



Legislative Council Legal and Social Issues Committee

Inquiry: Inquiry into workplace drug testing in Victoria

Hearing Date: 22 May 2024

Question[s] taken on notice

Directed to: Alcohol and Drug Foundation

Received Date: 3 July 2024

1. **David ETTERS HANK, page 6**

Question Asked:

Thank you, Chair. Thank you for your presentations – really appreciated. I guess I would like to move on to some of the sort of practical applications of this. Perhaps if we start with the issue you raised about stigma and a person's right to be able to work in an environment free of stigma and suchlike. It is not in your submission, but I am wondering if the foundation has a view on the applicability of the discrimination Act and particularly the definition of disability as it applies in this context.

Robert TAYLOR: Yes. I am afraid – sorry – that is just a little beyond our expertise. So no. Apologies.

David ETTERS HANK: Okay. That is a swing and a miss. In terms of the practicalities of implementing a health-based approach at a workplace level, and thinking particularly in terms of you are talking to lawmakers or hopefully shaping that legal process, are there specific changes you would like to see to the regulatory framework in terms of the application of an appropriate drug and alcohol policy at a workplace level?

Robert TAYLOR: That is an interesting question, and I am trying to think off the top of my head whether there is anything I could give you in concrete terms that aligns with our existing positions. A lot of our work does focus more on the criminalisation of personal use within the community more broadly. I think it is worth saying, you know, we support the decriminalisation of all personal use and possession of illicit drugs. We know that criminalisation is a key driver of stigma, if not the key driver of stigma. I think that is very clear in the way that medicinal cannabis is particularly singled out as a particularly controversial medication when other medications that are more impairing that are not criminalised in the same way as cannabis are not stigmatised in the same way. But beyond that, to specific workplace regulations, I am sorry.

David ETTERS HANK: Okay. Would you be happy to take that – in fact probably both of my last two swings – as a question on notice?

Robert TAYLOR: Yes.

David ETTERS HANK: Okay. That would be great. Thank you.

Robert TAYLOR: We will do what we can.

Response:

The Alcohol and Drug Foundation (ADF) is unable to comment specifically on the definition of disability within the *Equal Opportunity Act 2010* as this sits outside of our expertise. However, the ADF is strongly supportive of any legislative or regulatory approach that prioritises a health response to alcohol and other drug use within the workplace, while maintaining necessary safety standards. Individuals who are prescribed medication that may be impairing in roles where this may impact safety should be offered health-based responses from the workplace, rather than punitive responses like suspension or termination. This is particularly true for cases where medicinal cannabis has been treated differently than other medication that may cause impairment, like opioids or benzodiazepines. The ADF is supportive of amendments that would ensure that individuals are not discriminated against based on their choice of medication, and that support health-led responses in the workplace.

Additional questions**2. From David ETTERSANK****Question Asked:**

Given your position on the issues of stigmatism and punitive workplace approaches, what is the ADF's position on the applicability of the Victoria's anti-discrimination laws per Committee's terms of reference #4.

Response:

As above, the ADF lacks the expertise in the legal considerations around the applicability of anti-discrimination laws in the workplace setting in Victoria. However, as a matter of principle, we are strongly in support of legal settings that will lead to outcomes where individuals' choices of medications are not grounds for discriminatory action. Legal settings that allow discrimination based on certain choices of medication (such as medicinal cannabis) form part of a broad system of stigmatising legal and social practices that continue to cause harm in the Victorian community. The ADF has conducted extensive work looking at the causes and impacts of stigma, including the ways in which legal systems can contribute to stigma and subsequent poor health outcomes for individuals and the community. More information on the functioning of stigma and its outcomes is available here: [Alcohol and Other Drugs Stigma: A background paper](#).

3. From David ETTERSANK

Question Asked:

Are there other workplace regulation options that the ADF believes should be addressed to achieve an optimal approach to workplace drug testing?

Response:

The ADF supports an approach to workplace drug testing that takes place within a broader health-based approach to alcohol and other drug use within the workplace. While ‘zero-tolerance’ approaches to medication that may cause impairment have a place in safety-critical tasks, this should not be considered as an adequate approach to minimising harm. Similarly, drug-testing in the workplace is imperfect in its application, and when used, should only be considered as one part of an overall approach to ensuring health and safety in the workplace. A health-based approach to alcohol and other drug use in the workplace should encourage employers and employees to approach safety in a collaborative manner. Employees should be educated about the potential impacts of impairing substances (prescribed or unprescribed), and employers should be similarly educated about the specifics of medications that individuals may be prescribed. While certain tasks may not be appropriate if an individual is impaired due to use of medication, employees should be protected from discriminatory punitive measures on the basis of taking a certain medication. Employers should meaningfully manage an individual’s right to privacy where a disclosure concerning potentially impairing medication is required.