative approaches to support people with substance use issues to gain employment

There are better approaches than those in this Bill to assist people with substance use issues to seek treatment and participate more in the workforce, with many other alternative avenues that will have a meaningful impact on people's lives. These interventions need to focus on those with substance use disorders or people for whom substance use is having negative impacts, rather than punitively targeting drug use. Such measures could include:

Improving access to drug and alcohol services for people with problematic substance use

To achieve greater access to treatment services we need to address the imbalance of federal government spending dedicated to drug policy. Of total government investment tackling the problem of illicit drugs, almost 65 per cent is spent on supply reduction via law enforcement compared to 22 per cent on treatment, 9.5 per cent on prevention and just 2.2 per cent on harm reduction.[44] This is not a cost-effective approach and it presents a huge missed opportunity. Studies have found that treatment is two

[38] Ibid.
[39] Ramsay M, (2003), "Prisoners' drug use and treatment: seven research studies", *Home Office Research Study*, 267,1-164
[40] Singleton *op cit*.
[41] Joseph J Palamar and Monica J Barratt, (2016), "Synthetic Cannabinoids: Undesirable Alternatives to Natural Marijuana", *American Journal of Drug Abuse*, 42(4), 371-373.
[42] Pidd, K., & Roche, A. M. (2014). How effective is drug testing as a workplace safety strategy? A systematic review of the evidence. Accident Analysis & Prevention, 71, 154-165.
[43] http://connections.edu.au/opinion/drug-testing-how-it-works-and-what-it-can-and-cannot-achieve
[44] Alison Ritter, Kari Lancaster and Katrina Grech, (2011), "An assessment of illicit drug policy in Australia (1985 to 2010): Themes and trends", *National Drug and Alcohol Research Centre*.

to three times more cost-effective than law enforcement in reducing drug use and 10 to 15 times more cost-effective at reducing drug-related crime.[45]

Recommendation: The Federal Government should make urgent and significant investment in treatment services in areas of high-need, and adopt policies that support and encourage harm reduction and voluntary treatment seeking (including reduction in stigma).

Using educational programs and training to support employability, and integrating meaningful work (whether paid or unpaid) as a strategy to support long-term recovery

A sense of purpose and having meaningful activities to undertake (which could be unpaid or paid work) has been shown to support long-term functional recovery from alcohol and other drug issues.[46] Therefore, treatment services that integrate educational programs, training, and access to meaningful work will support employability and contribute to meeting the Government's stated policy objectives.

Recommendation: The Federal Government should fund programs and strategies that support both short-term and long-term recovery, and those that foster community engagement and empowerment as key predictors of recovery. These should include educational programs, training, and meaningful activity or work as integrated components of functional long-term recovery, consistent with known evidence about what works.[47]

Changing the legal response to drug use and possession

A criminal record is a major barrier to workforce participation.[48] In Australia, 78,167 people were charged with drug offences in 2017-18, the majority of which (52,665, 67%) were for possession or use.[49] The majority of illicit drug offences proceeded to court action, despite some state-based differences[50], therefore despite the existence of diversion and alternative justice approaches, many Australians either have or will get a criminal record principally due to drug possession or use. This record will persist for a minimum of ten years (or five years for juveniles) even if they have no further convictions in this time.[51] This criminal record can therefore continue to affect people's job prospects

[45] J Caulkins, C Rydell, W Schwabe and J Chiesa, (1997), "Mandatory Minimum Drug Sentences: throwing away the key or the taxpayer's money?", *RAND Drug Policy Research Centre*, Santa Monica, CA, pp. 68–9.
[46] Best, D., Gow, J., Knox, T., Taylor, A., Groshkova, T., & White, W. (2012). Mapping the recovery stories of drinkers and drug users in Glasgow: Quality of life and its associations with measures of recovery capital. Drug and Alcohol Review, 31(3), 334-341.
[47] Perkins, D. (2008). Improving employment participation for welfare recipients facing personal barriers. Social Policy and Society, 7(1), 13-26.
[48] Manuel, J. I., Yuan, Y., Herman, D. B., Svikis, D. S., Nichols, O., Palmer, E., & Deren, S. (2017). Barriers and facilitators to successful transition from long-term residential substance abuse treatment. Journal of substance abuse treatment, 74, 16-22.
[49] Australian Bureau of Statistics (2019 Recorded crime – offenders 2017-18, available from: https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4519.02017-18?OpenDocument
[50] Ibid
[51] https://www.afp.gov.au/what-we-do/services/criminal-records/spent-convictions-scheme

and employability even after they go through treatment and recovery, contributing to a long-term cycle of a disadvantage and despair.

Recommendation: The Federal Government should review its approach to criminalization of drug use, including the productivity impacts of historical and recent drug use charges on the employability and work prospects of people who use (or used to use) drugs.

Recommendation: The Federal Government should review the "Spent Convictions" legislation and consider reducing the waiting period to improve workforce participation and employability prospects for those with historic drug possession offences.

Conclusion

Penington Institute does not dispute that there is a complex relationship between substance use disorders and unemployment, and we further do not dispute that assisting people to become employed is a worthwhile goal. However, there is no evidence base to support mandatory drug-testing of welfare recipients, with international evidence suggesting it would be costly and ineffective. Furthermore, there are the potential for severe unintended harms arising from this policy, a view that is supported by experts in the medical, alcohol and drug, and community services fields. Given this, Penington Institute does not support the proposal outlined in this Bill, and encourage the Government to look for alternate strategies to assist people with substance use issues, which have a strong evidence base, and are focused on positive supports for those in need.