SANDAS submission to:

Social Services Legislation Amendment (Welfare Reform) Bill 2018

April 2018

SANDAS *is the peak organisation for the non-government alcohol and other drugs sector in South Australia.*

SANDAS works to lead and strengthen community responses to the harms caused by alcohol and other drugs.

SANDAS facilitates networking, collaboration, research, information sharing, advocacy, training and policy reviews to reduce the harmful impacts of alcohol and other drugs. We are the voice of our members at national and state levels.

INTRODUCTION

SANDAS is the peak organisation for the nongovernment alcohol and other drugs sector in SA.

SANDAS represents over 35 organisational members that provide a broad range of services including drug and alcohol health promotion, early intervention, treatment, and after-care programs. These community based organisations operate throughout South Australia. They comprise both large and small services that are diverse in their structure, philosophy and approach to drug and alcohol service delivery.

SANDAS's vision is to lead and strengthen community responses to the harms caused by alcohol and other drugs.

SANDAS facilitates networking, collaboration, research, information sharing, advocacy, training and policy reviews to reduce the harmful impacts of alcohol and other drugs. We are the voice of our members at national and state levels.

SANDAS is governed by a Board of Directors primarily elected from the SANDAS membership.

Further information about SANDAS, its programs and services is available on the SANDAS website at www.sandas.org.au.

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Social Services Legislation Amendment (Welfare Reform) Bill 2017 Submission

Drug Testing Welfare Clients – a fraught approach

SANDAS and the South Australian non-government alcohol and other drug treatment services we represent do not support the drug testing of welfare recipients. This is the fourth submission in which we have provided a response to this proposed legislation, not including letters to individual members of parliament and advisors to government ministers. This advice is consistent with submissions by major health and welfare bodies, alcohol and other drug treatment services, peak bodies and clinicians, as well as many of the submissions provided by community groups who are responsible for working directly with clients and families of those affected by alcohol and other drugs.

In this context SANDAS recommends that the Senate Committee advise against proceeding with the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018. Our reasons for recommending this are set out below.

Our main concerns are:

- This amendment is inconsistent with the Australian Government's new National Drug Strategy 2017-2026 and do little to address the structural factors that contribute to unemployment.

- There is no evidence that an intervention of this kind will lead to positive outcomes for users or the wider community. This intervention will incur costs without any clear benefit. Evidence from previous drug testing trials has clearly identified significant problems with drug testing welfare recipients. In New Zealand, where drug testing of people on income support has operated for three years, Ministry of Social Development figures report that in 2015, 32,000 people underwent drug testing and only 466, or 1.4%, returned positive results.[1] It is clear that testing proved to be an ineffective mechanism for identifying people with drug problems.

- Drug use is primarily a health issue, and this intervention is not an informed and appropriate response based on addressing the health needs of people who use drugs. Relapse is a common aspect of the journey towards recovery, and punitive actions would most likely undermine the efforts and positive achievements of people making changes to their drug use. There is also a significant number of people who use drugs who have co-occurring psychiatric health issues, with 80% experiencing high levels of psychological distress. Drug testing and its implications would place an additional burden on a most vulnerable section of our community.

- The primary justification for this change in legislation according to the Explanatory Memorandum is that, 'Substance abuse is a major barrier to social and economic participation and is not consistent with community expectations around receiving taxpayer funded welfare payments'. Giving primacy to the attitude of the general population over the health treatment needs of individuals is inconsistent with the provision of evidence-based health interventions.

- This intervention would impose further financial hardship on a vulnerable section of our community, without realising benefit for the wider community. People receiving benefits are amongst the poorest in our community, and any further financial deprivation places their health

[1] Collins, B. (2017). 'Tens of thousands drug-tested, hundreds fail', Radio New Zealand. http://www.radionz.co.nz/news/political/325553/tens-of-thousands-drug-tested,-hundreds-fail

and wellbeing at significant risk. Stopping of payments can have major ramifications in terms of accommodation, health and readiness for employment and/or training.

- Children and other family members would also be impacted by the loss of payments/benefits. This may impact on children's access to schooling, health services, and other supports with an increase in parental poverty aligned with an increased likelihood of child removal into state care. The state system of care is already under enormous pressure.

- Drug testing stigmatises welfare recipients, and stigma is one of the most significant barriers to attending treatment. This outcome is at odds with the stated aim of the trial being to improve a recipient's capacity to find employment or participate in education and training by assisting them to attend treatment.

- International research shows that stigma can create barriers to people seeking and receiving help to address problematic alcohol and other drug use, hindering their ability to reconnect with their community, and further limit access to opportunities such as employment. Stigma and discrimination related to problematic alcohol and other drug use can also compound social disadvantage[2].

- There are other more effective means for achieving maximise use of treatment which are not reliant on the imposition of punitive reductions in basic living supports. If the government were serious about achieving this outcome, then there would be a determined effort to engage substance affected individuals into voluntary treatment rather than the implementation of highly punitive and stigmatising punishments such as income management. The Explanatory Memorandum fails to address any of the significant concerns expressed by AOD and Mental Health, Community Health, Public Health, Aboriginal Community Controlled Health Organisations, human rights organisations etc. about the significant issues that income management raises.

- There are serious implications in relation to denying a vulnerable segment of our community access to basic welfare payments. The fear of testing may result in them withdrawing from the welfare system. This may increase the likelihood of their engagement in illegal activities to raise money (minor crime, dealing to support personal use) and moving into the illegitimate economy where they may be subject to exploitation, or be easier to exploit by others involved in crime.

There is also likely to be many unforeseen consequences to this intervention, which may include but not be limited to:

- Welfare recipients who are using illicit drugs may choose to use new and emerging substances that do not show up on tests but are more dangerous or they may use prescription drugs illicitly.

- They may also use alcohol in much higher quantities, giving rise to alcohol related harm, which is not addressed by this strategy at all.

Requiring welfare recipients to comply with complex drug testing raises a number of significant concerns. These include but are not limited to:

[2] https://ndarc.med.unsw.edu.au/project/reducing-stigma-and-discrimination-people-who-use-alcohol-and-other-drugs

- Requiring individuals to pay for second or subsequent tests (at a time when their benefit may be suspended or pending suspension) breaches concepts of natural justice. It implies that they were cognisant of their drug use and would use subsequent tests as a delaying tactic. It fails to recognise the high rate of false positives that can occur in drug tests[3].

- The implications for those already in the justice system (e.g., on remand, undertaking drug diversion programs, subject to child welfare orders etc.) are unclear.

Introducing such testing will also give rise to process issues:

- The new Section 64 of the Act appears to give the responsibility of suspending benefits to the drug testing contractor. Is it the intention of the Government to delegate the decision in relation to benefits to a company that is contracted to provide testing? Will there be a risk that the contractor will be required to meet a key performance indicator about the number of people declined benefit?

- What role will Centrelink have in reporting drug use to other services (courts, corrections/justice, child protection)? How would such a role fit with privacy laws and rights?

- The Memorandum does not clarify the appeals process, other than by making the welfare recipient responsible for secondary tests at their own request where these tests are failed. There is no indication on how individuals can access the usual processes of natural justice in relation to administrative decisions made by a contractor, the department or minister.

- Where people are subject to reports made by Centrelink will they have a right to see these reports and if the report is wrong in fact how would a person be able to challenge such a report?

- A lack of transparency and natural justice around these issues may raise significant human rights implication. The way in which the discussion document addresses human rights issues is insufficient.

There are also concerns that drug testing is fraught with many issues in its own right. These include:

- Tests do not identify intoxication only past use and possibly exposure. Occasional use of most drugs is unlikely to result in an inability to search for, gain or perform work.

- Maintaining a chain of evidence consistent with legal requirements, achieving compliance with testing standards in Centrelink offices and addressing problems related to false positives and sample contamination is not adequately addressed in the legislation. There is emerging evidence that some tests may give high rates of false positives. Some of these are caused by secondary inhalation[4] (cannabis) or absorption through the skin (methamphetamine and some other drugs)[5]. Where a person tests positive but lives/works in a place where drugs are used how will positive tests arising from secondary exposure be distinguished from personal use?

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[3] Pidd, K, Roche, AM. (2011). Workplace drug testing: Evidence and issues. National Centre for Education and Training on Addiction (NCETA), Flinders University, Adelaide.

[4] NIDA. (2017, April 28). Marijuana. Retrieved from https://www.drugabuse.gov/publications/research-reports/marijuana on 2017, July 31

[5] 1: Van Dyke M, Martyny JW, Serrano KA. Methamphetamine residue dermal transfer efficiencies from household surfaces. J Occup Environ Hyg. 2014;11(4):249-58. doi: 10.1080/15459624.2013.848035. PubMed PMID: 24579754.

- Given the high rate of false positives in drug testing how will an appeals processes work if a test is wrong? Where/what is the burden of proof? Making a person pay for secondary test checks is unfair and discriminatory. There is no indication of how people will people be supported to undertake an appeal. Will a person who tested with a false positive be compensated, receive back pay or be able to seek damages?

- Drug testing incurs significant costs per test (including secondary/confirmation testing under laboratory conditions to eliminate false positives). These costs may offset any savings. To date there has been no details released of a cost benefit analysis having been undertaken to show that this approach could save the government money in the welfare budget. In New Zealand, Canada[6] and American[7,8] states where this type of testing has been trialled, it has been shown to result in no cost savings as most of those tested had multiple barriers to employment other than just substance use.

Finally, and perhaps most critically, alcohol and drug services are chronically underfunded and cannot meet the demand we already have from voluntary clients. Having an influx of involuntary clients would further overburden the system. Whilst the Government has indicated that it will increase funding and delivery of treatment places to meet increased demand in the trial sites there has been no discussion with the sector on the capacity to expand services within the trial timeframe.

SANDAS and our members would welcome the opportunity to work with the Federal Government on achieving better outcomes for people affected by alcohol and other drug-related issues and to meet with relevant Ministers or their staff to discuss these important issues.

For further information or to set up a meeting please contact:

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[6] S Macdonald, C Bois, B Brands, D Dempsey, P Erickson, D Marsh, S Meredith, M Shain, We Skinner, A Chiu, Drug testing and mandatory treatment for welfare recipients, International Journal of Drug Policy, Volume 12, Issue 3, 2001, Pages 249-257, ISSN 0955-3959, http://dx.doi.org/10.1016/S0955-3959(01)00094-9. (http://www.sciencedirect.com/science/article/pii/S0955395901000949)

[7] https://thinkprogress.org/what-7-states-discovered-after-spending-more-than-1-million-drug-testing-welfare-recipients-c346e0b4305d

[8] Morgenstern J, Hogue A, Dasaro C, Kuerbis A, Dauber S. Characteristics of Individuals Screening Positive for Substance Use in a Welfare Setting: Implications for Welfare and Substance-Use Disorders Treatment Systems. Journal of studies on alcohol and drugs. 2008;69(4):561-570.