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Police breach drug test rules

Police conducting Roadside Drug Testing have been caught breaching procedures, prompting calls for all tests conducted over MardiGrass weekend to be declared invalid.

Cate Faehrmann, NSW Greens MP and spokesperson for Harm Reduction and Drug Law Reform, was stopped by police for a random drug test on Sunday 2nd May at about 9am, while driving to MardiGrass, as were hundreds of others over the course of that weekend.

Her staff member, with permission, recorded a video that showed the officer conducting the test failed to use gloves while handling the testing device – a clear breach of part 1-5 of the Standard Operating Procedures for Random Oral Fluid Testing, which reads:

“Under no circumstances will oral fluid or equipment used to obtain oral fluid samples be handled by police without wearing protective latex or nitrile gloves.”

Ms Faehrmann said, “The tests used are incredibly sensitive and can be easily contaminated, potentially resulting in false positives.

“As we have no idea how many breaches by officers conducting the tests are going undetected, all tests conducted over the MardiGrass weekend are now in doubt, and any court attendance notices or penalties issued as a result of a positive test must be withdrawn.”

Police reports state that there were more than 1,500 RDT tests conducted around Nimbin during MardiGrass, with 29 detections.

Ms Faehrmann has written to the Police Minister David Elliott and the Attorney-General Mark



Cate Faehrmann being drug tested on her way to MardiGrass

Speakman with excerpts of the video, calling for all tests conducted over the MardiGrass weekend to be declared potentially contaminated and therefore invalid, and to undertake a performance audit of the scheme.

“I’m asking them to put the brakes on this dodgy Roadside Drug Testing regime and allow for it to be independently reviewed,” Ms Faehrmann said.

David Heilpern, a retired NSW Magistrate for over 20 years, said, “The consequences of the breach are significant.

“I join calls for all prosecutions or penalties launched or issued as a result of the flawed testing withdrawn. This is not only because any prosecution would be likely to fail, but also out of a recognition that it would be unfair to proceed.”

Mr Heilpern also highlighted the issue that putting such a high level of police funding into this program was a waste of taxpayer’s money and diverts police away from core responsibilities.

“These 1,500 tests were conducted on unimpaired festival goers and locals going about their business.

“It is a colossal waste of police time, community resources and road safety funding for this to have occurred in the first place. It was not and does not even pretend to be about road safety. It is all about prohibition.

“For this to have transpired in circumstances where the police cannot even follow their own clear directives amplifies the absurdity of the entire operation,” he said.

A recent study undertaken by researchers at the University of Sydney found that the two most common drug testing kits used by

the NSW Police are substandard in terms of accuracy and specificity.

The research showed that they failed to detect high concentrations of THC up to 16% of the time, and recorded positive results for THC when the actual presence was negligible.

Ms Faehrmann said, “My experience shows that mistakes happen, and when it comes to something that can lead to a person losing their drivers licence and their career, this isn’t good enough.”

> See also related story on p.14

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