

Government Response – Inquiry into workplace drug testing in Victoria

Preamble

The Victorian Government (Government) thanks the Legislative Council's Legal and Social Issues Committee for its report on workplace drug testing in Victoria, and those who took time to contribute to the Inquiry.

In most Victorian workplaces, drug testing is neither required nor prohibited by law. Employers may implement a workplace drug testing program to detect the presence of alcohol or other drugs (AOD) in their workers as part of managing risks to health and safety in the workplace that may be posed by AOD-related impairment, or for other reasons. Where an employer does implement a workplace AOD testing program, they must consider and comply with relevant regulatory frameworks including in relation to occupational health and safety, industrial relations, discrimination and road safety. Certain industries are subject to specific legislative requirements regarding AOD use and testing.

The Government acknowledges the issues raised in the Inquiry and is committed to ensuring that the legislative and regulatory frameworks applying to workplace drug testing treat workers fairly, respectfully and with dignity while also supporting the effective management of the harms that can arise from AOD impairment in the workplace.

The Government supports further action to clarify the requirements and considerations for employers and employees in relation to AOD use and workplace drug testing, particularly through improving guidance and educational material. This will ensure employers are equipped to develop appropriate workplace AOD policies and drug testing programs where relevant, to suit the context, circumstances and risks in their workplaces, while factoring for the privacy and dignity of employees that may have been prescribed medicinal cannabis, for example, by their treating medical practitioner. Guidance material should also keep pace with emerging evidence relating to impairment and testing.

Inquiry report recommendations and response

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1 – That the Victorian Government support the principle that in non-mandated industries, drug testing should only occur where employers have a well-founded belief that an employee may be impaired at work and should only then occur in the context of a comprehensive, alcohol and other drug policy and accompanying support framework as agreed by employers and employees within a workplace relations context.	Support in part The Victorian Government considers the existing risk-based approach to AOD use in workplaces under the OHS framework is appropriate to protect the health and safety of workers and the public. Restricting the use of drug testing to circumstances where an employer has a ‘well-founded belief’ that an employee may be impaired at work would not align with the preventative focus of the OHS framework and may have discriminatory impacts, as it would allow testing to be conducted based on a subjective judgement of an employee’s impairment. The <i>Occupational Health and Safety Act 2004</i> (Vic) (OHS Act) and Occupational Health and Safety Regulations 2017 (OHS Regulations) require employers to eliminate or reduce risks to the health and safety of their workers, so far as reasonably practicable. AOD testing is neither required nor prohibited under this framework and may be used by employers as a risk control measure, where appropriate, to prevent risks to health and safety arising from AOD impairment in the workplace. WorkSafe’s <i>Guide for developing a workplace alcohol and other drugs policy</i> (WorkSafe guidance) provides guidance to employers on developing a policy to manage risks to health and safety associated with AOD use in their workplace. This includes prompting employers to consider the appropriateness of implementing an AOD testing program as part of their policy, with consideration to the level of risk present in the workplace. It also recommends that where AOD testing is implemented, it forms part of a comprehensive workplace AOD policy. Employers are also required to consult with employees on matters that affect or are likely to affect their health and safety, which would include the development of or any changes to a workplace AOD policy or an AOD testing program. The <i>Fair Work Act 2009</i> (Cth) (Fair Work Act) sets out unfair dismissal protections that could apply in relation to any disciplinary action, such as dismissal, for a refusal to undertake a drug test or the return of a positive result. Enterprise bargaining agreements may also address AOD testing and the management of related disputes.
2 – That the Victorian Government amend the <i>Occupational Health and Safety Act 2004</i> and/or regulations to state key principles around alcohol and other drugs testing, including prescription medication. These principles should include, but not be limited to, the rights of workers to privacy and dignity, a commitment to workplace education, appropriate	Support in-principle The Victorian Government acknowledges the Inquiry heard that despite being legal since 2016, there is uncertainty among employers and employees around medicinal cannabis, and it is sometimes treated differently within workplaces to other prescription medications that may cause impairment.

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support measures and when and how alcohol and other drugs testing can or should be carried out.	The Victorian Government supports the intent of this recommendation to clarify key principles concerning workplace AOD testing and will progress work to ensure guidance on workplace drug testing recognises key principles including the rights of workers to privacy and dignity. The Government notes that the principles are broadly consistent with relevant existing Victorian and federal frameworks that are relevant to consider in the context of workplace drug testing, including the <i>Equal Opportunity Act 2010</i> (Vic) (Equal Opportunity Act), <i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic), <i>Health Records Act 2001</i> (Vic), <i>Privacy and Data Protection Act 2014</i> (Vic), <i>Privacy Act 1988</i> (Cth) and Fair Work Act. The Committee recognised in its final report that while it fully understands the concerns raised by employees and their advocates around stigma and potential discrimination against workers who take legally prescribed medicinal cannabis, there is a need to balance these identified issues with employers' legal responsibility to keep workplaces safe. Recognising this, the Government considers that guidance material is the most appropriate and effective mechanism for achieving the intended objectives of this recommendation, as the principles can be integrated with guidance on safety priorities, updated as circumstances evolve (for example as impairment testing becomes more definitive for medicinal cannabis) and avoids duplicating existing regulations. The Government will update AOD guidance to bring together and emphasise the key principles recommended by the Committee to strengthen guidance to employers and employees on the use of prescribed medicinal cannabis and drug testing more generally in the workplace. This guidance can be tailored to industries or particular workplaces, and can be regularly updated as the state of knowledge of impairment and health and safety changes.
3 –That the Victorian Government amend the definition of discrimination in Section 7 of the <i>Equal Opportunity Act 2010</i> to clarify that where a person uses prescription medication or requires medical treatment for a disability, this is a characteristic that a person with that disability generally has.	Under Review The Victorian Government is committed to protecting and promoting the human rights of Victorians with disability, including by recently legislating to expand anti-vilification protections to include the attribute of disability through the <i>Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025</i>. Importantly, there are a range of existing legal protections in Victorian and Commonwealth legislation that may assist people with disability who are experiencing discrimination. The Equal Opportunity Act, for example, provides protection from discrimination for people with disability in the workplace and in other areas of public life. Employers also have a positive duty to eliminate (as far as possible) disability discrimination from their workplaces. The OHS Act, Fair Work Act and the <i>Disability Discrimination Act 1992</i> (Cth) also provide a range of protections for people with disability.

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	Expanding the definition of discrimination in the Equal Opportunity Act to expressly capture the use of prescription medication or medical treatment for a disability requires further analysis and could be considered as part of any future reform to the Equal Opportunity Act. Any future reform to the Equal Opportunity Act will require thorough consideration of the resourcing and economic impacts on Victorians and comprehensive consultation with a range of stakeholders.
4 –That WorkSafe update its advice on alcohol and other drugs policies with information on medicinal cannabis, in particular that it should be considered in the same way as all medications that cause impairment. The advice should include but not be limited to: • The legal status of prescribed medicinal cannabis • The difference between CBD and THC • The relationship between the presence of THC and impairment • When employees should be required to disclose that they are taking medicinal cannabis.	Support The Victorian Government acknowledges that the Committee has identified a clear need for improved guidance, recognising the recent rapid increase in the use of medicinal cannabis in Victoria and the additional clarity employers and employees have sought on this topic. In consultation with relevant areas of Government and industry stakeholders (see recommendation below), WorkSafe will review and update its AOD guidance to address the matters raised in this recommendation in alignment with the current evidence base and health advice, including to refer to authoritative sources for information on matters across other regulatory frameworks. While incorporating the recommendations of the Committee, WorkSafe’s AOD guidance will continue to focus on outlining the steps employers can take to eliminate or reduce risks in the workplace from AOD use, aligning with their duties under the OHS framework. The guidance emphasises that a workplace AOD policy should focus on addressing the risks that may be presented by an employee being impaired at work and unable to perform their work safely, which could arise from the use of any drug. In this way, medicinal cannabis is treated in the same way under the OHS framework as any medication that may cause impairment. As the Committee observed, work in this area is constantly evolving and the challenge comes down to how to test for impairment rather than the mere presence of a drug. There is currently no widely accepted test that can assess impairment caused by prescribed drugs, including medicinal cannabis. With input from the Department of Health, Industrial Relations Victoria and subject matter experts, WorkSafe will update its AOD guidance to include further information on medicinal cannabis, including its legal status and the difference between CBD and THC. When updating this guidance, WorkSafe will also identify where there are other laws that apply in certain workplace contexts. For example, it is an offence for a person to drive with any detectable amount of delta-9-tetrahydrocannabinol (THC) in their system, which may be a component of medicinal cannabis, under the <i>Road Safety Act 1986</i> (Vic).
5 –That WorkSafe convene a working group consisting of industry stakeholders including employees and	Support in part

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employers' representatives, government departments, and public sector Alcohol and Other Drug (AOD) providers to: a) Update the 'Guide for developing a workplace alcohol and other drugs policy' which is no longer fit for purpose. b) Develop a Compliance Code covering, but not limited to: • Obligations of employers and workers in relation to impairment and safety at work, including the right to privacy and dignity, • General awareness training of impairment, • Appropriate policies and procedures, • Obligations and rights of HSRs to provide a health led response to impairment, • Reasonable workplace adjustments in the workplace for impairment, and • Advice on available alcohol, drug and gambling support. The Compliance Code should be accompanied by a complementary and comprehensive education campaign, emphasising a health based approach to AOD in the workplace, and the development of a Health and Safety Representative refresher training program.	The Victorian Government recognises the value of consulting industry stakeholders as part of reviewing and updating the current AOD guidance. WorkSafe will convene a working group as recommended to contribute to updating its guidance on managing health and safety risks associated with AOD in the workplace and workplace drug testing. Non-statutory guidance is a more appropriate mechanism than a compliance code for achieving the intent of part (b) of this recommendation in outlining detail on the topics listed, as it can be updated more flexibly and regularly as the state of knowledge relating to impairment and health and safety changes and can include more tailored content for specific industries or workplaces. Compliance codes provide guidance on how to comply with specific duties under the OHS Act or regulations, however there is no specific duty relating to AOD use or workplace drug testing. WorkSafe will consult with the working group to address the matters raised in this recommendation in non-statutory guidance material, including to appropriately refer to other regulatory frameworks that may apply. WorkSafe will also work with the working group to consider any activities that may complement these updates, such as education campaigns and health and safety representative training.
6 –That WorkSafe establish a framework to ensure that workplace drug policies are communicated in a clear and easily understandable manner which is visible and accessible to all employees.	Support WorkSafe's guidance provides advice to employers on how to develop an appropriate workplace AOD policy, including how the policy can be communicated in a clear and easily understandable manner which is visible and accessible to all employees. WorkSafe, in consultation with the working group referenced above, will consider further amendments to the guidance and communication strategies to build greater visibility and awareness of recommended approaches, including exploring how key messages can be communicated through other Government channels.

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7 –That WorkSafe investigate impairment testing methodologies, including the results of the current medicinal cannabis closed track driving trial, and publicly advise on their applicability to workplace drug testing.	Support WorkSafe will continue to regularly review new and emerging evidence and update guidance and policies to reflect findings that can improve workplace health and safety. WorkSafe will review the findings of the Government’s Medicinal Cannabis Closed-Circuit Track Trial, which is designed to evaluate the effects of THC-prescribed medicinal cannabis on the driving performance of individuals within a controlled track environment. Following the trial’s completion in late 2026, WorkSafe will assess the outcomes and consider whether updates to its guidance are required.