
Impact of the regulatory framework for cannabis in New South Wales
Post-hearing responses – Australian Industry Group **August 2024**

First question on notice:

The Hon. JACQUI MUNRO: Is there any data around that at the moment in terms of dismissals related to drug and alcohol substances in the system at work?

SCOTT BARKLAMB: May we perhaps put it like this? We might take that one on notice and we'll see if we can have a look, but one mechanism for doing that may be to go back and look at some decisions. I'm not instantly aware of someone else having done that, but we can go and have a look at that. I might pick up your first question very briefly—as I was sitting, letting it sink in a little. You were talking about a successful system of decriminalisation and remaining illegal in the workplace. One thing employers might do in a different legal situation more widely across the State—some employers, I imagine, would want to have a complete prohibition on smoking at work even if it wasn't, per se, part of their safety policies about impairment or heavy machinery. They might even want to insist on a situation where you couldn't have marijuana in your bag, in your locker, onsite at all. But we're thinking through a very different situation were it legal in the wider community.

We undertook a search of published decisions of the Fair Work Commission for 'drug and alcohol', 'marijuana', 'cannabis' and 'THC'.

We searched 'decisions' made under section 394 of the Fair Work Act 2009 (Cth), which are determinations of unfair dismissal claims, and found the following numbers of decisions per calendar year:

	Drug and alcohol	Marijuana	Cannabis	THC	TOTAL
2020	15	13	19	8	55
2021	187	43	40	21	291
2022	16	4	4	9	33
2023	12	2	3	2	19
2024*	13	2	5	3	23

*To end August

(Further consideration may be necessary on why calendar year 2021 yielded such divergent outcomes).

Note: This is based on mentions of 'drug and alcohol', 'marijuana', 'cannabis' or 'THC' in decisions. The decisions were not further parsed as to whether the applicant employee or respondent employer was successful, nor whether the decisions were determined by / turned on the drug and alcohol matter raised.

Second question on notice:

The Hon. Dr SARAH KAINE: The Chair's question was about whether there were any employers that had set that testing level; it would probably be with larger employers as well. I wonder whether there had been any particular union positions or claims that you had come across, likewise, that a union is trying to implement across a sector with regard to this issue—whether they have been accepted or not?

TRACEY BROWNE: Can I clarify that question? You are asking whether unions are trying to implement something or whether unions are responding to employers?

The Hon. Dr SARAH KAINE: Yes, whether unions are putting a particular position on this, and the testing and the levels, to employers?

TRACEY BROWNE: Yes. If it's a unionised workplace, the union will generally be involved in the discussion around implementing the process. Different unions have different approaches and some of that comes down to the industry area that the focus is as well.

The Hon. Dr SARAH KAINE: But you don't have any that you could cite as an example?

TRACEY BROWNE: Not at this point, but we could take that on notice because it's a big thing that has been in place, really, for most workplaces—most larger workplaces have probably had drug and alcohol policies in place now for over 20 years.

The Hon. Dr SARAH KAINE: Sorry, I don't mean to interrupt, and I know it's hard when we're virtual. I'm just trying to get quite specific about the questions that preceded mine about levels of testing and those kinds of things, to make sure you don't have to go and provide lots of information. Just on that particular issue would be great.

SCOTT BARKLAMB: One interesting thing would be whether union claims are about process, about how you test and where you test, and then how the employer addresses, in shorthand, a failed test or a level of THC that's contrary to policy. Whether that is more likely in union claims than a particular level in the bloodstream—Tracey, if that's all right with you, unless you want to add anything—I think that's worth us just briefly having a look at.

The Hon. Dr SARAH KAINE: That would be great. Thank you.

We again undertook a search of recent published decisions of the Fair Work Commission, focussed on those approving agreements.

This was not as successful, and examples were not usefully forthcoming responding to Dr Kane's specific question.

However, we then looked at some recent agreements (approved since 1 July 2024) and can identify the following agreed processes to be followed regarding drugs and alcohol. [These agreements / clauses are not cited with approval or endorsement by Ai group, but rather as examples of some recent practices in agreements finalised with union support. There is also no basis to conclude that these approaches are representative of wider industry practices / agreements generally].

- Micos Aluminium Windows And Doors QLD PTY LTD and CFMEU Union Collective Agreement 2023-2027 [[\[2024\] FWCA 2505](#)], Appendix 2, Impairment Policy
- SIMPLOT AUSTRALIA PTY LIMITED AND AMWU AND CEPU ECHUCA ENTERPRISE AGREEMENT 2024 [[\[2024\] FWCA 2894](#)], Part L, Simplot Echuca Fitness for Work Drug and Alcohol Procedure
- AMWU and Structural Challenge Pty Ltd Collective Bargaining Workshop Agreement 2024 [[\[2024\] FWCA 3062](#)], Appendix 3