

NSW Local Government Alcohol and Other Drugs Policy

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Summary:

Provides an agreed industry resource for New South Wales councils to assist in the development and implementation of alcohol and other drugs procedures in the workplace, in a consistent manner.

This policy was prepared by the Local Government and Shires Associations of New South Wales (LGSA); the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (USU); the Local Government Engineers Association (LGEA); and the Development and Environmental Professionals' Association (depa).

Review date:

This policy shall be reviewed:

- ∞ in July 2013;
- ∞ Immediately if there is a significant change in the level or availability of technology associated with the testing for inappropriate alcohol and/or other drugs use; or
- ∞ Immediately if any provision is contrary to law.

**NSW Local Government
Alcohol and Other Drugs Policy**

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1. STATEMENT OF INTENT

The LGSA, USU, LGEA and depa (the "**industry parties**") recognise that the inappropriate use of alcohol and/or other drugs is a significant problem that can affect a worker's performance and jeopardise their health, safety and welfare as well as that of their co-workers and other people in the workplace.

2. HOW THIS POLICY WAS DEVELOPED

This policy was developed by the industry parties. This cooperative approach followed a number of industrial disputes and a recognition that a policy developed cooperatively would assist the industry. Draft industry guidelines were prepared and trialled in five councils over a period of up to 6 months in 2011. For the purpose of the trial, random testing was available as an option and this option was adopted by the five councils.

Whilst different conclusions may be drawn from the results of the industry trial, the industry parties nevertheless agreed to support this policy.

3. AIM

The aim of this policy is to assist and encourage councils to establish clear and consistent procedures for addressing risks to health and safety in the workplace associated with the inappropriate use of alcohol and/or other drugs.

4. ISSUES TO CONSIDER

4.1 Safety in the workplace and fitness for work

Employers have a duty to ensure the health, safety and welfare of their workers and other people in the workplace (s19, Work Health and Safety Act 2011 (NSW)). Workers have a duty to take reasonable care for their own health and safety, as well as for the health and safety of other people in the workplace and to co-operate with their employer in providing a safe working environment (s28, Work Health and Safety Act 2011 (NSW)).

Workers are obliged to present themselves for work in a fit state so that in carrying out their work activities they do not expose themselves, their co-workers or other people in the workplace to unnecessary risks to health and safety.

The welfare of the individual and the health and safety of other people in the workplace needs to be considered.

There are penalties, under legislation for employers and the Award [or relevant Agreement], for workers who fail to take their occupational health and safety responsibilities seriously.

4.2 Establishing a supportive culture

Any alcohol and other drugs procedures should promote a supportive culture in which workers are able to seek the assistance of their employer in a non-threatening environment.

Councils should foster a supportive culture that encourages employees to accept individual responsibility for workplace health and safety and participation in disclosing to management

the identity of employees who may be regarded as a risk to others. Such an approach is supported by WHS legislation and the industry parties.

A supportive culture will encourage a co-operative approach between management and workers and build on the shared interest in workplace health and safety.

A supportive culture may be achieved by:

- ∞ recognising that the inappropriate use of alcohol and/or other drugs can be due to illness (e.g. dependency) or symptomatic of an illness (e.g. depression); and
- ∞ providing non-threatening assistance to workers who recognise that they have alcohol and/or other drug related problems (e.g. employers should ensure that workers are informed of the availability of an employee assistance program); and
- ∞ ensuring that clear and consistent processes are in place for addressing risks to health and safety in the workplace; and
- ∞ respecting the privacy of workers by ensuring that appropriate systems are in place to maintain confidentiality.

4.3 General conduct obligations

Workers are obliged to present themselves for work in a fit state so that when carrying out their work activities they do not expose themselves, their co-workers or other people in the workplace to unnecessary risks to health and safety.

The *Model Code of Conduct for Local Councils in NSW* (the "Model Code") establishes the minimum requirements of conduct for council officials in carrying out their functions (a council official is defined to include councillors, members of staff, administrators, conduct reviewers and delegates of council).

It is a requirement of the Model Code that council officials must not conduct themselves, when carrying out their functions, in a manner that is likely to bring the council or holders of civic office into disrepute (clause 6.1 of the Model Code). Council officials are expected to maintain high standards of professional conduct and service to the community and must act honestly and exercise a reasonable degree of care and diligence when carrying out their functions.

By way of example, a worker may be in breach of their general conduct obligations under the Model Code if they:

- ∞ attend for work whilst under the influence of alcohol and/or other drugs; or
- ∞ conduct themselves in an inappropriate and/or unprofessional manner whilst at work or at a work related function (which may be due to the effects of inappropriate alcohol and/or other drugs use).

4.4 When is disciplinary action appropriate?

A council should be supportive and rehabilitative but there will be occasions when disciplinary action is appropriate.

Procedures for managing workplace risks associated with the use of alcohol and/or other drugs should balance:

1. the employer's obligation to ensure the health, safety and welfare of workers and other people in the workplace, and
2. promoting a supportive culture in which workers feel able to seek the assistance of their employer in a non-threatening environment.

The focus of any workplace alcohol and/or other drugs procedures should initially be on education and correcting inappropriate worker behaviour. Although disciplinary action may be necessary, it should be viewed as a measure of last resort that is reserved for serious breaches of the Council's Code of Conduct or where a worker has repeatedly failed to respond to warnings about their work performance or work conduct. Where appropriate, disciplinary action should be complimented by offers of support to the worker, through council's employee assistance program or other external agencies such as specialist units at public hospitals.

5. ALCOHOL AND OTHER DRUGS TESTING

Workplace alcohol and other drugs testing (D&A testing) is a complex issue. Things to consider include:

- ∞ **When to test** – Common examples of when D&A testing is conducted by employers include, upon reasonable suspicion that a person may be impaired (reasonable suspicion testing), following a workplace health and safety incident (post incident testing), randomly (random testing) and voluntary testing;
- ∞ **Types of tests** – There is a variety of different D&A testing methods available. Some of the more common forms of D&A testing include breath testing, blood testing, saliva testing, urine testing, sweat testing and hair testing. It should be understood that some testing procedures are more likely to identify the likelihood of actual impairment than others and some will identify drug use almost immediately after use rather than only being able to detect use over an hour or more following the use of the drug/s. The LGSA, USU, LGEA and depa support the use of breath analysis for alcohol testing and saliva for other drugs. Saliva testing can provide a positive result immediately after use and whose range of detectability is such that it is more likely to indicate potential and or actual impairment when compared to other testing procedures which can provide a positive result to substances days, weeks or months after last use/exposure, at which time the worker may not be impaired at work.

The primary objective of an Alcohol and Other Drugs Policy is to ensure WHS obligations are met and to educate workers on the affects of the misuse of alcohol and/or other drugs within the workplace. The costs of different types of testing, whilst relevant, should not be the sole factor in weighing up how to meet such WHS obligations.

- ∞ **Worker privacy** – Some D&A testing methods may be considered more intrusive than others. Furthermore, inappropriate alcohol and/or other drugs use may have been in response to an underling illness or personal concern (e.g. depression, family pressures, etc). It is imperative that a worker's privacy be respected and that the results of D&A testing be kept confidential;
- ∞ **Who to test** – Employers should consider how best to allocate and use their limited resources in adopting and implementing Alcohol and other Drug Testing Procedures based upon WH&S risk assessment/s and organisational risks, in relation to any random testing. The industry parties recommend that where random testing is undertaken, all workers are eligible to be tested;
- ∞ **The meaning of a positive test result** – A positive test result can have different meanings. For example, blood and saliva testing will generally detect the presence

of a substance that was consumed within a matter of hours, whereas hair testing can detect the presence of a substance that was consumed months earlier. A positive test result may not indicate that a worker is unfit for work.

When developing procedures for managing workplace risks associated with the use of alcohol and/or other drugs, the LGSA, USU, LGEA and depa recommend that employers:

- ∞ where practicable, only use D&A testing methods that detect 'recent use' as this is likely to be more reliable in detecting whether a worker is unfit for work, and
- ∞ avoid using D&A testing methods that unreasonably intrude upon the private/personal affairs of workers.

Industrial courts/tribunals have found that urine testing can be unnecessarily invasive and that a non negative test result is less likely to indicate impairment than other forms of testing.

The USU, LGEA, depa and LGSA, as a general rule, do not support the use of urine testing at council workplaces unless it is to confirm a test result (i.e.: a confirmatory test) or unless the employee requests that a urine test be undertaken.

6. LEGISLATIVE REQUIREMENTS

General employer/worker obligations in relation to workplace occupational health and safety laws exist under:

- ∞ the *Work Health and Safety Act 2011* (NSW), and
- ∞ the *Work Health and Safety Regulations 2011* (NSW).

Workers who drive motor vehicles for work (including when travelling to or from work) must obey applicable road safety laws, including those relating to prescribed concentration levels for alcohol and other drugs. For further information in relation to prescribed concentration levels refer to:

- ∞ the *Road Transport (Safety and Traffic Management) Act 1999* (NSW), and
- ∞ the *Road Transport (Safety and Traffic Management Regulation 1999* (NSW)

Depending on the work environment, employers may have a positive legal obligation to conduct alcohol and other drugs testing in the workplace. Workplace procedures for managing risks in relation to alcohol and other drugs use must reflect these obligations if they apply. Examples include:

- ∞ the *Rail Safety Act 2008* (NSW), and
- ∞ the *Rail Safety (Drug and Alcohol Testing) Regulation 2008* (NSW)
- ∞ Civil Aviation Act 1988 (Cth), and
- ∞ Civil Aviation Safety Regulations 1998 (Cth)

6.1 Other references

Australian Standards:

- ∞ AS3547:1997 – Breath alcohol testing devices for personal use.

- ∞ AS4760:2006 – Procedures for specimen collection and the detection and quantitation of drugs in oral fluid.

7. HOW TO DEVELOP ALCOHOL AND OTHER DRUGS PROCEDURES FOR THE WORKPLACE

1. **Gather information** – about the problem and how it relates to your workplace. This could relate to things like accidents and absenteeism, low productivity or the use of alcohol as part of the workplace “scene”.
2. **Raise awareness** of the issue – You could do this by displaying posters or distributing pamphlets, or holding a brief information session for staff. Education of staff is vitally important for successful implementation.
3. **Consult** broadly in developing the procedure for the workplace (this should include consultation through existing forums such as the Work Health and Safety Committee and staff Consultative Committee).
4. **Use the Industry Procedure as the basis for your draft** alcohol and other drugs procedure – An effective procedure should:
 - ∞ Contain a clear statement of your council's commitment to an alcohol and other drugs free workplace.
 - ∞ Contain a clear statement of the behaviour expected of workers.
 - ∞ Form part of your council's overall health and safety program.
 - ∞ Provide an atmosphere of support for problems.
5. **Circulate** the draft procedure to workers and the unions for comment.
6. **Finalise** the procedure and set a date for its introduction.
7. **Inform** all workers of the procedure. Include details of the procedure in orientation for new staff.
8. **Set a date for review** of the procedure – e.g. 12 months after implementation date.

Policy and Procedure for Alcohol and Other Drugs – Example

The LGSA, USU, LGEA and depa have developed a draft template alcohol and other drugs procedure for local government. The template procedure was trialled in a number of NSW councils between July and December 2011. Councils should consider the template procedure when developing or reviewing their own workplace alcohol and other drugs procedure.

An extensive Frequently Asked Questions database is also available for councils use which was developed as a result of the trial.

Further information:

1. Local Government and Shires Associations of NSW

Contact: the Workplace Solutions Team.

Phone: (02) 9242-4142

2. United Services Union

Contact: Stephen Hughes (Manager, Newcastle Branch)
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3. Local Government Engineers Association

Contact: Martin O'Connell (Director)
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4. Development and Environmental Professionals' Association

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