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Social Services Legislation Amendment (Drug Testing Trial) Bill 2019

The Alcohol and Drug Foundation ('ADF') welcomes the opportunity to comment on this Bill. Established in 1959, the Alcohol and Drug Foundation is a trusted partner of the Australian Government, delivering preventative programs, information services and policy advice.

The Bill

According to Assistant Minister's Second Reading speech, the Bill will establish:

- A two-year trial of drug testing for 5,000 new recipients of Newstart allowance and youth allowance (other) in three locations: Canterbury Bankstown in New South Wales, Logan in Queensland and Mandurah in Western Australia.
- A dedicated treatment fund of up to \$10 million to support jobseekers across the three locations, "after listening to feedback from the drug and alcohol treatment sector".
- For jobseekers who test positive, quarantine 80% normal payment "to limit their ability to use their payments to further fund their harmful drug use."
- Jobseekers who test positive will also be subject to a second drug test within 25 working days and may also be subject to further subsequent tests.
- Jobseekers who test positive to more than one drug test during the trial will be referred to a Services Australia contracted medical professional with experience in drug and alcohol treatment.
- If the report from the medical professional recommends treatment, the jobseeker will be required to participate in one or more treatment activities to address their substance abuse as part of their Job Plan. This could include activities such as rehabilitation or counselling. The Bill's Explanatory Memorandum states: "Recipients who fail to meet the terms of their Job Plan including any drug treatment activities would be subject to the participation payment compliance framework."
- A comprehensive evaluation of the trial to determine which aspects have been successful in addressing welfare recipients' substance abuse and barriers to employment.

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The Alcohol and Drug Foundation's Response

As an evidenced-based organisation, the ADF constantly searches domestically and internationally for cost effective approaches in preventing alcohol and other drug (AOD) harm. As was the case with Social Services Legislation Amendment (Drug Testing Trial) Bill 2018, there is an overwhelming view among experts in the AOD sector that there are more effective and cheaper alternatives to a Drug Testing Trial. Furthermore, there is strong concern that a Drug Testing Trial would be counterproductive.

The then Australian National Council on Drugs (ANCD) August 2013 Position Paper stated: "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 could have high social and economic costs. In addition, there would be serious ethical and legal problems in implementing such a program in Australia. Drug testing of welfare beneficiaries ought not be considered."¹

The ADF asks the Committee to consider the following:

- 1) That the Bill contradicts the Australian Government's National Drug Strategy 2017-26:
"Approaches and policy responses aimed at reducing alcohol, tobacco and other drug harms in priority populations should be informed by evidence as it develops and should be reviewed regularly. It is also important that any responses do not inadvertently or unintentionally further marginalise or stigmatise people who are at higher risk of experiencing alcohol, tobacco and other drug related harm [ADF emphasis]."
- 2) That drug use is not the only, and not necessarily the main barrier to employment for people who are out of work. A lack of suitable jobs, lack of education, lack of transportation, and mental and physical health problems, are among the most serious impediments to participation in the workforce, regardless of drug use.²
- 3) That the Bill implicitly treats any illicit drug use as a barrier to employment. This is not the case as the majority of illicit drug users are employed. The proposal will risk forcing functional, non-problematic drug users into a treatment sector that is already unable to meet demand. In that case it may even worsen the access to the treatment system for problematic users of illicit drugs. It may also mandate treatment for an individual who will not benefit from it.
- 4) That the biggest barrier to drug treatment is the shortfall in places because over the past decade the demand for drug treatment places has increased by 45%.³ Consequently, many people who seek drug treatment are placed on waiting lists because demand outstrips supply. In 2014 the National Drug and Alcohol Research Centre estimated that 200,000 people access alcohol and other drug treatment services in Australia each year and that the unmet demand is between 200,000 and 500,000 people per year. NDARC concluded: 'there is substantial unmet demand for AOD treatment' in Australia.⁴

The money proposed to be spent on drug testing would do more for people who use illicit drugs if it was committed to expanding drug treatment services and to reducing stigma, which is a genuine barrier to help seeking. On a broader front, the expansion of evidence informed drug prevention is the most humane response to the challenges posed by the widespread availability of illicit drugs.

- 5) That a wealth of research shows unemployment increases the risk of depression and anxiety due to financial stress, loss of identity and the stigma of being unemployed. Adverse mental and emotional states that are precipitated by those experiences increase the likelihood of problematic drug use.⁵ Subjecting an unemployed person to a drug test will increase their stress and anxiety and risks exacerbating mental health problems. *Consequently, drug testing unemployed persons may have the unintended and counter-productive effect of driving illicit drug use higher.*
- 6) That the proposed scheme will compel the individual to submit to an invasive collection of personal body samples, and that the coercive element means the individual cannot provide a legitimate informed consent.⁶ This may represent a severe infraction of human rights with far reaching consequences if compulsory acquisition of body samples is accepted as standard practice for receipt of Government support. As the Bill does not explicitly rule out the sharing of drug test results with law enforcement agencies, the potential adverse impact of drug testing for the individual is magnified, and the lack of informed consent is even more critical. An inherent risk of data breaches and loss of privacy and confidentiality is a further concern for trial participants.
- 7) The Bill's Explanatory Memorandum states: "Recipients who fail to meet the terms of their Job Plan including any drug treatment activities would be subject to the participation payment compliance framework. Reasonable excuse provisions would continue to apply; however, not where the reason is wholly or substantially attributable to drug or alcohol use and the person has refused available and appropriate treatment [ADF emphasis]."

The loss of a Newstart and a Youth Allowances by non-compliant individuals is almost certain to impoverish many people who are already existing on the financial margins and further disadvantage those who depend on them for care (e.g. children). The loss of an allowance, even for a temporary period, will reduce a household's capacity to finance food, rent and children's educational expenses; in the worst cases people may lose housing, and it may even precipitate a turn to criminal activity to replace lost income. Both outcomes would add to public expense and probably outweigh savings in unpaid unemployment benefits. According to the Bill's Explanatory Memorandum: "Recipients who are part of the drug testing trial and fail to attend scheduled appointments with Services Australia will have their payment suspended until they attend a rescheduled appointment. When the recipient attends a rescheduled appointment, their payment will be resumed but will not be backdated to the date of suspension, unless the recipient has a reasonable excuse for not attending, such as unforeseen caring responsibilities." Concerningly, "job seekers are no longer able to continue using drug or alcohol dependency as a reasonable excuse for not meeting their mutual obligation requirements if they have refused to participate in available and appropriate treatment".

- 8) There is no financial impact statement included in the Bill. The Explanatory Memorandum to the Bill states: "The financial impact of these amendments is not for publication." Before passage, the Bill should be referred to the Parliamentary Budget Office (PBO) for financial implications of the Bill. If the Bill passes, the Trial should be referred to the Auditor-General and the Joint Committee of Public Accounts and Audit to examine efficiency and effectiveness.

- 9) That the Explanatory Memorandum states substances to be tested are, essentially, methamphetamine, cannabis, and opioids and the means of testing are sampling of saliva, hair and urine. However, while drug testing can determine that a drug has been used in the past, it does not distinguish between occasional drug use, regular drug use, and dependent drug use; nor will the testing determine whether the individual was impaired by their drug use at the time they were tested.⁷

Importantly, each drug testing methodology has inherent limitations and the integrity of the results depends on strict adherence to rigorous procedures.⁸ The lack of guarantee was demonstrated by the Canadian 'Motherisk' scandal. Between 2005-2015, the Motherisk Drug Testing Laboratory in Ontario tested the hair of 16,000 people to monitor drug use and to assess the subject's fitness as a parent. After many children had been permanently or temporarily removed from their parents' care, due to an alleged positive drug test, two formal reviews found the drug testing regime was flawed and the results were unreliable.⁹

A second problem is people may turn to or increase consumption of 'alternate' illicit drugs for which they will not be tested, such as synthetic cannabis, ketamine, or other lesser known substances, whose risk profile may be higher than the tested substances. In that case testing would not materially reduce drug use among the target group, although it may be recorded as having achieved a reduction.

- 10) The Bill does not address alcohol, the substance that most commonly drives Australians to drug treatment. Alcohol was the principal focus of 34% of treatment episodes for the 130,000 people treated by publicly funded treatment services in 2017-18.¹⁰ This means that where substance use impairs unemployed people's capacity to engage in work, it is likely that alcohol is a greater barrier than illicit drug use.
- 11) That few Western nations have drug tested welfare recipients and those programs' results are not considered successful. Both the USA and New Zealand have trialled drug testing beneficiaries of welfare, while the United Kingdom mooted an attempt but did not proceed.

Michigan State in the US instituted 'suspicion-less drug testing' that surveilled people who claimed a particular benefit without having a 'reasonable suspicion' that they had recently used drugs. The legislation was struck down after an American Civil Liberties Union (ACLU) court challenge.¹¹ The policy was found to violate the constitutional right to freedom from unwarranted searches and seizures outlined in the Fourth Amendment to the Constitution. In a subsequent attempt Michigan established the Substance Use Disorder Pilot to determine the efficacy of suspicion-based drug testing for recipients of its cash assistance Family Independence Program (FIP). In a pilot study with 443 participants, no person was considered worthy of being deemed 'suspicious'.¹²

In 2013, New Zealand required welfare recipients to apply for job vacancies which utilised a pre-employment drug screen. Applicants who tested positive or refused to participate were given a 30-day deadline to cease using drugs, or their welfare payments would be reduced or stopped.¹³ Subsequently, the Ministry of Social Development conceded that only low numbers of positive tests were recorded since its introduction.¹⁴ There were only 48 instances of positive tests from the 64,265 individuals who were work-ready receivers of benefits.¹⁵ It is a low positive rate, and raises doubts about the usefulness of drug testing policies as the cost to implement the program outweighs the benefits.

12) Prevention works

The Alcohol and Drug Foundation's focus is on prevention and early intervention. Our strategies include community action, health promotion, education, information, policy, advocacy, and research. Our work aligns with the Australian National Drug Strategy that declares "efforts to promote social inclusion and resilient individuals, families and communities" are a key objective within the demand reduction pillar.

Community organisations are key settings in delivering best practice drug prevention. The ADF's Good Sports program has demonstrated success in reducing excessive alcohol consumption and related harms in the community sports setting. Good Sports assists community sporting clubs control the use of alcohol and promote community safety by implementing effective alcohol management policies and practices. It is the first primary prevention alcohol program in community sport in the world to be proven successful. A randomised control trial showed the Good Sports program reduced the likelihood of risky drinking by club members (down by 37%) and risk of club members experiencing alcohol related harms (down by 42%).

The ADF delivers the Local Drug Action Team Program which is part of the Australian Government's investment of \$298 million over four years under the National Ice Action Strategy. Local Drug Action Teams receive an initial \$10,000 and are supported by the Alcohol and Drug Foundation to develop Community Action Plans, which outline evidence informed prevention activities to address local alcohol and other drug-related issues. 244 Local Drug Action Teams are established across Australia to prevent and minimise alcohol and other drug-related harm in their communities. Over 1300 organisations are now part of the Local Drug Action Team Program network across Australia. Local Drug Action Teams help to strengthen their neighbourhoods by delivering primary prevention initiatives such as peer support, mentoring, education in schools, support for young people and resources to reduce Fetal Alcohol Spectrum Disorder (FASD).

LDATs operate in the pilot sites and are currently undertaking a number of activities that will help to minimise harm through prevention. These include two LDATs in the Logan QLD area, two LDATs in the Canterbury Bankstown NSW area and one LDAT in Mandurah WA.

Activities being delivered by these LDATs work to create stronger and healthier communities by increasing protective factors such as:

- connection to community, school and local sport/recreational clubs;
- creating a sense of connection, belonging and empowerment;
- developing skills and creating employment opportunities;
- enabling early engagement into support services when required;
- building resilience in individuals and communities; and
- collectively working towards reducing stigma and increasing access to local support services where needed.

Several LDATs are also undertaking specific work that will reduce stigma and improve employability. These include:

- Logan's ADRA Logan Local Drug Action Team - aims to reduce alcohol and other drug-related harms in the local community, through gathering the community together to do hands-on creative activities such as art, crafts, light steel fabrication and woodworking. The emphasis will be on participants being occupied, reducing boredom and being creative to produce things of interest and value to themselves and the community. This will increase their sense of belonging and feelings of self-worth while motivating and inspiring them to contribute productively to the community. The activity will provide a regular gathering space for participants to engage their creative interests, with the view of improving employment opportunities, reducing stigma and increasing access to local support services.
- Canterbury Bankstown's Our Youth Matters Project LDAT - aims to reduce the harms associated with alcohol and other drugs among young people from refugee backgrounds aged 12 to 30-years by increasing community cohesion. This will be achieved by hosting youth-led forums focusing on identity, belonging, living between cultures and defining your future and reducing stigma. This will include arts-based and job skills workshops that focus on identity, developing networks and social connection, in order to upskill community members and enable skills to be utilised within their communities, and to promote stronger inter-community relationships.
- Canterbury Bankstown's Street Smart Project – is developing an activity that aims to reduce stigma, improve mental health, social and emotional well-being of Aboriginal people, reduce isolation and foster connection to culture.

Determining the full impact of a robust, evidence informed program usually requires a long term perspective as it can take many years to realise the results. In the 1990s, Iceland had some of the highest rates of youth alcohol and other drug use in the world but has seen a significant decline over the past 20 years due to a concerted effort to prevent and delay uptake amongst youth.

In 1998, the Iceland government committed to long-term investment in Planet Youth. At the core of Planet Youth is increasing parental involvement in children's lives and children's participation in organised, healthy activities, especially sport, outside school hours. This may appear a common-sense practical approach, however it is not simple to implement as the joint support of parents, communities and local governments is critical.

Between 1998 and 2016, the percentage of 15-16 year old Icelandic who had consumed alcohol in the past 30 days declined from 42% to 5%; daily cigarette smoking dropped from 23% to 3%; and use of cannabis one or more times fell from 17% to 5%.¹⁶

Delayed initiation to alcohol and other drugs is associated with better long-term socio-economic outcomes. While there are differences between Iceland and Australia, many risk and protective factors for alcohol and other drug use are the same. As well as drastically reduced AOD use, Iceland has seen reduced rates of bullying, juvenile crime and unsupervised parties.¹⁷ Planet Youth is a long-term investment that addresses complex factors such as culture and attitude. The change in Iceland has been profound.

Yours sincerely

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