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Submission to the Law and Order Selection Committee on the Drug and Alcohol Testing of Community-based Offenders and Bailees Legislation Bill 238

About NCWNZ

The National Council of Women of New Zealand (NCWNZ) is an umbrella group representing 288 organisations affiliated at either the national level or to one of our 21 branches. In addition to our organisational membership, about 260 women are individual members of branches. NCWNZ's function is to represent and promote the interests of New Zealand women through research, discussion and action.

This submission has been prepared by the NCWNZ Justice and Law Reform Standing Committee and the Parliamentary Watch Committee after consultation with the membership of NCWNZ.

Availability and effectiveness of current drug and alcohol intervention services

The key focus of the Bill is to introduce a new regime for monitoring and testing compliance with alcohol or drug conditions, pursuant to bail conditions or orders relating to community based offenders.

The availability of effective treatment services in the community is obviously a critical infrastructure support for any such regime. This was recognised by the Minister of Corrections in his first reading speech, where he noted that the proposed changes in the Bill sit alongside an increased provision of alcohol and drug intervention services offered by the Department of Corrections:

“...for example, in 2014 there were more than 8,500 drug and alcohol treatments and interventions, which is an increase of nearly 300 percent on the previous year.”

It is unclear from the statistics he has provided whether these are all programmes that are currently available for bailees and community-based offenders.

NCWNZ members, including professionals working in the justice and health sectors and community organisations, commented on the accessibility and effectiveness of current drug and alcohol intervention services. This appears to vary between regions, particularly in respect of accessibility.

However, the majority of members who responded noted limited access to services in their region (particularly in the provinces and rural communities) and nationally, including:

Nelson, Marlborough (where there is only one facility), Stratford, Marton, Hamner Springs, Te Puke (now closed).

Springhill residential treatment centre in Napier continues to function but is always full, which means that when someone is referred to a residential facility for treatment, it is almost impossible to find a facility for them.

According to experts in the field, current programmes and facilities are woefully under-resourced and inadequate. A JustSpeak article from 2013 reports only 1,000 of 20,000 offenders who spend time in prison each year gain access to treatment programmes.¹

There is accessibility in the city but rural areas are not well covered. They require a carer / car driver to get to any treatment services. Treatment requires commitment and often the pressure is on those around rather than the offender or bailee. Such treatments are only effective if there is a commitment to the outcome. Treatment can be effective though.

Community based A & D education services are lacking.

Several members provided reasons for the current barriers to accessibility. Difficulties of accessibility are caused by:

- The growing numbers of people requiring treatment. This causes waiting lists for assessment, referral and admission to programmes;
- People living in rural and 'hard to reach' communities;
- The increasing combination of mental health issues and addictions impacting on the increasing complexity of treatment needed plus the person's ability to attend treatment sessions regularly;
- The lack of youth-focussed treatment services;
- There are a growing number of people being 'required' legally to attend treatment services. This limits the availability of services to self-referred people who do not have

¹ <http://justspeak.org.nz/drug-treatment-units-in-nz-prisons-are-they-enough-to-support-prisoners-with-substance-addiction> (last accessed 16/04/2015).

any such obligations. The ‘separateness’ of District Health Boards making it difficult for people to be treated in one DHB area and have follow up resources made available to them in another. This causes difficulties for a transient group of the population.

- Previous treatments were intended to stop prisoners using and abusing. Current intervention and treatment services now aim to reduce intake or use. Medicating for use aversion is not as effective as the previous treatments were. It appears that there is not sufficient hospital follow through / after care treatment. Staff working in the area of community and prisoner rehabilitation could previously refer a person to a residential facility for intervention and treatment services. That has changed and currently only a clinician can refer someone for treatment to a residential facility. Staff who work in the area of community and prisoner rehabilitation are only able to escort a person to the facility.”
- “There are limited opportunities for post-graduate training in the addictions/treatment field.”

Clauses 7, 15 and 30: Complying with alcohol and drug conditions

Some members recognised the role of the family in helping a person to comply with their conditions: A family or whanau support group would be invaluable in the case of alcohol or drugs to provide protection to the person who is the likely offender.

Many members recommended support systems, such as buddies, as a way of supporting offenders’ compliance with these conditions. For example, one member organisation recommended that:

“Instead of just employing people to test community-based offenders, adopt the model used by community mental health services where they employ support workers, often with ‘lived experience of addiction’ to contact the people to encourage them in their abstinence.”

“Be sure there is support in the community before release, knowing that offenders often go back to the same environment where alcohol and drug abuse continues. Provide support and assistance for a fresh start in a different community if requested – encourage and offer this option. Use groups like AA to provide sponsors.”

One member strongly advocated for a new approach to dealing with, and supporting offenders with drug and alcohol problems. It is time to establish:

“...an Alcohol and Drug Court system into NZ. The pilot programme and international research have proved positive.²

² <http://www.justice.govt.nz/courts/district-court/alcohol-and-other-drug-treatment-aodt-court-pilot-1> (last accessed 16/01/2015).

Reallocation of tax-payer funding away from building more prisons to ensure provision of adequate health care (including mental health treatment), intensive, wrap-around drug and alcohol addiction rehabilitation, counselling and life-skills (including literacy and numeracy training) for all offenders who see offending is alcohol or drug based.

This is a paradigm shift away from the current punitive approach of the Justice and Corrections systems, but statistics (burgeoning prisoner numbers) show it is time for a bold move to be made in order to create a positive change, reduce recidivism and take steps towards building a stronger society.”

One branch advocated for a strong role for Police in supporting the offender with addiction or abuse problems:

“Police should make referrals to social service agencies situated in the location in which the offender is domiciled. Strengthening families meetings could be held to link up support systems around the offender (with one lead agency), alternatively Family Group Conference type meeting could be held where the person non-complying has to front up and seek support, as well as receiving counselling to establish the underlying problem and establish healing of previous hurts, or establish a plan to avoid repeat offending/non-compliance. The testing itself only establishes the fact that the alcoholic condition exists.”

Some members thought that workplaces could also have a role in assisting that person to comply. While another member thought that there should be a culture and support wrapped around self-reporting and actively seeking assistance. This could be supported through a reward system and support to attend, such as petrol vouchers.

Part 2 Clause 15: Administering testing as part of the monitoring regime

Outlines the basis of the new monitoring and testing regime relating to an alcohol or drug prohibition condition. This includes defining where such testing may take place, to include outside the person’s home and otherwise in a public place.

A large number of members who submitted on the Bill were concerned about the privacy and human rights implications of the testing aspect of the regime. Many expressed a recommendation that it be administered fairly and with regard to the humanity of the person concerned. For example:

Punishment by public shaming, making people feel they have no rights or expectations to be treated as any reasonable member of the public would expect to be treated is counter-productive and inhumane. In all dealings with authority there should be a fair and reasonable expectation that people will not be put in a situation where their human dignity is destroyed.

Clause 15 New section 16C

There were some concerns about testing a person in a public place:

Testing should be done as discreetly as possible to enhance the prospect of re-integration of the offender into the community and so that his/her rights are not breached.

People being tested should be removed from a public place giving them the same consideration as people with any other type of medical or psychological difficulties

Testing a person on parole or bail in a public place does not allow for a person's dignity to be maintained.

Other members saw an analogy with drink driving tests that all members of the public are subject to, or made a distinction between the types of testing to be undertaken, for example, drug testing and urine samples.

Clause 9 inserts new section 36B into the Bail Act 2000: Financial penalties

This clause which makes it an offence for a defendant who is required to submit to continuous monitoring to refuse entry to an authorised person for certain purposes relating to continuous monitoring. The purposes for which a defendant must allow an authorised person entry include the attachment of a drug or alcohol monitoring device to the defendant and the installation of any equipment necessary for the operation of that device. A similar provision is proposed to be inserted in the Parole Act 2002 and the Sentencing Act 2002.

An offence against new section 36B has a maximum penalty of 3 months' imprisonment or a fine of \$5,000.

Members commented on the suitability of applying a financial penalty for offenders with drug and alcohol problems. Many were opposed; some thought it should be available if the offender could afford to pay.

While there will be some who can afford to pay a fine, there will be many, especially those on benefits who cannot. Low income leads to increased family stress, when they cannot cope they turn to drugs/alcohol. All too often a huge debt is accumulated often with a multitude of unpaid fines and no ability to pay.

The penalty would have to be dependent on the nature of the original offence. If AOD use was directly or significantly related to their criminal conviction then they should be immediately detained in custody until seen again by the court. After all consequences need to be immediate.

Alternatives to a financial penalty included:

- Carrying out useful, positive, community work with people who are positive role models could help to instil/encourage a work ethic and improve self-esteem. It would also help to minimise periods of inactivity and boredom;
- To give some incentive, such as a reduction in their community hours, when alcohol and drug conditions are met;
- There should be some penalty – bail revoked if appropriate;
- Compulsory counselling/help for alcohol and drug use should be available too. These people need help to overcome their problem; and
- Removing privileges (if there are any); going back to (or lengthening) home detention or prison; having consequences such as compulsory assessment; programme or residential treatment.

Clauses 11, 18 and 30 Proposed Criteria for Rules

The Government is proposing that the Police Commissioner and the chief executives of the relevant government departments be empowered to make rules about drug and alcohol testing and monitoring under the Bail Act 2000, the Parole Act 2002 and the Sentencing Act 2002. These rules would be promulgated in the Gazette.

Before the rules could be made, the Police Commissioner / chief executive would need to be satisfied that the following criteria were met:

- Testing procedures should be no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition;
- Rules should allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
- Rules should ensure that offenders liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.

The majority of NCWNZ members that commented on the rules relating to drug and alcohol testing under the Bill agreed in principle with the proposed criteria.

There was also support for having the testing done by a person of the same gender as in Part 1 clause 11 (1) (b)

However, many members raised reservations about the regime and suggestions for additional criteria for the rules, including:

- Ensuring that there are appropriate safeguards, such as testing never to be by one person alone, the timing of the testing should be reasonable and testing should be linked to a

reasonable cause (for example, a person is seen using or purchasing drugs or drinking alcohol; unexplained drugs or alcohol on the person; associating with users).

- “Privacy and dignity are important concepts that need training. There have been many examples of the power differential between prisoners and their custodians being abused.”
- “It is difficult to see how testing carried out in a public place, and possibly immediately outside the defendant’s residential address, would not be considered intrusive and lacking in dignity for the defendant.” There is also a need to consider the needs, and to minimise the impact, of others in the household during testing.
- Safety of workers should be added as a criterion.
- The principle of fairness is important. There needs to be flexibility to excuse a one-off breach, as opposed to regular breaches. To be given another chance can increase cooperation and give hope. However, another group of members noted that automatic testing may be appropriate when a person is involved with violence, breach of trespass orders, or persistent public nuisance.
- All offenders on these conditions need clear information about how this monitoring works and the consequences of a breach.

Several members commented on the development and operation of the rules and recommended that there be wide consultation on any proposed rules before they come into force. It was unclear what additional oversight there would be of the rules once operational.

Members recommended guidance material with specific examples for officers exercising powers under these rules. For example:

“The wording “no more intrusive than is reasonably necessary” is open to a variety of individual interpretations over what is reasonable. How the Police or Corrections interpret “reasonable” could be quite different and it may also depend on the officers involved. A better wording could be “That testing is not to be intrusive and is to comply with an individual’s human rights””.

One member noted the need to distinguish between alcohol and drugs – one is a legally sold substance and the other is not. Other members noted that officers needed:

“An understanding about the types of drugs where it takes a number of days after a person has stopped using for them to register a ‘negative result’ when tested.”

A couple of members thought that monitoring should be completely random and that this uncertainty may have a positive compliance effect on other people in the community with similar conditions who are subject to the monitoring regime.

Oral Submission

We request the opportunity to make an oral presentation to the Select Committee on this Bill.

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