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WORKPLACE DRUG TESTING: WHY THE CONTROVERSY?

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In our July issue, we examined the mechanics of testing for illicit drugs. Now we ask, 'Why is workplace drug testing so controversial?'

Drug testing is increasingly commonplace, with testing occurring in a wide range of settings including the workplace, the sporting arena, the roadside, prisons, clinical treatment and schools. The introduction of testing to these settings has raised a number of controversial issues. Central to the controversy surrounding these issues are underlying assumptions about what testing can or cannot achieve. A comprehensive examination of all issues across all settings is beyond the scope of this paper. The focus of this brief paper will be on workplace testing, however, many of the issues raised also apply to other settings.

Drug testing and drug impairment

An implicit assumption underlying the rationale for workplace testing is that it can improve safety by detecting impairment. While there is strong evidence for the efficacy of breath analysis as an indicator of blood alcohol content and for a cut-off level of 0.05g/100mL to be indicative of alcohol impairment, no such evidence exists for alcohol or other drugs detected by the most common forms of workplace testing (i.e. urinalysis and saliva testing). A positive on-site urine or saliva test merely indicates that the individual has consumed a drug at some time in the past. Subsequent laboratory analysis can only estimate the likelihood that the individual may have been impaired.

Drug testing as a method of deterring use

It is often assumed that workplace testing is an effective strategy in deterring worker drug use. To date, only three published studies have used national data sets to examine

this issue. The most recent (Carpenter 2007) analysed data collected from US national drug use surveys and found small, but consistent, patterns indicating workplace drug testing was associated with lower levels of worker drug use, especially where testing was frequent and penalties were severe (e.g. immediate termination of employment). However, lower levels of worker drug use were also apparent in non-drug-testing workplaces that provided a drug education program, an employee assistance program, and a written drug policy (Carpenter 2007). While the cross-sectional nature of this study limits conclusions regarding causality, the results are consistent with deterrence theory, which proposes that timely sanctions are necessary for effective deterrence. However, as outlined below, a punitive approach to drug testing in the workplace may come at some cost.

Testing as a method of reducing drug-related harm

Reviews of research consistently fail to find robust evidence that workplace testing is effective in reducing drug-related harm. Rather, research indicates testing can result in employees holding negative attitudes towards their employer which in turn has a negative impact on productivity. Comer (2000) identified that while many employees see testing as relatively non-invasive, they also perceive it as being unable to detect impairment or enhance safety, and have a negative view of their experience in taking drug tests.

Drug testing may unintentionally obscure the true extent of harm in settings such as the workplace. This is most likely to occur when a positive test results in a punitive outcome. For example, drug testing can result in:

- a focus on illicit drugs. Australian workforce data indicate a relatively small proportion use illicit drugs, but a much larger proportion engage in harmful patterns of alcohol consumption
- less attention being paid to drug-related behaviours. Hangovers and other drug-related behaviours (e.g. aggression, mood swings) can continue to negatively affect safety and productivity long after use is no longer detectable by most testing methods
- displacement effects. Individuals may shift from the use of drugs that are easily detected, to other drugs that are harder to detect





- unintended behavioural change. Individuals may change their behaviour to avoid detection, rather than reducing use. For example, they may change patterns of consumption or use commonly available masking agents including prescription or over-the-counter medications.

Drug testing in the US

Proponents of drug testing often present the US experience as support for the implementation of testing into Australian workplaces. However the US legal framework and US drug policy differ markedly from that of Australia and these differences affect the degree to which their testing experience translates to Australia.

The focus of US policy is on prohibition ('zero tolerance') via law enforcement. Australian drug policy is based on harm minimisation, which proposes prevention and reduction strategies can only be achieved through wide-ranging and broad-based interventions which encompass the whole community. The adoption of flexible principles and a harm minimising approach distinguishes Australia's drug policy from US policy.

In the US workplace, drug testing is carried out under the *Drug Free Workplace Act* (1988; 1991) which mandates 'drug free' workplaces and implicitly authorises drug testing. This Act applies to all federal government employees, employers seeking federal government contracts of \$25,000 or more and all federal government grantees. The Act allows employers to develop policies that prohibit the use of alcohol on the job and prohibit the use of illicit drugs at any time (Walsh 2008). In general, US federal and state courts have upheld employers' right to test and enforce a zero tolerance policy in regard to illicit drug use.

In contrast, Australia has no such legislation. The only exception to this is recent (2008) amendments to civil aviation safety regulations which mandate drug testing in the aviation industry. All other Australian workplaces deal with workplace drug issues under various occupational health and safety Acts and regulations, which require employers and employees to take all reasonable steps to ensure a safe workplace. These Acts and regulations either explicitly or implicitly refer to alcohol and drug use as a potential safety risk, but do not mandate or recommend testing as a response.

A recent review of Australian legal decisions concerning workplace testing (Roche et al. 2008) summarised the Australian position as recognising that drug testing is only one of a number of responses available to employers and is only considered reasonable where specific workplaces are deemed to be safety sensitive or have special needs.

Zero tolerance random testing, in the absence of strong justification, has been judged as unreasonable.

Commercialisation and consumer protection

Worldwide, drug testing has grown into a billion dollar a year industry. In US workplaces alone it was estimated that between 30 and 40 million workers and job applicants were tested for illicit drug use in 2007, with accredited laboratories processing up to 75 000 samples daily (Walsh 2008). Along with the commercialisation of testing comes concern over consumer protection. Much of the information available to employers is provided by manufacturers of testing products and providers of testing services. Thus, there is always a potential conflict of interest between accurate consumer information and marketing strategy. In the US, some degree of consumer protection is provided. All on-site Point of Collection Test (POCT) devices are required to be approved by the Federal Food and Drug Administration, workplace testing guidelines are mandatory, and testing laboratories are required to be certified by the US Department of Health and Human Services. In Australia, there is no requirement for on-site POCT devices to be approved by an Australian government authority, drug testing standards are voluntary, and laboratory accreditation is voluntary via membership of the National Association of Testing Authorities.

Summary

Drug testing is at best a limited method for deterring use or reducing drug-related harm. Moreover, the inability of drug testing to detect drug impairment severely compromises its usefulness as a method of detecting risk to workplace safety. The increasing commercialisation of testing and the potentially negative consequences of testing in some settings also indicate the need for caution when considering testing, especially in the workplace.

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