



# Legislative Council Legal and Social Issues Committee

**Inquiry:** Inquiry into workplace drug testing in Victoria

**Hearing Date:** 21 May 2024

**Question[s] taken on notice**

**Directed to:** Mining and Energy Union

**Received Date:** 12 June 2024]

## 1. **David ETTERSANK, page 57**

### **Question Asked:**

Yes. I think we are in that question-on-notice-type stage because it is obviously getting late in the day. There were a couple I would just like to respond to. Mr Jacka, you talked about the *Disability Discrimination Act* and the potential effect of that applying to medicinal cannabis. What if we just put a question on notice to you, if you could just elaborate on whether you think there should be reform or amendment to the discrimination Act to clarify its applicability to an industrial setting or workplace setting?

**Adam JACKA:** I will take that on notice.

**David ETTERSANK:** Yes. That is what I am asking.

**Adam JACKA:** I think the Victorian discrimination commission has also made a submission and suggested some wording that I cannot tell you off the top of my head, but I will come back to you on that.

### **Response:**

The Mining and Energy Union supports the proposal by the Victorian Equal Opportunity and Human Right Commission (VEOHRC) to amend section 7 of the *Equal Opportunities Act 2010* (EO Act) which is Option 1 in the VEOHRC's submission to the enquiry quoted below:

*One option for reform in this area, is to amend section 7 of the EO Act to confirm that if a person is taking prescribed medication or receiving treatment for a disability, this is taken to be a characteristic that a person with that disability generally has.*

*For example, it could be amended to include a new subsection, such as: (5) For the purposes of subsection (2) if a person with a disability is taking prescribed medication or receiving medical treatment for a disability then adhering to the prescription or treatment is taken to be a characteristic that a person with that attribute generally has.*

*For the avoidance of doubt the explanatory memorandum could give examples including medical marijuana to support interpretation of the provision.*

We agree with the VEOHRC's reasoning that the existing EO Act protections and exceptions relating to disability discrimination would apply and there would be no need for further amendments to the EO Act to provide protections from unlawful discrimination to people receiving medical treatment or taking prescribed medication. The Mining and Energy Union supports the VEOHRC's suggestion that this reform could be accompanied by education to ensure employers and workers understand how the clarified protection applies.

2. **David ETTERSHANK, page 58**

**Question Asked:**

I am going to put this as a question on notice, if that is possible, and we will just go from there. Ms Thuesen, the HACSU submission is fabulous, really comprehensive, so thank you for that. I am again putting this as a question on notice. You made a comment about getting laws and industrial frameworks right. I guess from a committee point of view, we would be interested in terms of the learnings you had from America and Canada. As lawmakers, we would be very interested in your thoughts as to specifically what you think this inquiry could be recommending based on those learnings. That would be fantastic. That will do.

**Response:**

During the Hearing reference was made to the Worksafe Victoria guidelines for workplace drug testing dated 2017. Worksafe Victoria are an important part of the industrial framework. The Mining and Energy Union suggests that the guidelines are updated.

**Additional questions**

3. **David ETTERSHANK**

**Question Asked:**

The VEOHRC in its submission identified a range of potential issues and actions related to the applicability and amendment to the Discrimination laws, particularly in relation to the disability and prescribed medication. What is the union(s) position or positions on these proposals?

**Response:**

The Mining and Energy Union refers to our response at question 1.

4. **David ETTERSHANK, page 38**

**Question Asked:**

The submission from the Lambert Initiative at page 10, suggested that a more acceptable approach to drug testing would be to use two test such as a presence test (eg cheek swab) and an impairment test (such as Druid). What are your thoughts on that approach?

**Response:**

The purpose of drug testing in the workplace should be to test for the presence of THC that is above a cut off level that may result in impairment in employees and to manage any posed safety risk. We agree with the Lambert Initiative submission that the use of an oral fluid point of collection device (eg cheek swab) would be an improvement for managing workplace impairment instead of blood or urinary drug testing.

The Mining and Energy Union notes the submissions of the Lambert Initiative from pages 7 to 10 dealing with the question “*Does the presence of THC in urine and oral tests indicate impairment?*”. In consideration of the issues raised in the submission, the Mining and Energy Union supports an impairment test (such as Druid) if the oral swab test is non-negative for THC. We do not support mandatory impairment tests in conjunction with oral swab testing unless the employee provides a non-negative test and the impairment test is used to determine if the employee is impaired.