



Environmental and Occupational Health & Safety Unit

# OH&S notice

October 2011

## Random Drug Testing at Work

**OHS Reps MUST be consulted over all workplace safety matters**

Despite the recent full bench decision of Fair Work Australia which found employees can be forced into random drug and alcohol tests, all employers have a legal obligation to fully consult with the CFMEU OHS rep before any changes.

**The CFMEU believes the Fair Work decision is wrong at law and lacking in common sense.**

**We prefer the reasoning of the Victorian Building Industry Disputes Panel and the single member of Fair Work Australia. They agree that the EBA Drug and Alcohol Policy prevented random testing and instead concentrated on the effective method of co-operation, communication, commitment and trust.**

The decision **does not** mean that testing can be conducted. It only says that the EBA does not prevent testing. The full bench has said nothing about how such testing should be conducted.

If an employer seeks to introduce random testing the workplace OHS rep must be consulted over the process. If workers or their rep have any concerns they are entitled to initiate the disputes resolution procedure.

Under the Victorian OHS Act 2004, **Section 35 (1)b**, employers **MUST** consult with employees when '... making decisions about the measures to be taken to control risks to health or safety at a workplace.

Further to this, **Section 36 (2)** mandates that '...If the employees are represented by a health and safety representative, the **consultation MUST** involve **that representative**'.

While this process is under way no testing should proceed.

If your employer tries to bring in random drug tests,

- contact your shop steward or organiser,
- get your OHS Rep involved
- ask for details on how the testing would be conducted
- tell your employer there will be no testing until you have had a chance to get some advice.

**For further advice call the CFMEU OHS Unit on 9341 3444.**

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Authorised by Bill Oliver, Secretary, Tommy Watson and John Setka, Assistant Secretaries of the CFMEU Construction and General Division.  
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