



INQUIRY INTO WORKPLACE DRUG TESTING IN VICTORIA



HACSU

Health & Community
Services Union

WHOEVER
KILLS AN



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STATEMENT FROM THE HEALTH AND COMMUNITY SERVICES UNION



Attention: Trung Luu MP, Ryan Batchelor MP, Matthew Bach MP, Michael Galea MP, Joe McCracken MP, Rachel Payne MP, Aiv Puglielli MP, Lee Tarlamis MP, John Berger MP, Moira Deeming MP, David Ettershank MP, Renee Heath MP, Wendy Lovell MP and Sarah Mansfield MP

Dear Committee Members,

The Health and Community Services Union and our members are delighted to have the opportunity to provide a submission to the Inquiry into Workplace Drug Testing in Victoria.

For far too long workplace drug and alcohol testing has not been based in principles of health or compassionate assistance, rather it has been grounded in a pernicious culture of fear, stigma and shame.

It is the view of HACSU members across the State that it well beyond time that the State government echoes the calls made by that of the Royal Commission into Victoria's Mental Health System whereby employers, unions, workers and government agencies must urgently move toward establishing mentally healthy workplaces.

We believe that progressive, health-led reform rooted in education and training and with a clear methodology in delivering occupational and psychological health and safety inclusive of impairment, will drastically improve the mental health of working people and their families and will begin to unburden the public mental and alcohol and other drugs sectors.

The Health and Community Services Union make the following recommendations:

- 1. The introduction of recovery ready workplaces.**
- 2. A regulated workplace drug and alcohol testing system.**
- 3. A health-led response to workplace drug and alcohol testing.**
- 4. A mass rollout of general awareness drug, alcohol and gambling training to all workforces.**
- 5. The introduction of Occupational Health and Safety Compliance Codes.**
- 6. The introduction of AOD and impairment HSR refresher training.**
- 7. Reasonable adjustments and duty to accommodate for medicinal cannabis patients.**

We look forward to commencing this incredibly important discussion with you all as we know that Victorian workers, their families and the mental health and alcohol and other drugs workforces simply cannot wait another day for this progressive, health-led, compassionate reform.

In solidarity,

Paul Healey
State Secretary

Kate Marshall
Assistant State Secretary

THE ROYAL COMMISSION INTO VICTORIA'S MENTAL HEALTH SYSTEM



Recommendation 16: Establishing Mentally Healthy Workplaces

- a. foster the commitment of employers to create mentally healthy workplaces;
- b. advise on, develop and provide resources to assist employers and employees across Victorian businesses to:
 - promote good mental health in workplaces;
 - address workplace barriers to good mental health;
 - promote inclusive workplaces that are free from stigma and discrimination; and
 - support people experiencing mental illness at work.

The Royal Commission into Victoria's Mental Health System (RCVMHS) Recommendation 16 called for the establishment of mentally healthy workplaces.

We know that employment is a critical enabler of mental health and wellbeing. Work provides a purpose, contributes to our sense of self and identity, and encourages economic and social participation.

Noted in Volume 11, The Commission "envisages a future in which all Victorian workplaces play a positive role in promoting mental health and wellbeing for all employees, volunteers, and the wider community. In this vision, workplaces of many sectors and sizes are supported to promote positive mental health and wellbeing, prevent mental injury, and support people with lived experience—and they have the guidance and resources to excel at this."

As the only specialist union for mental health workers in Victoria, we are acutely aware of the unique challenges in relation to co-occurring mental ill-health and issues of addiction related to drugs, alcohol, and gambling. In acknowledgment of this, the RCVMHS called for the integration of treatment, care, and support for people grappling with mental ill-health and risky substance misuse.

There is no denying that mental health and addiction are inextricably linked.

While we acknowledge that some sectors have substantial interventions in relation to mental health, are supported, and in some cases funded, it is our view that issues of addiction must be urgently included in all services and prevention measures offered.

To truly establish mentally healthy workplaces, the inclusion of all issues related to addiction, harm reduction and minimization, and medical use must be accounted for.

INTRODUCTION OF RECOVERY-READY WORKPLACES



In September 2023 the Biden-Harris administration via the United State Department of Labor released the Recovery Ready Workplace policy for employers to respond more effectively to substance use disorder among employees, build their workforces through hiring people in recovery, and develop a recovery-supportive workplace culture.

As part of this new policy, there is a strong focus on reducing the risks associated with potential impairment by providing education to all levels of an organization and implementing practical steps to ensure occupational health and safety risks are lowered.

The most positive shift is that now the default response to positive drug tests or to substance-related impairment in American recovery-ready workplaces will be to link the employee with the needed services and support.

The Recovery Ready Toolkit provided by the United States Department of Labor goes further in extending this concept to employees who do not have a substance use disorder but have tested positive. It is now the position of the American government that education, a reminder of policies, and potentially an agreement to additional testing for a period of time will generally be more effective than sanctions as a response to non-dependent substance misuse.

The Biden-Harris administration notes that disciplinary action is not an appropriate response to employee health conditions and when employees fear stigma, discrimination, discipline, termination, or other negative impacts if it becomes known they have an alcohol or other drug use disorder, they have a strong incentive to hide their addiction, rather than seeking help for it. This exposes them, their fellow workers, and the organization to unnecessary risk and leads to problems such as reduced productivity and higher healthcare costs.

As well as introducing visual signifiers within the workplace such as posters for noticeboards, the Recovery Ready workplace model embeds prevention, risk education, and training as a core industrial business. Assessments are done for each workplace to ensure all policies, procedures, and training packages are responsive and are fit for purpose for each workforce.

A REGULATED WORKPLACE DRUG TESTING SYSTEM



The Occupational Health and Safety Act 2004 and Occupational Health and Safety Regulations 2017 do not mandate, require, or prohibit drug testing. Traditionally, workplaces implement workplace drug testing policies as per enterprise agreements and the WorkSafe "Guide for Developing a Workplace Alcohol and Other Drugs Policy."

This guide is an excellent starting point, however, it is pertinent to note that without a standardized, progressive, and health-led response to workplace drug testing, it is inevitable that concerns will remain within the workforce about privacy, effectiveness, and the employer's rationale to request a test.

While consultation is strongly suggested in the Worksafe guide (We note that as this is a guidance document and not law, making it unenforceable), HACSU holds deep concerns that at times workers are unfairly targeted by employers via testing and upon testing, the procedures are woefully inadequate in relation to definitions, procedures and with little to no involvement of health professionals.

Academics from across the country note that to date, the extent of current workplace drug testing procedures remains indeterminate in relation to the extent of its effectiveness. We note that while analysis of urine, hair, and saliva indicates past drug use, none of these tests can detect impairment or intoxication. Furthermore, the Australian Standards merely outline cut-off levels for detecting past drug use and have been set to minimize the likelihood of false positives.

These drug tests cannot indicate the time of use, the amount used, the dose level, or a pattern of use, and notably, there is very little evidence that drug testing does much to deter or reduce the risk of harm in the workplace for drug and alcohol use. According to the 2022 Understanding the Cost of Addiction Report, the current alcohol and other drug policy settings cost the country over \$80.3 billion per year, with 48% of the total losses (\$36.6 billion) attributed to workplace and household productivity losses.

In Australia, it takes an average of 20 years for a person to seek assistance for addiction due to shame and stigma — this is a trend that is appearing in all industries across the state. Often, it is only when a working person fails a drug test or during disciplinary action that the employer or union becomes aware of an addiction.

Employers currently have differing policies regarding when a worker is tested, the benchmark of training required to ensure that general awareness training obligations have been met, the length of time in which a sample is held, and the outcome of a failed test.

For the most part, no conversations are had with the affected worker in relation to their mental health or potential addiction.

A REGULATED WORKPLACE DRUG TESTING SYSTEM



It is our view that a standardized and progressive impairment policy must be built for each sector in partnership with unions and industry leaders that promotes early intervention and builds best-practice responses, as well as peer-reviewed training to educate working people on AOD and mental health.

Depending on the sector, a no-fault discussion should be had with the employer and trade union and, with the capacity to include a drug and alcohol worker, to foster a culture of disclosure without fear of termination.

We note that the foreword of the Worksafe guidance note states "Employees unfit for work as a result of alcohol or other drug use put themselves and other people at the workplace at risk of harm. Co-workers may feel obliged to cover unsafe work practices or not report an affected employee due to loyalty or fear of consequence." In HACSU's view, this is a deeply problematic language that does nothing to promote early intervention and highlights the urgent need for health-led reform and regulations of this system.

Extra procedures and considerations must be made for workers who use medicinal cannabis as a matter of urgency. Warnings about workplace safety and impairment should follow the same approach that doctors use when advising patients on how to minimize risk with any other medication that could cause impairment (such as promethazine [Phenergan], benzodiazepines, and opioids). When accessing these medicines, patients are advised that they cannot drive if impaired.

While we welcome the emerging acceptance of medicinal cannabis as a legitimate medicine, we are acutely aware that the laws relating to employment are decades behind.

A health-led educational package for workplaces should be adopted regarding the effects of the use of either CBD or THC-based products, the importance of 'starting low and going slow' with dosage, and the impacts of oral ingestion versus inhaled ingestion. This will be critical because, much like alcohol, impairment differs for every person for a range of reasons. A strong base of education will ensure that all consumers are empowered with the knowledge to assess their limits in the workplace when accessing this vital medicine

Unless the pernicious culture of fear, shame, and stigma is overcome, it will be impossible to foster a culture of prevention and early intervention for working people and Victoria will be unable to meet its obligations in relation to the Royal Commission into Victoria's Mental Health System.

To support this endeavor it is our strong recommendation that no impairment testing of any kind should be undertaken in any workplace unless the employer pays for regulated, health-led general awareness training.

INDUSTRIAL CLAUSES SUPPORTING POLICY CHANGE



Alcohol and Drugs Policy

(a) The Employer supports the objectives, rehabilitation measures, consulting, peer support and training initiatives offered by Odyssey House/Windana/Victorian Workers' Health and Wellbeing Foundation (VWHWF) [health provider or agreed upon training institution]. The Employer will encourage Employees who are affected by alcohol or any other drugs to utilize the services of xxx.

Employee Assistance Program/Assistance:

(a) All Employees, workers and managers can access the Employee Assistance Program (EAP) to obtain confidential help, assistance, and support. Where an Employee accessing the EAP raises concerns about their own alcohol and/or other drug use, they must be referred to a specialised/external AOD counselling service or approved rehabilitation services provider (including VWHWF) for assistance.

(b) Where a union covered by this Agreement offers an EAP service to its members, information about that EAP will be made available to all employees.

(c) Employees covered by this Agreement will have access to the following additional services;

(i) Victorian Workers' Health and Wellbeing Foundation / Rehabilitation - Phone: (XX) XXXX XXXX Drugs & Alcohol - xx@xxxxxxxx

(ii) Gambling - xx@xxxxxxxx

(iii) Admissions / Hotline - Phone: (XX) XXXX XXXX - xx@xxxxxxxx

(iv) XXXXX Suicide (Prevention) Awareness program/ XXXX - xx@xxxxxxxx

Mental Health and Wellbeing

XX.1 The Employer and Employees recognise that mental health issues have a significant impact on workplace health and safety. [Suicide rates in the XXXXXX industry are higher than average and] it is best practice for Employers and Employees to work collaboratively to pro-actively tackle mental health issues at the workplace.

XX.2 The Employer recognises that following a serious incident Employees may suffer trauma.

XX.3 In order to improve mental health outcomes, the Employer and Employees agree to support the [Agreed health provider's] XXXXXXXXXXXXXXX program.



INDUSTRIAL CLAUSES SUPPORTING CONSULTATION



Consultation – AOD Policies:

- (a) Employees shall comply with the requirements prescribed in the policies of the Employer in relation to alcohol and other drugs.
- (b) Employees shall be trained and inducted in any alcohol and other drug policies that apply to them. Failure to do so shall mean that such policy does not apply.
- (c) Any new policies in relation to alcohol and other drugs introduced by an Employer, or changes to existing policies, are within the scope of, and shall be dealt with via, the consultation procedures at cl. XX.
- (d) Where an Employer introduces any new policies in relation to alcohol and other drugs, the following principles shall apply:
 - (i) Alcohol and other drug (AOD) use is an Occupational Health and Safety issue, and prevention of workplace health and safety issues is the primary goal of AOD policy formulation.
 - (ii) Addiction and related conditions are health issues and will be recognised as such by the Employer.
 - (iii) Employees experiencing addiction or related health issues will be provided with appropriate assistance, support, and access to AOD services without jeopardising their employment.
- (e) Any disputes in relation to, or in connection with alcohol and other drug policies, testing and/or principles, are within the scope of, and shall be dealt with via, the dispute resolution procedures at cl.



SUPPORTING A HEALTH-LED RESPONSE TO WORKPLACE DRUG TESTING



It has never been more important to implement a health-led response to workplace drug and impairment testing.

In the first instance, it is our firm belief that sectors that require workplace drug and alcohol testing or impairment testing, must be supported by the Victorian parliament to bargain for strengthened protective measures in relation to the proceeding circumstances leading up to a test, the required personnel when a test is required and a stepped out health-led response. This shift must also be supported in all awards where impairment testing is mandated in the workplace.

In New South Wales, such clauses and procedures have been in operation for years in the construction sector allowing employers, workers, and health and safety representatives the opportunity to work with an AOD professional to render a health-led response that allows the worker the space and advice to combat their issues.

For the mental health and alcohol and other drug workforces, this shift towards early intervention on the journey towards no-fault disclosure will make an immeasurable impact on the entirety of the public mental health sector. While at present it is impossible to measure, we know from our members and colleagues in the public alcohol and other drug sector that far too often, consumers who require the care of our workforces, are not given enough opportunity to seek assistance in the workplace. Fear, stigma, and shame prevented them from speaking up, exorbitant fees to enter rehabilitation were not an option and there were no health-led mechanisms in place while in their employment.

By introducing progressive health-led reform in all Victorian workplaces with an agreed-upon procedure, we believe we will start to see a reduction in workers hitting rock bottom as they will be given the correct education and opportunities to seek assistance if required, without fear of losing their employment.

INDUSTRIAL CLAUSES SUPPORTING A HEALTH-LED WORKPLACE TESTING REGIME



XX. Alcohol and Other Drug breaches of AOD Procedure

a) The following circumstances are considered breaches of this standard:

- (i) Refusal to sign documentation and/or to participate in testing
- (ii) Failure to produce the required sample in the required timeframe
- (iii) Any worker who provides a substituted specimen, or interferes with a specimen or a testing device, in an attempt to prevent detection of alcohol or other drugs
- (iv) Any worker or visitor who refuses to be tested
- (v) A 'Confirmed' Positive Test result (for alcohol or other drugs)

b) The consequences of breaching this Policy are outlined below and should be read in conjunction with this Agreement in terms of an Employee's rights. At all times a Worker has the right to be supported by the employee representative and health and safety representative.

INDUSTRIAL CLAUSES SUPPORTING A HEALTH-LED WORKPLACE TESTING REGIME



Employee/Breach	Consequence
<p>1st Confirmed Positive Test Result or Breach</p>	<ul style="list-style-type: none"> • The worker will be stood down from work immediately and paid the equivalent of their normal scheduled work routine for the time they are excluded from the workplace until such time a negative result can be produced, and arrangements made for their transport home. • Relevant trade union representative and HSR will be contacted immediately. • Should the confirmatory test return a negative result then that employee shall return to their workplace with no adverse effect to their pay, leave or other entitlements. • Should the confirmatory test confirm a positive result in the case of an employee, the employee will not receive pay for the time excluded from the workplace, but the employee may elect to take annual leave and then unpaid leave. • The worker will be offered assistance through EAP or external support AOD agency for counselling and/or rehabilitation if applicable at the Company's expense. • The worker shall not be allowed to recommence work without the production of a negative test result. If costs are incurred these costs will be Company's responsibility • A negative breathalyser reading is acceptable for an alcohol breach. These may be conducted at site prior to commencement of shift. A negative oral, fluid, saliva method result will be required for other drugs before returning to work. • A formal first written warning shall be given to the employee advising them that a 2 additional positive tests results within the next 12 months will result in dismissal. • Employee will be subject to targeted testing for the next 12 months.

INDUSTRIAL CLAUSES SUPPORTING A HEALTH-LED WORKPLACE TESTING REGIME



2nd Confirmed Positive Test Result or Breach (Within 12 months since last Confirmed Positive Test Result)

- Relevant trade union representative and HSR will be contacted immediately.
- The worker will be stood down from work immediately and paid the equivalent of their normal scheduled work routine for the time they are excluded from the workplace until such time a negative result can be produced, and arrangements made for their transport home.
- Should the confirmatory test return a negative result then that employee shall return to their workplace with no adverse effect to their pay, leave or other entitlements.
- Should the confirmatory test confirm a positive result in the case of an employee, the employee will not receive pay for the time excluded from the workplace, but the employee may elect to take annual leave and then unpaid leave.
- The worker will be offered assistance through EAP or external support AOD

agency for counselling and/or rehabilitation if applicable at the Company's expense.

- The worker shall not be allowed to recommence work without the production of a negative test result. If costs are incurred these costs will be the Company's responsibility.
- A negative breathalyser reading is acceptable for an alcohol breach. These may be conducted at site prior to commencement of shift A negative oral fluid (saliva) method result will be required for other drugs before returning to work,
- A formal second and final written warning shall be given to the employee advising them that a 1 additional positive test result within the next 12 months will result in dismissal.
- The worker will be informed of the consequences of testing positive and their obligations to present or remain in a fit state.
- Employee will be subject to targeted testing for the next 12 months.

INDUSTRIAL CLAUSES SUPPORTING A HEALTH-LED WORKPLACE TESTING REGIME



procedure including its rehabilitation and consequence management requirements.

(ii) Demonstrated compliance of the Worker with the rehabilitation and/or consequence management outcomes of their employer's drug and alcohol procedure.

(iii) Worker Fitness for Work Drug and Alcohol Policy breach history.

(iv) Provision by the excluded Worker of a negative test result (cost to their employer) for Drugs and Alcohol at the time the Worker presents to recommence work at a workplace, as the work to be carried out by that Worker is classified as a higher-risk activity.

Where a worker is not readmitted to a workplace, then:

(v) The worker will be advised of the decision and the reasons for the decision.

(vi) The worker will be provided with the opportunity to show cause why they should not remain excluded from workplaces and may have a representative of their choice to assist them.

- Contractors will be responsible for the management/ arrangements for their employees who return a positive test result for Drugs or Alcohol in accordance with their own employment arrangements.
- Unless extenuating circumstances exist, a Worker other than a direct employee who receives three Positive Result Confirmatory Test results may be permanently excluded from all workplaces.



INDUSTRIAL CLAUSES SUPPORTING A HEALTH-LED WORKPLACE TESTING REGIME



3rd Confirmed Positive Test Result or Breach (Within 12 months since the last Confirmed Positive Test Result)

- Relevant trade union representative and HSR will be contacted immediately.
- The worker will be offered assistance through EAP or external support AOD agency for counselling and/or rehabilitation if applicable at the Company's expense.
- The worker's employment could be terminated.
- There may also be reasons to consider the extension of an employee's contract past the three-incident time-period for termination.
- This would only be in exceptional circumstances and would be subject to the employee whose employment is to be terminated requesting special consideration by way of providing a written request for reconsideration of any mitigating circumstances that may apply.

Other Persons and Subcontractors

- Relevant trade union representative and HSR will be contacted immediately.
- Any other persons or Subcontractors who produce a non-negative result will be removed from site immediately until a confirmatory test can be conducted at their cost.
- Subcontractors will be offered a Referral to the EAP or external support agency for counselling and/or rehabilitation.
- If a Confirmed Positive Test is produced, they will be removed from site immediately.
- Workers, other than direct employees, who are excluded from a workplace for a Positive Result Confirmatory Test can be readmitted to a workplace upon application by their employer.

The matters to be considered in whether to readmit an excluded worker include but are not limited to:
(i) Demonstrated compliance by the Workers employer with their drug and alcohol

MASS ROLLOUT OF GENERAL AWARENESS ALCOHOL, DRUGS AND GAMBLING TRAINING



General awareness of alcohol, drugs, and gambling training inclusive of the potential impairment impacts of using medicinal cannabis should be a standard educational piece offered in all workplaces for all sectors.

The reality facing all Victorian workplaces is that workplace impairment testing, inclusive of drug and alcohol testing and training is unregulated. While we acknowledge that all impairment training must adhere to the Australian testing standards, it is often not reviewed by leaders in the alcohol and other drug sectors and is not fit for purpose and accessible for working people. While meeting Australian standards in relation to testing via urine, hair, and saliva is critical, practical, worker-led general awareness training must be rolled out in tandem. This training should be regulated, hit particular benchmarks, and include practical options for workers to access assistance and respond directly to an agreed upon workplace procedure in relation to testing, impairment, and requesting the assistance of healthcare workers, health and safety representatives, and industrial representatives.

For workplaces that don't require workplace drug testing, there is no general awareness or impairment training offered at all, meaning there are no proceeding awareness mechanisms, procedures, or support for workers who may find themselves accidentally impaired at work due to medicinal cannabis use or in the grips of risky substances misuse.

Often times industrial representatives and health and are only made aware of a potential issue with a worker when they present severely impaired on site or their work performance deteriorates.

At this point, it is always a disciplinary matter.

HACSU believes that a general awareness training package for drugs, alcohol, and gambling inclusive of the effects and use of medicinal cannabis must be developed in consultation with public alcohol and other drug treatment services for workplaces that have no training on offer and that these organizations such as Odyssey House, Windana and Turning Point should be deployed to peer review all current training offered.

This will ensure that health professionals can offer advice, make reasonable adjustments to content, and can assist employers in implementing health-led workplace procedures that encourage prevention and compassionate early intervention if required.

INDUSTRIAL CLAUSES SUPPORTING TRAINING

Submission 021



Induction/Orientation Training (can be inserted into pre-existing induction/orientation clause):

(a) Orientation and induction training for new Employees will include information about the services offered by the Victorian Workers' Health and Wellbeing Foundation (VWHWF).

Workplace Impairment Training/Procedure

- (a) The Employer will provide to all Employees (including apprentices and/or trainees) awareness, education and impairment training through an approved provider;
- (i) On induction; and
- (ii) Every twelve (12) months.
- (b) Impairment awareness and policy information sessions will be delivered to all Employees (including apprentices and/or trainees, supervisors and managers), contractors and labour hire workers (where applicable) and renewed every three (3) years.
- (c) An impairment awareness and policy information component will be developed and incorporated into Employee, contractor, labour hire and visitor induction prior to entering a workplace for the first time.
- (d) The Employer will also provide impairment awareness and policy information in a variety of multimedia formats including posters, flyers and regular staff meetings/tool box meetings.
- (e) For the purposes of this clause the Victorian Workers' Health and Wellbeing Foundation (VWHWF) is an approved provider of workplace impairment training.
- (f) The Employer will meet the full cost of any training undertaken by an Employee pursuant to this clause and payment for such training must be made in advance of the training being held.
- (g) Drug or alcohol testing may not be introduced at a workplace by the Employer unless impairment training has been first undertaken by all Employees who regularly work at that workplace.
- (h) If drug or alcohol testing is introduced by the Employer the procedure at Schedule X applies.

The Employer will, in consultation with the Union, undertake ongoing review of training needs and delivery throughout the life of this Agreement.

INDUSTRIAL CLAUSES SUPPORTING TRAINING



Education and Awareness

- a) The content of this procedure and any specific workplace procedures relating to alcohol or other drugs will be communicated to workers and other persons during the induction process. It also forms part of all subcontractor contractual requirements.
- b) The workplace induction shall include the following as a minimum to promote the health and wellbeing of all Workers and outline the company's commitment to a safe and healthy workplace. The training provider shall be the BTG workplace impairment officer or other agreed provider between the union and the PC/employer. Impairment awareness training sessions will be delivered to all workers (including principal contractor workers), subcontractors and labour hire workers at least once every five years.
- c) Requirements for an approved training provider:
 - (i) Must have previous experience delivering workplace impairment training.
 - (ii) Must consult with professional organisations to develop all training courses.
 - (iii) Must be able to demonstrate a continuous improvement plan for each training course.
- d) Trainers must have the following qualifications:
 - (i) Certificate IV in training and assessment.
 - (ii) Certificate IV in drug and alcohol or community services.
 - (iii) Certificate IV in work health and safety.
- e) All training must be delivered face to face
- f) Workplace impairment training must be a minimum of 2 hours in length and must cover the following topics:
 - Australian Workplace Health and Safety statistics
 - Overview of the Occupational Health and Safety Act 2004 (Vic)
 - Mental health - discussing at length stress, anxiety and depression
 - Fatigue - overview of causes and coping mechanisms
 - Illness and injury-management of illness and injury, legal requirements, rehabilitation process
 - Chemicals, heat cold and noise and their abilities to cause impairment at work
 - Legal/illegal drugs and alcohol -statistics on current use, potential negative consequences to the workplace, workplace deaths and accidents associated with alcohol and other drug use
 - Harm relating to alcohol and other drug use
 - Understanding what is a standard drink and how long this will stay in your system
 - Detection rates for legal and illegal drugs
 - Administering self-alcohol and drug tests
 - Information about the rehabilitation, outreach and outpatient services and Employee Assistance

Programs and the services on offer.

OCCUPATIONAL HEALTH AND SAFETY COMPLIANCE CODE



Compliance codes, declared under the 2004 OHS Act, provide practical guidance to those who have duties or obligations under the Act. These now replace the old "Codes of Practice".

The compliance codes were developed after the 2004 OHS Act and aligned to the 2007 OHS Regulations. With the new OHS Regulations 2017 in effect, the compliance codes that align with the regulations

The current compliance codes available are in relation to:

- Lead, 2022
- Managing exposure to crystalline silica-engineered stone, 2022
- Demolition, 2019
- Excavation, 2019
- Facilities in construction, 2018
- Hazardous manual handling, 2019
- Hazardous substances, 2019
- Managing asbestos in the workplace, 2019
- Removing asbestos in the workplace, 2019
- Noise, 2019
- Plant, 2019
- Prevention of falls in housing construction, 2019
- Prevention of falls in general construction, 2019
- Workplace Amenities and Work Environment, 2019
- Communicating occupational health and safety across languages, 2008
- First Aid in the Workplace, 2021
- Foundries, 2008
- Confined Spaces, 2019

At present there is no compliance code in force in Victoria in relation to drugs, alcohol, and impairment in the workplace.

It is our view that a strong, compliance code written in consultation with public alcohol and other drug rehabilitation providers, trade unions, and employers should replace the Worksafe "Guide for Developing a workplace alcohol and Other Drugs Policy", thus making it available to be enforced by Victorian Health and Safety Representatives and should include matters relating to workplace policy, training, impairment procedure, personnel required and reasonable adjustments and policies in relation to the use of medicinal cannabis.

AOD HEALTH AND SAFETY REPRESENTATIVE REFRESHER TRAINING



One-day refresher training courses provide health and safety representatives with information to strengthen the knowledge gained from an initial course. Refresher course content can cover any of the learning outcomes from the initial 5-day training and could include:

- A general update on legislation
- Risk management specific to an industry or hazards
- Health and safety representative entitlements and powers
- Skills and development for health and safety representatives.

It is with this in mind that HACSU is proposing the urgent development of two health and safety representative training refresher packages - one for workplaces that require workplace drug testing and one for workplaces that don't.

It is our view that health and safety representatives should be embedded within every facet of the application of workplace impairment procedures, general awareness training, industrial outcomes of unsafe impairment on site, and reasonable adjustments for workers utilizing medicinal cannabis. To assist in this endeavor, we propose the urgent introduction of visual signifiers to alert workers in all workplaces who have the appropriate training to recognize and respond to all matters of testing, impairment, and training.

Refresher training should include:

- Definitions
- Dealing with suspected impairment
- Education and Awareness
- Alcohol at approved employer functions or occasions
- Possession and supply of alcohol or drugs
- Prescribed medication or pharmacy drugs
- Alcohol and other drug testing procedures
- The role of HSRs
- The role of health professionals
- Obligations of employers, HSRs, trade unions, health professionals, and a worker's industrial rights.

For workplaces that require drug and alcohol testing HSR refresher training should include the following points and:

- Voluntary and self-testing
- Random testing
- Reasonable grounds testing
- Post-incident and targeted testing

AOD HEALTH AND SAFETY REPRESENTATIVE REFRESHER CLAUSES



Health and Safety Representative Training – Alcohol and Other Drugs

HSR Training (AOD and Impairment):

- (a) The Employer will provide paid time for HSRs/Union delegates or other approved Employees, to attend approved alcohol and other drug (AOD) training, with such pay as they would otherwise be entitled to receive from the Employer for work during that period and not otherwise be disadvantaged.
- (b) For the avoidance of doubt, leave to attend HSR/delegate AOD training is separate and additional to any Trade Union Training Leave granted under cl. XX or Health and Safety Training Leave granted under cl. XX.
- (c) For the purposes of this clause, approved alcohol and other drug (AOD) training will include training provided by the Victorian Workers' Health and Wellbeing Foundation (VWHWF).
- (d) HSR/delegate AOD training programs will be determined in consultation with the Union to ensure the training is appropriate to the OH&S risks and hazards experienced in the sector, but must, at a minimum, be at least 3 hours in length and cover the following topics:
 - (i) Australian Workplace Health and Safety statistics
 - (ii) Overview of the applicable state-based OH&S legislation, including relevant duties/obligations
 - (iii) Mental health – discussion about stress, anxiety and depression and how these conditions can interact with AOD use/misuse
 - (iv) Fatigue – overview of causes and coping mechanisms
 - (v) Illness and injury – management of illness and injury, legal requirements, rehabilitation process
 - (vi) Legal/illegal drugs and alcohol – statistics on current use, potential negative consequences to the workplace, workplace deaths and accidents associated with alcohol and other drug use (industry-specific where feasible)
 - (vii) Harms relating to alcohol and other drug use and harm reduction
 - (viii) Information about workplace impairment and recognising signs of impairment
 - (ix) Information about the Victorian Workers' Health and Wellbeing Foundation (VWHWF) and the programs/services it offers
 - (x) Information about the range of AOD support and treatment services available in the state and how to access appropriate supports/services
- (e) The Employer will make every endeavour to ensure that at least one Employee at every worksite/facility has received AOD training.
- (f) The Employer will meet the full cost of any training undertaken by an Employee pursuant to this clause and payment for such training must be made in advance of the training being held.

INDUSTRIAL CLAUSES SUPPORTING PROCEDURE FOR HSRs



Re Testing:

XX.XX HSRs

a) At all times Health and Safety Representatives shall be advised before any testing occurs of any testing under this Policy and any consequential action.

XX.XX Reasonable Grounds Testing

a) If there are reasonable grounds or cause to suspect a worker is impaired or otherwise affected by alcohol or other drugs, then an alcohol and other drug test can be initiated.

b) Where a supervisor or other person has reason to suspect that a worker may be under the influence of alcohol or other drugs, the supervisor will meet with the worker and if the worker wishes their employee representative and set out the basis for the suspicion.

c) The Supervisor may complete a -Reasonable Grounds for Alcohol and Other Drugs Checklist (Sch 1), and if as a result the worker is deemed to be effected by drugs or alcohol the Worker may be tested in accordance with the procedure in this Policy.

d) If a worker is not affected by drugs or alcohol the worker will return to work and all records destroyed.

Project:		Date:		
Personnel and Event Details				
Employee / Worker Name:		Company / Employer:		
Position / Role:		Contact Number:		
Work Location:				
Description of Event				
Reasonable Grounds for Testing Criteria				
Physical / Observations (Speech / Balance)	<input type="checkbox"/> Attempt to conceal objects	<input type="checkbox"/> odours of marijuana	<input type="checkbox"/> odours of alcohol	<input type="checkbox"/> bloodshot eyes
	<input type="checkbox"/> dilated pupils	<input type="checkbox"/> slurring speech	<input type="checkbox"/> slow speech	<input type="checkbox"/> rambling speech
	<input type="checkbox"/> falling over	<input type="checkbox"/> staggering	<input type="checkbox"/> stumbling	<input type="checkbox"/> unbalanced
Behaviours / Unusual Actions	<input type="checkbox"/> Excessive sweating	<input type="checkbox"/> Emotional crying	<input type="checkbox"/> aggressive / fighting	<input type="checkbox"/> tremors
	<input type="checkbox"/> slow reactions			
Additional details / Witnesses				
Employee / Worker				
Name:	Signature:	Date:		
Test Authorisation / Approval Company				
Name:	Signature:	Date:		

REASONABLE ADJUSTMENTS FOR MEDICINAL CANNABIS PATIENTS



The Victorian State government has made the courageous step of introducing medicinal cannabis as a legitimate form of healthcare.

The use of medicinal cannabis for a range of health conditions is gaining traction in Australia with over 1 million prescriptions being administered. It is well documented that medicinal cannabis can provide effective relief for conditions such as severe epilepsy, symptoms related to chemotherapy, multiple sclerosis, nervous system damage, reproductive health conditions, and mental health disorders.

We are acutely aware that industrial reform has not kept pace with the emergence of this critical healthcare. Furthermore, there is sufficient research indicating that testing conducted via urine, oral fluid, and hair follicles are the only reliable methods for indicating past drug use as opposed to detecting impairment or intoxication.

This is of grave importance for all workers, but particularly those who do possess a medicinal cannabis prescription as cannabis can be detected for up to 90 days after consumption.

Without a strong industrial framework surrounding medicinal cannabis, it is inevitable that workers who hold a legal prescription will be stood down.

Overseas there is growing case law emerging that alters the precedent in workplaces whereby zero tolerance policies are now considered unreasonable. While employers are entitled to implement policies regarding disclosure and the use of medicinal cannabis in safety-sensitive work environments, the growing consensus is that employers should be obligated to make reasonable adjustments to these workers.

In the matter of *Ornge Air v Office and Professional Employees International Union*, 2021 CanLII 126376, the employer terminated an employee due to his disclosed medical marijuana prescription in an industry deemed high-risk. At arbitration the employer lost, even though they claimed it was imperative to the operations of their business to implement a zero-tolerance policy as it was found that their course of action was unreasonable, treating medical marijuana differently than other medications that may negatively impact an employee's fitness for duty.

In the matter of *Bird v Lafarge Canada Inc.*, 2021 AHRC 50, the arbitrator found in favor of the employer when they terminated an employee for testing positive for THC in a post-incident test. While the employee had a prescription for medical marijuana, he did not disclose his prescription thus not giving the employer the opportunity to make reasonable adjustments and accommodations for his medical condition. The employee was terminated for breaching the employer's medical disclosure requirements, not because of his use of medical marijuana, and the complaint was dismissed.

REASONABLE ADJUSTMENTS FOR MEDICINAL CANNABIS PATIENTS



As this emerging sector gallops apace, it is imperative that workplaces are supported to effectively manage potential risks, accommodations, and adjustments and industrial representatives and health and safety representatives must be supported with a strong legal framework.

When considering all possible accommodations, employers, industrial representatives, and health and safety representatives must consider the specific circumstances relating to the worker's prescription, with no-fault disclosure as the core of this principle. Issues to consider are:

- Is it medically authorized?
- How much marijuana is authorized?
- How much THC does the product contain?
- How is it being used (e.g. smoking, inhaling, ingesting, vaping)? What is the dose?
- What is the frequency of use? What time is it used?
- What adverse effects arise from use?
- What workplace limitations are associated with use?
- Are there other first-line treatments available? If so, have they been used?
- Is the employee able to safely perform their job?
- Any addictions?

HACSU urges the Victorian State government, the federal government, and The Fair Work Commission to emulate the Canadian government's duty to accommodate policy. Now under the Canadian Human Rights Act, employers have the obligation to accommodate to the point of undue hardship an employee who has identified as having a disease, injury, or disability, including substance dependence and medical authorizations to use cannabis for medical purposes.



INDUSTRIAL CLAUSES TO SUPPORT MEDICINAL CANNABIS PRESCRIPTIONS



Prescribed Medication or Pharmacy Drugs

a) If a Worker has a medical condition that could affect their Fitness For Work, they should inform their Supervisor and if they wish, an employee representative. The individual is not obliged to disclose confidential medical information unless it is relevant to their Fitness for Work and the ability of the Worker to safely perform the inherent requirements of their work task. If a Worker's ability to safely perform the inherent requirements of their work task is affected by taking prescription or pharmacy drugs, the Worker should obtain this advice in writing from the medical practitioner or pharmacist and provide it to their supervisor, and if they wish an employee representative, as soon as practicable.

b) Any Worker required to participate in drug testing is obliged to declare any medication taken immediately prior to the drug and alcohol test being conducted. Such information will remain confidential and only be used in determining if such medication has contributed to or caused a non-negative result.

c) Where the results of the confirmatory test identify the Prescribed Drug/Pharmacy Only Drug declared and the levels are consistent with that prescribed by the Registered Medical Practitioner, then a Negative Result shall be recorded, and no results retained.

d) Where the results of the confirmatory test identify the Prescribed Drug/Pharmacy Only Drug declared and the levels are not consistent with that prescribed by the Register Medical Practitioner or another drug(s) type is recorded, then a Confirmed Positive Test Result shall be recorded, and the provisions of this procedure shall apply.

