



8 February 2024

Legislative Council Legal and Social Issues Committee  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002

Re: Inquiry into Workplace Drug Testing (Victoria)

### **About Us**

[Harm Reduction Australia \(HRA\)](#) is a national organisation for individuals committed to reducing the health, social and economic harms potentially associated with both drug use and drug policy approaches. HRA was formed in 2015 by a group of professionals concerned about drug policy in Australia.

Under the auspices of Harm Reduction Australia, [Drive Change](#) is a national law reform campaign established to amend the driving laws giving patients on prescribed medicinal cannabis the same rights as all other patients. After numerous enquiries for assistance, this campaign was expanded to include workplace drug testing.

Accordingly, both HRA and Drive Change welcome the opportunity to review the current legislative and workplace drug testing in Victoria, and how this impacts patients on prescribed medicinal cannabis. We urgently ask the Committee to recommend the update of all occupational health and safety policies to ensure that patients on medicinal cannabis are not discriminated against.

### **Human rights and workplace drug testing**

It is important to consider the human rights aspect of this issue, as working rights are human rights. Both state and federal equal opportunity laws and the *Fair Work Act 2009* provide employees with some protection from adverse action, or discrimination, for taking prescribed medicinal cannabis.

In effect these laws make it unlawful to discriminate against a person on the basis they have a disability. 'Disability' is broadly defined to include the physical and mental impairment of a person. However, patients who have been prescribed medicinal cannabis continue to be discriminated against as employers may not recognise this as a valid form of treatment.



In some cases, the employers may dismiss and/or take disciplinary action towards an employee (who is prescribed medicinal cannabis) based on work health and safety duty. This is a highly complex matter and has led to unfair cases of patients not being employed (in pre-employment medical tests), or taken disciplinary action for declaring the use of prescribed medicinal cannabis.

**Recommendation:** The human rights as well as the healthcare rights of patients on medicinal cannabis should be prioritised in the review of workplace drug testing.

### **Workplace drug testing and a zero-tolerance approach**

Medicinal cannabis has been legal since 2016, and employers in Victoria need to consider this as an emerging treatment in Australia. There have been almost [130.000 SAS-B applications](#) for medicinal cannabis in Victoria, and this number continues to increase.

Alcohol and other drugs use (including prescription and illegal drugs), whether it occurs in or away from the workplace, can be an occupational health and safety issue if that drug use impairs an employee's ability to exercise judgement, coordination, motor control, concentration and alertness at work.

However, there is a misconception that the mere presence of medicinal cannabis, either Delta-9-Tetrahydrocannabinol (THC) or cannabidiol (CBD) leads to impairment. The stigma and discrimination issue surrounding workplace drug testing, either pre-employment or random drug testing, is that employees/patients are tested for the presence of THC, the cannabinoid that contains psychoactive properties.

If positive, then the employee is judged to be impaired and unable to perform their duties. In effect, there remains a default zero-tolerance approach towards patients on medicinal cannabis, despite it being a legal, registered medical treatment and despite a strong evidence-base showing that neither THC or CBD leads to impairment.

**Recommendation 1:** We urge employers to ensure that workplace drug testing policies and frameworks are up to date, evidence-based, adhere to a human rights approach and enforced consistently as other medications.

In addition, we recommend educating and training for employees in understanding the regulatory framework of medicinal cannabis and how they can better support employees who are receiving this form of treatment.

## **Medicinal cannabis and impairment**

The HRA and Drive Change position is that *if* the prescribed medicinal cannabis does not affect the workers' ability to perform their duties at work as per other prescribed medications, employers cannot compel employees and/or potential employees to provide details of their medication (or medical disclosure).

If an employee self-discloses or if it is determined that they are taking medications (including cannabis for therapeutic reasons) that may cause impairment or result in diminished functionality, the employer has a duty to accommodate this situation and have the appropriate policies and procedures in place.

**Recommendation 3:** It is important for employers to find ways to develop a framework where, if the use of medicinal cannabis is in accordance with the prescribing doctor's instructions, this should be deemed as safe and employees should not be subjected to workplace drug testing.


Our position is based on existing legislation and rights that are already in place for employees in regards to their prescribed medications.

## **Conclusion**

Drive Change and Harm Reduction Australia strongly urge the Victorian Government to consider the recommendations in our submission. Medicinal cannabis is unlikely to be the end of this challenge for employers as we start to see other drugs being considered or trialled for medicinal purposes, such as MDMA, ketamine and psilocybin.

Indeed, recently MDMA and psilocybin have been [rescheduled by the Therapeutic Goods Administration](#) as controlled drugs in Australia, and are being prescribed to treat post-traumatic stress disorder, and ketamine is now being used to treat depression. Employers will also need to consider how these drugs are to be managed within their relevant drug and alcohol policies and procedures.

We look forward to working closely with the Committee in addressing this barrier that continues to impact patients on medicinal cannabis.



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