

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Workplace Drug Testing in Victoria

Melbourne – Tuesday 21 May 2024

In camera hearing

MEMBERS

Trung Luu – Chair

Ryan Batchelor – Deputy Chair

Michael Galea

Renee Heath

Joe McCracken

Rachel Payne

Aiv Puglielli

Lee Tarlamis

PARTICIPATING MEMBERS

Melina Bath

John Berger

Georgie Crozier

Moira Deeming

David Ettershank

Wendy Lovell

Sarah Mansfield

Richard Welch

WITNESSES

Joe Calafiore, Chief Executive Officer, and

Ben Wright, Manager, Earth Resources and Silica, WorkSafe Victoria.

The CHAIR: I declare open the Legislative Council Legal and Social Issues Committee's public hearing for the Inquiry into Workplace Drug Testing in Victoria. Before we continue, please ensure your mobile phones are switched to silent and background noise is minimised.

I would like to acknowledge and pay respect to Aboriginal people, the traditional custodians of the land we gather on today, and pay respect to their elders past, present and emerging. I also particularly welcome any elders and community members who are here today to impart their knowledge of the issue to the committee. Welcome to members of the public watching via live broadcast.

Before we continue, I would like to introduce the committee. My name is Trung Luu. I am the Chair. My Deputy Chair, Mr Ryan Batchelor, is to my right; to my left, Dr Sarah Mansfield, Mr Richard Welch, Mr David Ettershank and Ms Rachel Payne.

Rachel PAYNE: Hello.

The CHAIR: Also joining us on Zoom are Mr Lee Tarlamis and Dr Renee Heath.

Welcome to the panel joining us today. We have got from WorkSafe Mr Ben Wright and Mr Joe Calafiore. Welcome.

Before we continue I just want to read this information to you. All evidence taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council standing orders. All information you provide during this hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same thing, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. You will be provided a proof version of the transcript following the hearing. The transcript will ultimately be made public and posted on the committee's website.

For the Hansard record, could you please state your full name and organisation you are appearing on behalf of.

Joe CALAFIORE: Yes. Joe Calafiore, CEO of WorkSafe.

Ben WRIGHT: Benjamin Wright, Manager of Earth Resources and Silica.

The CHAIR: Thank you. Welcome, gentlemen. Thank you for making time to be here. I invite you to have a quick opening statement before we go to the committee to ask questions.

Joe CALAFIORE: Yes. Thank you, Chair. Good morning, committee members. I have a very brief statement that I will just whip through before we are more than happy to answer any questions. The committee I understand has been provided a background document on WorkSafe's regulatory remit in relation to workplace drug testing ahead of my appearance, which I hope has been of assistance. In that document, at the hearing today, I intend to briefly address the terms of reference as applicable to WorkSafe. WorkSafe is Victoria's workplace health and safety regulator and workplace injury insurer. Our role is to reduce workplace harm and improve outcomes for injured workers. We do this by providing education support and guiding Victorian workplaces to provide a safe environment for their workers.

WorkSafe administer several Acts and regulations as part of our role, including the *Occupational Health and Safety Act 2004*, the *Workplace Injury Rehabilitation and Compensation Act 2013* and their associated regulations. There is no express requirement, mandate or prohibition around workplace drug and alcohol policies or testing in the OH&S laws for most workplaces, except for mining – and Chair, as you introduced, we have got Ben Wright, who is our Senior Manager of Earth Resources and Silica team. He is an expert on

any matters mining for the hearing today. But the use of drugs and alcohol in the workplace may become an occupational health and safety issue if a worker's ability to exercise judgement, coordination, motor control, concentration and alertness at work is impaired, so we take the approach that occupational health and safety issues in this context arise from the effects of the drug on the worker, not its legal status. Whether that is medicinal cannabis or any prescription drug or any illegal drug, we treat it all the same way.

If the use of a drug affects a worker's ability to perform their role safely it is an occupational health and safety issue, and once again I reiterate it is about the effect on a worker, not the drug itself. As with other OH&S issues, employers should take a risk management approach when addressing the hazards and risks associated with the use of alcohol and other drugs in the workplace. Alcohol and other drug policies are one way for employers to address these risks, and WorkSafe guidance emphasises that the focus of the policy should be to eliminate or reduce risks associated with the use of alcohol or other drugs in the workplace in a way that is consistent and fair for all employees. On our website you will find guidance around establishing a workplace drug and alcohol policy, which always should be done in consultation with workers. It is important to note employers must consider all other relevant legislative and regulatory obligations when complying with their OH&S duties, which include industry-specific safety, industrial relations, privacy, equal opportunity and anti-discrimination laws.

Just in closing, Chair, equal opportunity and discrimination matters in Victoria are obviously regulated by the Victorian Equal Opportunity and Human Rights Commission under the *Equal Opportunity Act*. OH&S laws only deal with discrimination on a limited basis, where the OH&S Act prohibits an employer from discriminating against employees based on health and safety matters. The WIRC Act prohibits discrimination based on a worker notifying an employer of a workplace injury, seeking compensation for a workplace injury or lodging a WorkCover claim.

In closing, we take the approach that regardless of any drug, it is the impact it has on the worker's ability to perform their role that is really at the heart of that matter. That is really where WorkSafe's remit is. We thank you for your time. We are happy to take any questions today, and anything that we cannot answer on our feet today we are obviously happy to take on notice and provide to the committee.

The CHAIR: Thank you. Ben, do you want to make any comments?

Ben WRIGHT: No comments from me.

The CHAIR: Okay. No worries. Well, thank you. There are quite a few of us; we are limited to about 4 minutes each. I will start off with a quick question before I present it to the committee. In relation to occupational health and safety, if an incident occurs on a workplace and there is no framework in relation to drug and alcohol imposed on the workers – liabilities; who is responsible if an incident has occurred? Is it the employer or the employee?

Joe CALAFIORE: Yes. That is a very good question, Chair. I suppose to any type of scenario question our answer will always be it depends on the specifics of a matter. At a first principle, employers have the obligation under the OH&S Act to maintain a safe workplace as reasonably as practically possible, so that is where you start. On an issue-by-issue basis it would depend on the circumstances, but under the Act it is the employers that actually, as the duty holders, have the obligation of ensuring that a workplace is safe.

The CHAIR: I understand that you also in WorkSafe say that all drugs, including prescription and illegal drugs, should be treated the same way under the alcohol and drug policy. Does this include medicinal cannabis as well?

Joe CALAFIORE: Yes, that is right. The hazards and risks associated with the use of alcohol and other drugs should be assessed in precisely the same way. WorkSafe's issue is really not with the legality of any drugs, it is really about identifying the hazards associated, assessing the risks, determining what your control measures are and then conducting the reviews. In one respect this issue is considered exactly the way you would consider any other normal OH&S issue.

The CHAIR: Just one more question before I pass to our committee: from a WorkSafe point of view, do you think we should have a framework for employees across the spectrum? Should there be a framework that

implements standards across workplaces, and should there be a framework in relation to drug and alcohol policies in force?

Joe CALAFIORE: I suppose we do not really have a specific position on whether there should be a framework or not. My suspicion is that that would be a policy matter for government. I suppose it does depend a little bit on an issue-by-issue basis. Perhaps if I invite Ben to comment briefly on the mining industry, where you have a bit more specific regulation that applies to this topic.

Ben WRIGHT: Thank you. There are specific regulations in the mining sector that do require employers to have a system in place to manage both the risks to employees due to drugs or alcohol as well as actively look for its presence and prevent people who may be impaired by drugs or alcohol from entering or remaining at the workplace. That is the legislative structure that supports these matters within the mining sector. What falls from that is companies developing individualised policies and procedures with their staff and with their management teams to articulate how that will occur and to ensure natural justice processes and of course the appropriate levers to allow any prescription medication to be disclosed and used in line with authorisation from the treating practitioner.

The CHAIR: Thank you. I just wondered about getting ahead in that space. I understand mining, transport and police have their own because of the nature of the work. I am just asking, overall, in other occupations which do not require manual or motorised coordination, would it help OH&S investigators if there was a framework standardised across the board?

Joe CALAFIORE: I am just thinking about that question. It does not jump out. At the moment there is a pretty clear duty in terms of maintaining a safe workplace, and safety obviously covers physical and mental safety. So yes, that is probably a policy matter for government, but it would not jump out in terms of our obligations, which are clear from our perspective.

The CHAIR: Thank you. Deputy Chair.

Ryan BATCHELOR: You have got a set of guidance policies, really. I assume the function of those guidance policies is to assist employers to understand their duty and how to exercise their obligations consistent with that duty. How far do those policies go in terms of detailing what employers should and should not be doing?

Joe CALAFIORE: I suppose they are very much not at the minute, prescriptive level. Among the feedback we often get, whether it is from employees, employers or stakeholder groups, is to try, if possible, to make our material digestible, practical and usable, so they tend to be more at the higher level. It tends to be more about understanding the principles and everyone's roles and statutory responsibilities. On this topic it is a normal OH&S safety approach. You have your duty to make sure your workers are safe, and you have your duty including to protect the health and safety so far as is reasonably practicable. Obviously, what that looks like industry by industry depends, so I would not say it is completely prescriptive.

Ryan BATCHELOR: Getting to what is reasonably practical at an industry level, who helps employers understand what that looks like? Is that WorkSafe's responsibility or is it industry associations'? Who comes to the real heart of what is reasonably practical at an industry level?

Joe CALAFIORE: All of the above, actually. We have statutory obligations to assist, so part of the role of being the regulator is that we have our compliance and enforcement and prosecution end of the spectrum, but similarly we get tens of thousands of calls in an advisory capacity. So part of that is the role of the regulator and part of that is the role of industry associations, such as the VCCIs and the AIGs, and obviously the sector-specific associations, such as, say, transport or ones that exist in mining. It is definitely both – in addition to the normal avenues of legal advice that people would be able to procure.

Ryan BATCHELOR: You mentioned in your opening statement about how obviously you have got your duties under the *Occupational Health and Safety Act* to provide a safe workplace, and there are obviously discrimination laws about not discriminating against people on the basis of medical conditions. Do those two conflict, and if so, how? And how do they get resolved?

Joe CALAFIORE: No, I would not describe it as ‘they conflict’. I would say in any workplace there is an intersection of different parts of legislation, so when complying with their OH&S duties employers must consider all relevant legislative and regulatory obligations that are considered, whether they are industrial relations, equal opportunity, privacy et cetera et cetera. So I would say you have got more of an intersection with other parts of the law as opposed to any inherent conflict per se.

Ryan BATCHELOR: Do you see those issues playing out in any way that is problematic at the moment, or do you think there is an understanding amongst employers about how to navigate those circumstances?

Joe CALAFIORE: Yes. It is something that Ben and I actually – it is interesting – were just discussing in the waiting room. We certainly do not experience a large volume of inquiries on this specific topic. I do not have a specific number offhand at the moment. From a WorkSafe perspective, in terms of the issues that get raised with us in terms of for clarity, this is not one at the moment where we have received large representations. That is not to say it is not an issue at particular workplaces in particular sectors, but no, it is not something that we have received a large volume of inquiries about.

Ryan BATCHELOR: Thanks, Chair.

The CHAIR: Thank you. David, would you like to continue?

David ETTERS HANK: Thank you, Chair. Nice to see you again. Could I ask first of all: do you consider alcohol or drugs in the workplace and worker impairment to be a major contributor to workplace injuries?

Joe CALAFIORE: On the data that I have seen, no, I would not describe it as a major contributor. If I think of my previous life at the TAC, certainly in road trauma you definitely have drugs and alcohol in terms of road trauma. But in terms of workplace injury data that I have seen, no, it would not be jumping out in terms of the top drivers of workplace injuries.

David ETTERS HANK: So the data is actually there, and you are able to make that assessment. Or is it not really that clear?

Joe CALAFIORE: At a high aggregate level. If I speak really briefly, at WorkSafe we have got about 100,000 active clients. At a really high aggregate level, in terms of a slip, trip and a fall, a psychosocial injury, a musculoskeletal – we have sort of got what I call high-level aggregate data, but the only thing that I always stress is with any injury there is often a combination of factors and causes and the like. But in terms of just alcohol and drugs leaping out in terms of the top three or four in the datasets that I have seen, no, it does not.

David ETTERS HANK: Okay. As you have identified in your very succinct submission, you basically indicate that the Act is largely silent on the responsibilities of employers, unions and health and safety reps to negotiate workplace drug-testing policies. Do you have any sense of how many workplaces or what percentage of workplaces actually have agreements in place?

Joe CALAFIORE: I actually do not, I confess. I am not sure. I am happy to sort of investigate. I suspect in the mining industry it would be quite common. But mining aside, no, I actually would not have any knowledge on that.

David ETTERS HANK: Can I give that to you as a question on notice? We would be very keen to understand it better.

Joe CALAFIORE: Of course. We will make inquiries and see what we can do.

David ETTERS HANK: Picking up on a theme that our chairperson raised, is it a shortcoming in the legislation that there is actually no imperative given to having workplace drug policies in place?

Joe CALAFIORE: From WorkSafe’s perspective we certainly, as I touched on earlier, do not experience it as an impediment on a day-to-day basis. The statute is very clear about having your obligations as an employer as a duty holder. I am happy to defer the policy matter to government, but from a WorkSafe perspective I have not had any feedback from our inspectors or our legal team that it is an impediment in our day-to-day duties in terms of enforcing the OH&S Act or the WIRC Act.

David ETTERSHANK: Okay. The guide for developing the workplace alcohol and other drugs policy, which seems to be about the only – I think there are a couple of tip sheets, as you call them, otherwise that is about it on the site as far as I can tell. It was published in 2017 and as far as I can tell also has not been amended since then. That was of course the same time that medicinal cannabis was introduced, or legalised, in Victoria. I am curious as to whether or not the exponential growth in medicinal cannabis is on WorkSafe's radar and whether or not the guide actually is fit for purpose, particularly in terms of the issue of presence versus impairment of THC.

Joe CALAFIORE: Certainly it is on our radar in a number of ways, separate to this inquiry, as part of the environmental scanning work what do we do. I can share with the committee, having read the guidance material as part of the preparation for this committee and given where we are now in 2024, that I think that is worthy of revision. It would be worthy for us to have a fresh look at that guidance material, and I am happy to undertake that as an action item too.

David ETTERSHANK: Terrific. Okay. Thank you.

The CHAIR: Thank you, David. Dr Mansfield.

Sarah MANSFIELD: Thank you. Thank you, both, for appearing today. I am interested in understanding: are you aware of roughly what proportion of businesses implement workplace drug testing in Victoria?

Joe CALAFIORE: I confess I am not.

Sarah MANSFIELD: Okay. Maybe specifically looking at mining, how widespread is the use of workplace drug testing in mining?

Ben WRIGHT: Thanks for the question, Doctor. It is, I would say, in every mining company in Victoria.

Sarah MANSFIELD: What is the evidence base that you rely on for using workplace drug testing in that sector?

Ben WRIGHT: The evidence base is that, it being a high-hazard sector, there is, you would say, a lot of opportunity for individuals to manage hazards directly. And just on the basis of the nature of the work, it lends itself to the position within the legislation being more formalised for this particular sector, in that there is a potential for multiple-fatality events in the mining sector, where workers directly contribute to controls and manage and maintain those controls on a daily basis. That simply elevates the importance of thoroughness and the importance of everybody contributing to that safe workplace.

Sarah MANSFIELD: Given that I think you have acknowledged in your submission that testing does not actually correlate with impairment, what other measures do you put in place to assess impairment?

Ben WRIGHT: I would say that that is a real challenge being faced by the sector at the moment. Where alcohol testing is fairly well correlated with impairment, that same level of confidence is not found for other drug presence.

Sarah MANSFIELD: Where there have been incidents in the mining industry, in the analysis of what has led to those incidents, have alcohol or other drugs played a role in any of those incidents when you look at them post fact?

Ben WRIGHT: I can absolutely say that in the history of the mining sector there would be incidents where alcohol and other drugs may have contributed. It is very standard practice to conduct alcohol and drug screening in a post-incident investigation. Most company policies include immediate post-incident testing of people involved with any incident.

Sarah MANSFIELD: With the type of testing that is used in the mining industry, are you able to provide any details about what that is?

Ben WRIGHT: At a high level?

Sarah MANSFIELD: Yes.

Ben WRIGHT: Almost every site would have a breathalyser at the front gate, and most people would be tested most days for the presence of alcohol. In terms of drug testing, they have proprietary cheek swabs as well as urine analysis available at the entry points for drug detection.

Sarah MANSFIELD: For someone who is using medicinal cannabis and where there may be THC detectable, if you have got a cheek swab every day, how is that compatible with being able to work in the mining industry, given the high risk of THC being detected on a cheek swab in that situation, if they are, say, having to have multiple doses of that a day?

Ben WRIGHT: From a legislative point of view, we certainly allow a prescribed medication to be used at a mine when it is authorised by the treating practitioner, and that implies good communication between the person using that drug, their treating practitioner and the company involved. There is nothing that states you cannot have any prescribed drug in your system. It would then come down to a case-by-case basis on how that is managed. I feel that an issue would arise if it was undeclared and discovered in a drug screening.

The CHAIR: Thank you, Dr Mansfield. Mr Welch.

Richard WELCH: Thank you, Chair. Thank you, gentlemen, for coming in. Just to pick a little bit up on the Chair's questions regarding the requirement to in some cases actively look for the presence of impairment, I guess if you assess that, you assess it on a case-by-case basis. So I was just curious: what is the role of precedent then within your assessments of it? If it is a case-by-case basis, do you have sort of a precedence case law type approach?

Joe CALAFIORE: Probably not in the sense that the case law in these types of schemes tends to be more – I am just trying to think it through – perhaps on the compensation side of the business. I am just trying to think in this context. No, I mean our inspectors obviously have guidance material and industry knowledge in terms of it being a bit sector-specific, but I am just trying to think of outside. So the mining sector –

Richard WELCH: Maybe I could clarify: if you are considering whether they have been sufficiently active in doing it, what is the role of precedent in where that line is per industry, I guess, and per scale of organisation as well?

Joe CALAFIORE: It is a good question. I think we have got over 350,000 employers in Victoria, from one-person employers to very large corporations, so when we look down our published approach to identify, assess, control, review – so it does depend on the context, it does depend on the nature of your risks, and it does depend on what levers an employer has to mitigate risks. The smaller the size of a business, by definition the less opportunity to redirect into different roles – off a forklift into an administrative one, for example. We have our Act, our regulations and our guidance material, so probably less of the legal precedent, if I put it that way, but more of an approach that we work with stakeholders as to what modern safety should look like.

Richard WELCH: Because if an instance was contested, I guess, by the employer, do they have access to information to say, 'Well, in this case it was treated like this, and we feel we're being treated like that,' et cetera? And do you see in your mind at any point there would need to be some sort of rationalisation or documentation of, 'Okay, this is precedent, so these would be more than just precedents, these become guidelines themselves'?

Joe CALAFIORE: Yes, that is something that might be worthy of consideration, certainly because every decision we make as WorkSafe is, in this context, an administrative decision, so our decisions are contestable and employers can seek review via different mechanisms. For example, our inspector decisions can be subject to an internal review process or via the courts process. To your second point, I think it probably goes to us having a bit of a think about reviewing that guidance material. I mean, really as a regulator we want workplaces to be as safe as possible and we want to be as helpful as possible, so if there is a view from a committee or experts or stakeholders that they would require more clarity from WorkSafe, then that is something we are always quite open-minded to working to as to what that would look like.

Richard WELCH: Thank you. I think that is all. Thank you, Chair.

The CHAIR: Thank you. Ms Payne.

Rachel PAYNE: Thank you, Chair. Thank you for appearing today. I am going to jump around a little bit, just going off what a few people have talked about, but I am particularly interested, because in mining it is compulsory for workers to be tested – that is correct?

Ben WRIGHT: Not explicitly.

Rachel PAYNE: Not explicitly. Okay.

Ben WRIGHT: It is mandatory for the businesses to have a system in place.

Rachel PAYNE: It is mandatory to have a system in place. Okay. So that system, it would look like – you mentioned breathalysers to test for alcohol and then a swab that would test for drugs. Is there any other sort of impairment testing that is happening? Because you made reference here to exercising judgement, coordination, motor skill, concentration and alertness at work. If I am hungover and I test clear with my alcohol reading yet my ability to be alert and my motor skills and coordination may be impaired, are there other options for testing, and is that an option for the employer to request?

Ben WRIGHT: My experience is that beyond those types of tests we have discussed, the judgement would be made more anecdotally through potentially conversations, and this gets back to the safety legislation – looking at this as a hazard. Equally, you could be fatigued. Equally, you could be grieving.

Rachel PAYNE: Totally, yes.

Ben WRIGHT: So those things could all impair your mental state at work, and it would be the role of a supervisor to understand that person's normal performance. I am thinking of the American roadside sort of drug and alcohol testing of walking a line or saying the alphabet backwards. We do not see that.

Rachel PAYNE: Okay. So as a regulator you would not have guidance for further testing options? You know, there are sort of applications and things now that you can use on your phone that would test your hand-eye coordination or cognitive ability.

Ben WRIGHT: I have not seen that in industry.

Rachel PAYNE: Okay, great. Just on treating prescription and legal drugs based on their effects on work, not the status of the drug, one of the terms of reference in this inquiry relates to looking at the anti-discrimination laws and for medicine and medical treatment to be a captured attribute in that space. Is that something that the regulator would have comment on or is that something where you may need to provide guidance on those changes if that was something that was to be enacted?

Joe CALAFIORE: I would not have a specific comment. The OH&S Act 2004 deals with discrimination on a very limited basis, consistent with our regulatory remit. Under that Act, it prohibits an employer from engaging in certain adverse conduct against workers on the basis of health and safety matters, and we do work closely with other regulators in this space. I would not have a specific comment about the Act, no.

Rachel PAYNE: Okay. All right. Just on discrimination or complaints handling, do you receive any complaints from employees that they feel their employer's policy could be considered discrimination? Is that something that you would assist with?

Joe CALAFIORE: We certainly receive complaints from workers, and if it is a complaint that is relevant to the OH&S Act, we will triage in terms of response. If it is connected to the OH&S Act or the WIRC Act, that is something that is part of our statutory remit to look into.

Rachel PAYNE: Okay. Thank you. Thanks, Chair.

The CHAIR: Thank you, Rachel. Lee, do you have a question?

Lee TARLAMIS: I do not have any questions at this stage, Chair.

The CHAIR: Thank you. Dr Heath, are you still on Zoom?

Renee HEATH: Yes, I am. Thank you very much. I have just got a few questions. The first one is: you were talking about, like Ms Payne said, how it is not the drug itself, it is the effect of it. Is the responsibility for that assessment therefore on the doctor, not the workplace?

Joe CALAFIORE: An employer on any day-to-day basis has the legal obligation to ensure your workplace is safe and that they are controlling your risks as far as practicable. That would be the response there.

Renee HEATH: Right. You said, though, the prescribing doctor – you mentioned something about that. I cannot remember your words entirely. If you have got somebody, for instance, that was on sleeping tablets, that would not be too much different, I would imagine, in terms of impairment. Like, that would be also quite unsafe to operate the machinery – in fact it says it on the packet. Would you treat medicinal cannabis very differently?

Joe CALAFIORE: Maybe if I start and hand to you, Ben. In my understanding of your question, no. From our perspective, in a sense, the status of whether it is legally prescribed or an illegal substance – the great challenge, which I am sure we are all wrestling with in this area of public policy, is assessing that level of impairment. If an employer forms a view, based on whether it is testing, say, in the mining sector or based on more qualitative measures, that there is a risk – an imminent risk – to health and safety of staff or contractors or clients, an employer is obligated to act and to mitigate that risk. So yes, in answer to your question, we would treat it exactly the same way as a prescribed medicine.

Renee HEATH: Yes. And because it is a prescribed medicine in this scenario, is there a standard way of measuring impairment?

Ben WRIGHT: Not that I am aware of.

Renee HEATH: Okay. So it needs to be done, but we are not sure how it is done?

Joe CALAFIORE: Well, I suppose in sector-specific areas such as mining, which Ben has spoken about, there are the tools and measures that are industry-accepted there. But you are right. From WorkSafe's perspective, because there is no express requirement, mandate or prohibition on this topic, we do not have a specific view on the specifics of how one should test.

Renee HEATH: So how do you assess for impairment retrospectively then, if there has been an accident?

Joe CALAFIORE: I suppose it would be less about assessing retrospectively. What we do in the event of an incident is we investigate in accordance with our powers under the OH&S Act. I am not sure it is about retrospective testing, but we go in under the powers of our Act. We have powers to interview people, request information and then determine a judgement as to whether there has been a breach of the relevant legislation, which is normally the OH&S Act.

Renee HEATH: Okay. I think it was Ben who mentioned some drugs being undeclared – you said the problem is if the drug is undeclared. What are the rules around declaring what medication you are taking?

Ben WRIGHT: Under the legislative obligations to set up these structures at a business, the mining industry does have individual policies for how to conduct this. Typically it begins with the onboarding of new staff in pre-employment medical checks, and at that stage and then further by way of policy all staff are encouraged to escalate or make their employer aware of any change to their treatments or introduction of treatments that may impact their ability to conduct their work.

Renee HEATH: Okay. I think I heard a buzzer, so thank you.

The CHAIR: Thank you, Dr Heath. Just quickly, you mentioned it is mandatory for various sectors to have drug testing, like the mining sector. You also said under your guidelines employers who develop workplace, alcohol and other drug policies should aim for prevention, education, counselling and rehab for the employee. Would it be beneficial for the wider sector to have some sort of testing available for their employees, of course with voluntary disclosure and voluntary participation? Would it be beneficial under your guidelines in prevention and education to have mandatory workplace testing across the board?

Joe CALAFIORE: I suppose policymakers would have to weigh the pros and cons in terms of anything that is mandatory in a workplace. Remember, if it is covering such a broad scope, policymakers would have to weigh where they believe the specific risks are. From a WorkSafe perspective, we do not have a particular view on that, but it is something policymakers would have to wrestle with.

The CHAIR: Ryan?

Ryan BATCHELOR: In Dr Heath's questions you talked about injury and compensation claims. Do you record the extent to which alcohol and other drug use is a contributing factor to injury and compensation claims, or have you got any research that goes to that question?

Joe CALAFIORE: No to the first part of the question. In terms of –

Ryan BATCHELOR: So it is not part of your standard data collection as such?

Joe CALAFIORE: No. If it is okay with the committee, I can take on notice the question about what research we have got.

Ryan BATCHELOR: I think it would be useful for us to know whether you have got any research that goes to the question of the extent to which alcohol and other drug use is contributing, or not, to injury and compensation claims in the workforce.

Joe CALAFIORE: If that can be captured on notice, we are happy to look into that.

Ryan BATCHELOR: That would be great.

The CHAIR: We have got about 5 minutes left. Joe, did you have to leave? We have got 5 minutes left; did you want –

Joe CALAFIORE: No, no. Of course.

The CHAIR: David.

David ETTERS HANK: Thanks, Chair. I am having one of those sort of parallel universe moments, because, Mr Calafiore, the last time we met was obviously in the context of the WorkCover inquiry, where we heard about what a diabolical situation WorkCover was in. I am also looking at these submissions that are basically suggesting that workplace-based injuries arising from drugs and alcohol are a huge issue, and you are saying there is no data held. It seems to be, for you, a very low priority. I am just trying to reconcile those two perspectives. If you could help us out, that would be terrific.

Joe CALAFIORE: Certainly I do not think I have ever used the phrase 'low priority'. All workplace incidents from our perspective are preventable. The fact that 35,000 people are getting injured a year in Victoria and 100,000 people are injured is unacceptable. So, for the clarity of the committee, no workplace injury policy is a low priority. For clarity, I suppose I was responding to an earlier question about whether we see significant amounts of data in our injury data specifically related to this point, but no, that was not intended to imply that we see any issue as a low priority. I was referring to the fact that when we just look at our data – and it is published – about workplace injuries, it tends to be the traditional types of things that for people would be well known, in terms of back injuries, psychosocial injuries et cetera. That is the context of the remarks I was making.

David ETTERS HANK: Okay. All right. Thank you, I think. I am looking at the guide for developing a workplace alcohol and other drugs policy, and it talks about how central to that process of agreement between employers, unions and health and safety reps is the identification of an employee not fit for work as a result of alcohol and other drug use. I know this is a theme that others have raised, but I would just like to try and clarify here. In the context of medicinal cannabis, if you are saying to people, 'Negotiate your own agreements. Focus on identification of employees not fit for work arising from alcohol and other drugs,' how do you do that with medicinal cannabis using a swipe test when clearly it is not a measure of impairment?

Joe CALAFIORE: As I said, I can only really speak to our remit. I cannot really expand on anything more specifically than that. What we are trying to do in our guidance material is we are trying to provide support

material to employers and employees as to how you would approach this topic. The reason we keep saying ‘it depends’ is because the risks depend very much on your setting and the industry that we are speaking about. That is really the basis behind the approach that we take.

David ETTERS HANK: So if it is not your remit, whose remit is it? Or is it just a hole in the ground at the moment?

Joe CALAFIORE: I am not sure. I mean, our remit – I can only speak for our perspective, which is about occupational health and safety obligations on employers and employees and then obligations that occur and arise under the WIRC Act. I appreciate it is a challenging area of public policy, but we are only –

David ETTERS HANK: You cannot actually point to anywhere else where you can say, ‘That’s their responsibility’? I mean, that is fairly normal.

Joe CALAFIORE: No, I can speak to –

David ETTERS HANK: Or is it a vacuum?

Joe CALAFIORE: From WorkSafe’s perspective we are clear in terms of what our remit is, and we really endeavour to try and be as helpful as possible, whether it be to employers or industry or workers, about ensuring that your workplace is as safe as possible. If that means we have to try and have a fresh look and review our guidance material, we will do that, but I cannot really extend beyond our legislative remit.

The CHAIR: Thank you, David.

David ETTERS HANK: Thank you.

The CHAIR: I think Dr Mansfield has got one more question.

Sarah MANSFIELD: Thank you. Given that workplace drug testing is not mandatory but it has been implemented as one tool, I guess, to screen for things that indicate past drug use, is there a risk that it is then relied upon by some industries or organisations as a way to fulfil their obligation to provide a safe workplace? And if we were to remove it, might it increase the obligation on managers and others to properly assess for whether their workers were impaired? I guess I am just wondering if that screening reduces that sense of, ‘Well, we’ve checked them for drugs. We don’t need to do any other sort of active screening for impairment.’ If we were to remove mandatory screening in some workplaces – mandatory testing – would managers then have a greater obligation to assess the real-time impairment and function of workers?

Ben WRIGHT: Interesting question. To think about it as a hypothetical there for the mining sector at least, I think enabling the best tools to make these judgements is what is intended in the legislation, and that is setting up those requirements to detect the presence of alcohol and drugs and ensure that people do not enter or remain in the workplace if that is detected. That is, I would say, industry standard. It sets the culture for the site and the industry and has a clear and well-socialised regime for a site. I think while it could be seen as something that maybe is a point to check your employees, it is not the only point and it does not check everything, so I think both the supervision and the detection are parts of a full system here and should both be relied upon.

The CHAIR: Thank you, Dr Mansfield. And thank you very much, both, for coming in, for giving your insight and your evidence today. It is invaluable. We appreciate your time.

Witnesses withdrew.