



Legal issues

What laws apply to alcohol and drugs and the workplace?

Workplaces are covered by various laws that set out how work is organised and managed to ensure fairness and prevent harm.

Laws involving alcohol and drugs broadly cover:

- the employment of staff
- worker safety and wellbeing
- public or patient safety.

Some laws are industry-specific reflecting the serious risks that work activities (for example driving, working in public spaces or providing healthcare services) can present to workers, customers and the public.

Work health and safety law

Employers are legally obliged to protect the health and safety of workers by managing workplace hazards.

Workplace conditions can increase workers' alcohol and drug use, and this use can impair workers' physical and mental health and work performance.

As such, employers are responsible for minimising the risks associated with workers' alcohol and drug use.

Employers must:

1. protect the safety of workers and others, including the public and customers
2. provide a safe work environment

3. consult workers when preparing policies on health and safety issues
4. provide information on hazards, policies and procedures
5. provide training on policies and procedures
6. monitor workers' health and workplace conditions to prevent illness or injury.

Some industries (e.g., safety (mining) and integrity (police) sensitive) have implemented drug testing to meet their statutory obligations and the public interest.

Workers must:

1. take reasonable care of their own health and safety
2. ensure their actions or failure to act does not cause harm to others
3. follow reasonable instructions while at work
4. follow any reasonable policy to ensure health and safety at work.

Laws specific to alcohol and drugs

Safety sensitive industries have specific laws restricting workers' alcohol and drug use. These laws are implemented because the work activities are high risk and/or to meet public interest requirements. Industries with specific alcohol and drug provisions include:

- Aviation
- Construction
- Healthcare
- Mining
- Transport (heavy vehicles, buses, taxis, and rail).



Aviation services

Under the *Civil Aviation Safety Regulations 1998 (Cth)*, s 99, aviation service employers must develop a Drug and Alcohol Management Plan (DAMP).

Workers (including contractors) cannot be impaired because they perform safety sensitive aviation services including:

- air traffic control
- maintenance
- radio and telecommunication
- navigation
- security
- baggage handling
- firefighting and refuelling.

Construction industry

The Australian Building and Construction Commission oversees the activities of construction service companies working on Commonwealth government funded projects.

The *Building Code 2016* requires a zero-tolerance policy to alcohol and drugs. Any worker with detectable levels of alcohol or drugs is deemed unfit for work and must cease work.

Construction companies undertaking Commonwealth funded work must have a fitness for work policy that includes testing for:

- alcohol
- opiates
- THC (cannabis)
- cocaine
- benzodiazepines
- amphetamines
- methamphetamines.

The fitness for work policy must include specific procedures for frequent and periodic alcohol and drug testing. The policy should clearly state:

- the methods used to test and how results are managed
- who is covered by testing (including construction and site office workers)
- how many workers are sampled during each round of testing
- how workers are selected for testing.

The Code requires a minimum amount of workers be tested each month. Businesses must test at least 10 percent of their workforce per month.

Driving

Road users must not operate a vehicle under the influence of alcohol (blood alcohol concentration (BAC) of 0.05 or higher) or test positive to:

- cannabis
- speed
- ecstasy.

Transport drivers (buses, taxis, heavy vehicles, vehicles carrying dangerous goods, trains) must have a zero BAC.

Positive test results may incur heavy fines, licence disqualification, and/or court costs.

Healthcare workers

Healthcare workers registered under the *Health Practitioner Regulation National Law 2010 (SA)* must not work while intoxicated from alcohol or drugs. Working while intoxicated is notifiable conduct which may lead to loss of registration and right to practice (s 140).



Registered health care providers include:

- doctors
- nurses
- paramedics
- physiotherapists, occupational therapists and chiropractors
- psychologists.

While there are a range of laws addressing alcohol and drugs as consumer products, laws restricting workers' use of alcohol and drugs focus on securing the safety of workers, patients, customers and the public. Contemporary practice extends the safety focus to include health and wellbeing.

Mining

The *Work Health and Safety Act 2012 (SA)* contains specific health and safety regulations for mines.

Schedule 2 establishes a Mining and Quarrying Occupational Health and Safety Committee. In addition, the *Work Health and Safety Regulations 2012 (SA)*, sections 640 & 641 require mining operators to manage health and safety risks associated with fatigue and alcohol and drug consumption.

Since the 1990s, mining companies have consulted with unions and workers to develop fit for work programs that have included alcohol and drug testing.

Rail transport

The *Rail Safety National Law 2012 (SA)* states that rail transport operators must ensure that rail safety workers are not impaired by alcohol and drugs during work.

Rail safety workers include workers whose activities involve:

- driving or controlling the movement of rolling stock
- signalling or communications
- maintaining, modifying, repairing, monitoring or inspecting rolling stock or infrastructure including track
- monitoring passenger safety.

Rail transport operators must develop and implement a Drug and Alcohol Management Plan (DAMP) which includes provisions about:

- alcohol and drug information and education for rail safety workers
- confidentiality protections related to testing, treatment or rehabilitation
- testing procedures including how results are managed.

Substances tested include alcohol, cannabis, speed and ecstasy. It is an offence for a rail safety worker to refuse a test (see Schedule 1 and sections 99, 115, 123 – 129 for more information about this Act).

This Act is replicated in all Australian States and Territories.

Resources and handouts are available at <https://worklife.flinders.edu.au/external-site-resources>.

References are available at <https://worklife.flinders.edu.au/references>.