6.05.9  Fitness for work - alcohol and other drugs

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Introduction

Bega Valley Shire Council is committed to ensuring all workers are provided with a safe, healthy and productive workplace free from the hazard of poor behaviour and/or poor decision making caused by the effect of drugs and/or alcohol. There is a clear expectation that all workers will arrive for, and return to work in a competent state and are not adversely affected by drugs and/or alcohol when working.

Council takes a zero tolerance stance of any use of alcohol or illegal drugs which constitutes a criminal offence or has the potential to adversely affect the health and safety of Council’s workers and others in the workplace or the conduct of Council’s operations.

Scope

This procedure applies to all Council workers, volunteers and contractors within any Council facility, including buildings; parks; reserves, or operating vehicles; plant; or any physical asset, owned or controlled by Council. Additionally, this procedure applies to council staff working at external locations to those owned and operated by Council.

Objective

The objective of this procedure is to create a safe, healthy and supportive work environment for all workers and visitors free from any hazards associated with the inappropriate use of alcohol or other drugs.

This will be achieved through:

- Creating a supportive workplace culture that acknowledges and encourages workers to accept individual responsibility for workplace health and safety.
- Provide support for workers who may have difficulty addressing alcohol and/or drug related issues.
- Foster an attitude and culture amongst all workers that it is not acceptable to come to work under the influence of alcohol and/or any other drug that will prevent them from performing their duties in a safe manner.
- Ensure the Council meets its legal obligations by providing a safe working environment for its workers and the general public.
- Providing education and peer support for rehabilitation from alcohol or drug related issues.
- Provide mechanisms to remove workers from the workplace when they are not in a fit state to be at a Council worksite – where a worker co-operates with the decision to remove them from a worksite it is not the intention of Council to pursue disciplinary action in the first instance.
- If any disciplinary action is required, ensure all disciplinary processes are consistently managed in accordance with the Local Government State Award and any subsequent Award or Agreement.
A Supportive Culture

A key feature of the way alcohol and other drug use (as it impacts upon the workplace) is managed is by providing a supportive culture where open and honest conversations on this subject can be had between management and staff.

It is vital that all BVSC workers understand that first and foremost Council’s preferred option is to provide assistance to staff with an alcohol and/or other drug dependence. It should be noted however that this procedure does provide a process for disciplinary action should repeated non-adherence occur (as per BVSC Disciplinary Action procedure).

Worker Assistance

If a worker has issues of concern including those related to alcohol and other drugs, Council encourages workers to make use of the Employee Assistance Program (EAP) and seek appropriate support and assistance. Council will provide appropriate education, information, instruction and counselling necessary for workers to understand the risks associated with the use and abuse of alcohol or other drugs at work.

Identifying other workers whose behaviour is risky to themselves and others

It is recognised that there may be reasons why workers feel uncomfortable about identifying fellow workers whose behaviour is risky to themselves and others. Council supports workers and will provide assistance through a rehabilitative approach to manage these issues. Under no circumstances is it permissible to discriminate against a worker who either raises a safety issue relating to alcohol and other drug use; nor a worker suspected of breaching this procedure. At all times the matter of alcohol and other drug use (as it impacts upon the workplace) is to be managed in a confidential and sensitive manner.

Mitigating Factors

Mitigation factors will be taken into consideration for each instance that a worker does not appear to be in a fit state for work. All workers will be given an opportunity to explain their behaviour (keeping in mind that a person may appear to be impaired from alcohol or other drugs but not necessarily have taken any such substances). The symptoms of impairment consistent with alcohol and other drug use may also be similar to other health issues; these may include psychological, behavioural, environmental or medical issues (all of which can have a detrimental effect on Councils ability to provide a safe workplace). In these instances the strength of the relationship between manager/supervisor is critical; because if a trust relationship is not formed the worker will not feel comfortable discussing these sensitive issues.

Council strongly encourages (but cannot force) workers to disclose any issues they may be suffering which have the potential to adversely impact upon themselves or other workers. It is expected that if a worker voluntarily discloses psychological, behavioural, environmental or medical personal information that this information is treated with a strict adherence to confidentiality/privacy principles. This information will be managed in accordance with Council’s Privacy Management Plan as well as the Privacy Code of Practice.

Mitigating factors include things such as, but not limited to:

- Unexpected impairment from prescription or over the counter medication;
- Side effects from medical treatment or an illness or injury;
- Impairment from fatigue due to a personal trauma, sleep deprivation or other issue; or
- Any similar factor that may cause impairment but is not the result of inappropriate alcohol or other drug consumption.

Where the responsible persons are satisfied that a person is impaired due to a mitigating factor no disciplinary action is to be taken. In some instances if a reasonable explanation is provided explaining the perceived impairment a worker may remain at work.
**Prescription/over the counter medication**

Certain medication may cause impairment whilst at work and return a positive/non-negative result during alcohol/other drugs testing. Workers are therefore encouraged to inform their Manager if they are taking any medication that may either return a result that would indicate impairment or more importantly hinder their ability to perform their duties safely.

Workers should seek advice from their doctor and/or pharmacist if they believe the pharmaceutical and/or prescribed medication may impact their own and others’ safety at work. It is recommended that workers seek alternative medication from their doctor and if not available, ask for a doctor’s certificate. Whilst taking any form of medication the level of consumption should not be in excess of the prescribed dose or in the case of over-the-counter drugs; the level of consumption should not be in excess of the recommended dose. All warnings on medication should also be followed.

If a worker is taking medication which hinders their ability to work safely alternative duties and/or standing the worker down for that shift should be considered. Should the latter be required assistance will be given to the worker to ensure they arrive home safely.

**Education and Training**

Council recognises that it is important to develop a safe workplace culture in relation to the use of alcohol and other drugs through education, where workers are prepared to encourage each other to be safe and not under the influence or impaired at work.

**Information for Workers**

Workers will receive information through induction, further training, noticeboards, and toolbox talks on the following topics:

- Council’s Alcohol and Other Drugs policy and procedure;
- The health implications of consuming alcohol and other drugs;
- The effects of alcohol and other drugs on safety and work performance;
- The early detection of problems related to the use of alcohol and other drugs; and
- Council’s management of privacy and confidentiality of test results and referrals for assistance.

**Information for Managers and Supervisors**

Council will also provide practical guidelines and training to Managers and Supervisors for:

- The responsibilities for the implementation of alcohol and other drugs policy and procedure;
- Management of strict confidentiality of test results and/or referrals for assistance;
- Communicating with persons who may be affected by alcohol or other drugs;
- Correct application of disciplinary action;
- Re-integration of a worker into the workplace upon completion of rehabilitation; and
- Creation and maintenance of suitable records.

**Duties and Responsibilities**

Bega Valley Shire Council recognises its responsibility to ensure the health, safety and welfare at work of workers (including contractors/sub-contractors, consultants, volunteers) and visitors and is committed to providing a safe, healthy and productive workplace that is free from hazards relating to drug and alcohol use.
General Requirements for all workers

The following general requirements apply to all workers on a Council worksite:

- At all times all workers will present themselves for work, or resume duties, in a ‘fit-for-work’ condition, that is; not under the influence of alcohol (see section below) or other drugs except where the drug is legally prescribed by a doctor for the purposes of treating a medical condition and their work is not likely to be affected by the drug.

- No worker will ingest, inhale or inject any drug at work except where the drug is legally prescribed by a Doctor (or able to be purchased legally over the counter – all staff however have a duty of care to ensure that any prescribed/over the counter medication will not affect their ability to work safely).

- All workers will refer any alcohol and/or drug related safety and/or welfare concerns likely to pose a safety hazard to any persons or property, to their immediate Supervisor and/or Manager. If the issue is not resolved, it should be referred to the relevant Director.

Specific requirements

**General Manager**

The General Manager will

- Report to work in a fit state, unimpaired by any substance, including when they return to work following scheduled breaks; and

- Ensure the implementation and adherence of the Fit for Work - Alcohol and Other Drugs Procedure throughout Council workplaces and operations.

**Leadership Executive Group (LEG)**

The Senior Management Team will:

- Report to work in a fit state, unimpaired by any substance, including when they return to work following scheduled breaks;

- Ensure the provisions of this procedure are implemented and functioning throughout their Group, including adequate resource allocation;

- Ensure workers are aware of their responsibilities and are provided with adequate information, instruction and training;

- Ensure compliance with the requirements of this procedure; and

- Ensure the provisions of confidentiality are adhered to.

**Managers**

Managers will:

- Report to work in a fit state, unimpaired by any substance, including when they return to work following scheduled breaks;

- Make all workers aware of, and understand, the Fit for Work Alcohol and Other Drugs Procedure and the provisions therein;

- Ensure the provisions of confidentiality in this procedure are adhered to;

- Address concerns or issues relating to the Fit for Work Alcohol and Other Drugs procedure, promptly and proactively to ensure the health and safety of all workers; and

- Ensure support is provided to workers who request/require assistance with issues around substance abuse as appropriate.
Workers

Workers (including contractors, sub-contractors, consultants, volunteers, team-leaders, coordinators and supervisors) will:

- Report to work in a fit state, unimpaired by any substance, including when they return to work following scheduled breaks;
- Ensure the law is adhered to in relation to the possession and consumption of substances including alcohol;
- Advise their supervisor or manager if they, or any other worker, is known to be, or suspected of being, unable to perform their duties due to the effects of drugs and/or alcohol;
- Question their doctor or pharmacist in regard to the effect, or side-effect, if any, their medications may have on work and/or safety performance;
- Recognise that performance of their duties could be affected by alcohol or drugs and instigate appropriate risk control measures if required;
- Not undertake duties if their ability to perform their duties safely, competently and professionally is affected by alcohol or drugs – on call workers in particular must ensure that they are fit for work for the duration of time they are likely to be called up for work that is out of normal business hours;
- Observe all directions from their supervisor in regards to this procedure; and
- Not possess, distribute or otherwise consume any prohibited substance, or deliberately misuse substances, while on duty or on Council’s premises.

Contractors

In addition to the provisions outlined above for workers, contractors engaged by Council are required to maintain records of instructions/training given to their workers regarding this procedure and provide records of this information (if requested) to Council.

At all times contractors must comply with the conditions of the WHS site induction.

Using Council vehicles or items of plant

In circumstances where workers are required to operate Council vehicles and machinery, staff have an obligation not to drive these vehicles or use this machinery while under the influence of alcohol, illegal drugs or prescription/over the counter medication (if the side effects of the prescription/over the counter medication prohibit safe usage of vehicles/plant). Workers may be personally liable where their actions in these circumstances lead to injury or property damage. All legal limits for the operation of plant and equipment will be adhered to.

Council approved work related social events

The General Manager (or his/her delegated representative/s prior to an event) may grant permission for the consumption of alcohol at social events or functions. Workers attending any Council approved function will demonstrate moderation, maintain professional conduct at all times and ensure they, and other workers, are not adversely affected by alcohol.

Council approved work related social events at a BVSC Worksite

For all events where the consumption of alcohol has been approved an Events Risk Assessment Form must be completed by the event organiser. This risk assessment will need to detail:

- Purpose of the event / occasion.
In the event that the General Manager permits alcohol to be consumed at a Council-owned facility, the function must be held away from any machinery or vehicles that are being, or may be, operated.

Council approved work related social events at a BVSC Worksite are to occur at the end of the working day away from the immediate work area.

All promotional material related to the above events will reflect Council’s commitment to ensuring a safe, healthy and happy event for all workers.

**Other work related social events**

Workers attending a Council approved function or representing Council at conferences, training courses or seminars, must ensure they act in a reasonable and responsible manner when consuming alcohol.

**Alcohol and Other Drugs Testing Program**

Council has established a program of testing that will discourage people from entering a BVSC workplace where they may be unfit for work because of alcohol or other drugs. Additionally Council’s alcohol and other drugs testing program will assist in identifying people who may be unfit for work.

If impairment is determined using preliminary testing methods Councils preferred response is for the worker to be stood down voluntarily -this usually will not invoke a disciplinary process. However should a worker repeatedly be stood down because of impairment or if they disagree with the decision to be stood down confirmatory testing will be required and any confirmed positive/non-negative results will result in a disciplinary process.

**Testing Protocols**

Council will use breath analysis for alcohol testing and will use saliva for testing other drugs for preliminary screenings conducted by internal staff (all internal staff undertaking testing must be suitably qualified and nominated by senior management). If confirmatory testing is required Council may engage suitably qualified third parties to conduct alcohol and other drug testing (e.g. this may include – but is not limited to – sending an worker to Capital Pathology for a test or a Testing Service Provider who will come on site and conduct alcohol and other drug testing).

Council’s Testing Program will:

- Provide people with information about the effects of alcohol and other drugs;
- Discourage people from coming to work where they may be unfit for work because of alcohol or other drugs; and
- Assist in identifying people who may be unfit for work.

**Confirmatory Testing Requirements**

Confirmatory testing is a second analytical test performed to identify the presence of alcohol and/or other drugs in accordance with Australian Standard AS3547:1997 and AS4760:2006. Confirmatory testing will only be used at Council in the instance that a worker disagrees with the results of a preliminary screening and refuses to be stood
down. In instances where confirmatory testing supports the findings of a preliminary test the worker may be subject to disciplinary action.

Where confirmatory testing is required it should be undertaken by suitably qualified personnel.

**Note** – If a third party is used for confirmatory testing they may require that a sample of urine is taken from the relevant worker and screened for alcohol and other drugs.

**Testing Underage Workers**

Testing of apprentices, trainees or work experience persons under the age of 18 is to be referred to the People and Governance team so that an appropriate parent or guardian can be informed that testing is to take place.

If an underage worker (or their guardian) refuses to consent to undertake an alcohol or other drugs test then the worker in question will be stood down for the remainder of the day on a type of leave and will not be permitted to resume normal duties until their respective manager/supervisor has determined that they are in a fit state for work.

**Testing Methods**

There are six methods Council will use to screen workers for alcohol or other Drugs. These testing options are:

- Pre-employment testing
- Voluntary
- Random Testing
- Notifiable/Significant Incident
- Reasonable Suspicion, and
- Return to Work Targeted Testing

**Pre-employment testing**

As part of its normal recruitment process BVSC requires the preferred candidate to undertake a drug test prior to the approval to recruit to a position is finalised. This testing will be undertaken by suitably qualified personnel and will involve urine testing.

**Voluntary Testing**

Voluntary testing provides workers with the ability to volunteer to be tested for alcohol and other drugs before attending work. A breath analysis device and/or an oral swab test will be used to conduct the screening in accordance with the Australian Standard. Workers should request a voluntary test if in doubt, prior to commencing duties.

**Note** - Any worker who voluntary undergoes an alcohol or other drugs screening will not be subject to disciplinary action – they will however be encouraged to refer themselves to an EAP provider. Continued absence from work however after returning positive/non-negative results to a voluntary screening can invoke disciplinary action.
Random Testing

Any worker of Council will be subject to random testing for alcohol and/or other drugs and testing may be conducted at any time throughout the worker’s hours of work (including overtime or for on-call staff). Testing will be carried out by an appropriately trained staff member in a private area which contains adequate facilities for testing.

Random testing may be undertaken with little or no notice and all workers will be eligible for selection for random testing.

Workers will be selected for testing by using a simple random selection processes involving the selection of a worker, location, or group of workers located in a specific area. For example workers may be randomly selected using the following methods:

- A simple random number generator may be used to randomly select worker identification numbers.
- Workers may be asked to draw lots or coloured items from a bag - the probability of selection must be the same for all staff.
- Alternatively an entire work site may be randomly selected with all staff at work at that particular site that day being tested.

Workers who are selected (using a simple random selection process) will be required to present themselves for testing immediately.

Random screenings must be conducted by a suitably qualified person (either an internal resource or a third party) using appropriate testing methods. The alcohol and other drug testing may be done off-site (e.g. at a Capital Pathology Office) and in the case of confirmatory testing may include urine screening.

Randomly Testing Contractors

Whilst undertaking work on a Council site any contractor may be subjected to a random alcohol and other drugs test.

Workers will be selected for testing by using a simple random selection processes which includes workers been asked to draw lots or coloured items from a bag - the probability of selection must be the same for all staff. All testing will be conducted by a suitably qualified person (either an internal resource or a third party) using appropriate testing methods.

In any instance that a worker is deemed not fit for work, chain of custody will be handed to the principle contractor who will then be responsible for removing the worker from the Council site. It is expected that the principle contractor will take all steps reasonable practicable to ensure the worker is medically safe and returned home safely.

Failure to comply with Council’s alcohol and other drugs procedure may result in termination of contract.

Notifiable Incident Testing

Notifiable incident testing will be conducted where a worker has been directly or indirectly involved in a notifiable incident (Refer to Appendix 1 - Notifiable Incident Testing Criteria). Notifiable incident testing should be conducted as soon as possible, when it is safe to do so and take place no later than 12 hours after the incident (Refer to Appendix 2 - Notifiable Incident Testing Process).

If a worker fails to report a notifiable incident, immediately as required and testing is unable to be undertaken within 12 hours as a result of this failure disciplinary action may be taken.

Where a subsequent investigation has identified that the true cause or causes of an incident were not properly reported and fell into the category requiring a test, then an alcohol and drug test will be organised.
Incidents that occur as the person travels to a designated Council location to commence their work shift or as the person is travelling to another location once their work shift has been completed will not be tested, unless the Police are involved in dealing with the incident.

Incidents that occur when travelling between work sites will require testing, unless the Police are involved in dealing with the incident.

**Significant Incident Testing**

Employees involved in a significant incident (which does not necessarily meet the definition of a notifiable incident) may be required to undergo alcohol and other drug testing. Significant incidents may include (but are not limited to):

- Vehicle Accidents
- Injuries treated by a medical practitioner
- Property Damage
- Verbal/Physical Assault

The People and Governance team shall determine when the incident-triggered testing is to take place.

**Reasonable Suspicion Testing**

Reasonable suspicion testing is used in instances where information is received or inappropriate behaviours are observed that may indicate that a worker is not in a fit state to be on a Council worksite. The Team leader, Supervisor or Manager will need to determine whether or not the worker in question could be affected by alcohol or drugs.

In order to make this decision the relevant Team Leader, Supervisor or Manager and a second witness will carry out and record a Fitness for Work Assessment Checklist (see section below) on the affected worker to determine if there are grounds to stand the worker down for impairment as a result of alcohol and other drugs.

If, in the opinion of the Supervisor or Manager, the worker poses a risk, the worker is to be stood down for the remainder of the day on sick pay (or another leave type is there is insufficient sick leave entitlement) and is expected to return to duties on the next scheduled working day. On-going sick leave will not be granted if it is considered that leave is being used to avoid a breach of this procedure being recorded against the worker.

In the event that the worker is scheduled to work overtime but is not in a fit state to do so, no further entitlement to that overtime will be recognised.

If another worker is concerned that a person on Council premises, or worksites, is impaired, they should report their suspicion to their Supervisor, Manager, or Group Manager. The responsibility to make a formal assessment of a person’s impairment remains with the assessors only.

**Consulting with the worker**

The responsible persons are to request a discussion with the worker in a private location away from other workers, where possible. The worker should be given an opportunity to have a Union delegate or other person attend the discussion. The privacy of the worker is a priority at all times. The responsible person should use wording such as:

“I am concerned that you are behaving unusually today because I have observed [list indicators forming basis of reasonable suspicion]. Is there a reason for this?”

Workers should be clearly informed by the responsible persons of the indicator or indicators upon which reasonable suspicion was based. Responsible persons should speak assertively. Judgemental or confrontational language is not to be used and debate is not to be entered into with the worker.
Reasonable Suspicions Assessors
Assessors conducting the visual assessment can either be:

- Director,
- Manager,
- Supervisor,
- Team Leader, or
- WHS Officer.
- Any other suitably trained person deemed appropriate by Senior Management

Assessors are to act in an ethical and professional manner and be consistent across all workers and on each occasion. When making assessments, they are to be made in the context of changes to a worker’s behaviour and not to be made on assumptions based on a worker’s previous behaviour or work record.

Disagreement Regarding Intoxication upon Reasonable Suspicion
If a worker is suspected of being affected by alcohol or other drugs and has been stood down accordingly and disagrees with the Supervisor’s or Manager’s assessment, the worker may request a preliminary drug and/or alcohol test.

If the worker does not wish to have the drug and/or alcohol test, the Supervisor or Manager must stand-down the worker, for the remainder of the working day. In this instance the worker will once again be assessed by a relevant assessor the next time they report for duty to ensure they are in a fit state for work.

NOTE - If a worker disagrees with the results of a preliminary screening conducted by suitably qualified testing personnel the worker may request a confirmatory test (see section 9.1.1 for more information regarding confirmatory testing) – if the confirmatory test confirms the initial assessment of impairment the worker may be subject to disciplinary action.

Fitness for Work Assessment
If at any stage a worker appears to not be in a fit state to continue to be at work the Reasonable Suspicion Assessors will need to undertake a fitness for work (drug / alcohol) assessment. This assessment will provide a basic checklist to firstly determine if a worker appears to pose a safety risk due to possible impairment and secondly it will ensure that confronting the worker is justified.

The basis for this procedure is a test of reasonable suspicion that a worker is impaired by alcohol and/or other drugs. This means a suspicion that is reasonably held (using the observable indicators of impairment set out in Fitness for Work Assessment Checklist) by two responsible persons.

There is an obligation on management to be aware that changes in the normal appearance or behaviour of a person may indicate that the person is impaired by alcohol and/or drugs. It is not the responsibility of the assessors to diagnose personal or health problems or determine what the cause of impairment may be.

Assessment of a worker’s impairment is to be made in accordance with the list of observable indicators (Fitness for Work Assessment Checklist) and is to be made in the context of changes to a worker’s behaviour. The assessment is not to be made on assumptions based on a worker’s previous behaviour or work record.

At least one (1) of the physical indicators in Fitness for Work Assessment Checklist must be satisfied and agreed between the responsible persons for reasonable suspicion to be established. Emotional effects (as contained in
the second part of the table) should not be used as indicators of reasonable suspicion but may be recorded as additional information on the relevant records.

If a worker (after confirmation using a preliminary alcohol or other drugs screening) is not impaired by alcohol/other drugs and the responsible persons believe that the worker still appears to not be fit to continue working as a result of the fit for work assessment, they will:

- Recommend that the worker sees a doctor
- Direct the worker to take personal or other leave until they are fit to resume duties, or

Consider short or long term alternative duties or other control measures to ensure the workers own safety and the safety of others in the workplace.

Return to Work Targeted Testing

If an employee has returned a confirmed positive test for either Alcohol and/or Drugs they will be stood down for the remainder of the shift and will be required to return a negative Alcohol and other Drug test before they are permitted back to work.

Additionally, if an employee has returned a confirmed positive Alcohol and other Drug test, as part of the return to work process, they must submit to a targeted Alcohol and other Drug test within three months of the confirmed positive result.

Please Note: Employee will still be part of the random test program. BVSC reserves the right to implement a more stringent return to work process based on factors such as the nature of the offence, regulatory compliance requirements, and the risk profile of the activities the employee is to be engaged in.

Where a person presents a negative result or result lower than the acceptable levels identified in this procedure, the person will be permitted to commence or resume their normal duties

Alcohol Test

All alcohol testing will be in accordance with AS/NZ 3547 Breath alcohol testing devices for personal use (see Appendix 3 - Alcohol Testing Flowchart) except in instances where a worker requests confirmatory testing (Refer to section - Confirmatory Testing Requirements).

An alcohol test must be conducted at a suitable private location in the workplace. The worker has the right to have a nominated representative present during the test and the right to change their mind and refuse the alcohol test. A witness will also be provided for the Supervisor or Manager.

If the worker does not wish to have the alcohol test, the supervisor or manager must stand-down the worker, for the remainder of the working day on a type of leave and will not be permitted to resume normal duties until their respective manager/supervisor has determined that they are in a fit state for work.

Prescribed Concentration levels of Alcohol

Bega Valley Shire Council’s acceptable Prescribed Concentration of Alcohol levels (based on the NSW Governments blood alcohol concentration levels) are as follows:

0.00% applies to:

- ALL Learner Drivers
- ALL Provisional 1 drivers
- ALL Provisional 2 drivers
- ALL visiting drivers holding an overseas or interstate learner, provisional or equivalent licence.
Under 0.02% applies to:

- Drivers of vehicles of “gross vehicle mass’ greater than 13.9 tonnes
- Drivers of vehicles carrying dangerous goods
- Drivers of public vehicles such as taxi or bus drivers.
- All workers engaged in the operation of major and/or minor plant
- All workers undertaking activities specified as hazardous under the WHS Act 2011 and WHS Regulations 2011

Under 0.05% applies to:

- All other workers who do not meet any of the above criteria

Drug Testing

Workers identified to participate in a drug test will be required to undergo an oral swab test as per the Australian Standard AS4760:2006 – Procedures for specimen collection and the detection and quantitation of drugs in oral fluid; except in instances where a worker requests confirmatory testing (refer to section 9.1.1 Confirmatory Testing Requirements). The test will be administered by suitably competent persons within Council and/or an accredited external provider. (See Appendix 4 - Drug Testing Flowchart)

Unless medically required, no food or drink is to be consumed for 15 minutes prior to the test. Smoking shall also not be permitted as it may distort the test results.

If any initial test shows as non-negative, the worker will be stood down unless a confirmatory test is requested. If confirmatory samples show a result at, or in excess of, levels contained in AS4760:2006 – Procedures for specimen collection and the detection and quantitation of drugs in oral fluid, then it is confirmed that the worker is non-negative confirmed (positive) and may be subject to disciplinary action.

Where practicable, the tester shall provide a list of medications which may provide a false positive result.

A drug test is to be conducted at a suitable private location in the workplace. The worker has the right to have a nominated representative present during the test and the right to change their mind and refuse the test. A witness will also be provided for the Supervisor or Manager.

If the worker does not wish to have the drug test, the supervisor or manager must stand-down the worker, for the remainder of the working day on a type of leave and will not be permitted to resume normal duties until their respective manager/supervisor has determined that they are in a fit state for work.

Assistance for Affected Workers

In the event of a worker receiving a positive/non-negative screening result for alcohol or other drugs the supervisor or manager is to reinforce with the worker that counselling is available through Bega Valley Shire Council’s EAP. The details will be provided to the worker for self-referral.

Tampering with samples

Any attempt to tamper with samples and introduce, or alter the concentration of alcohol or other drugs in their own, or another’s saliva or breath will constitute serious misconduct and be dealt with according to Council’s Disciplinary Action Policy.

Safe return home

It is important to note that any worker who has been stood down for reasons of impairment should not be permitted to drive themselves home. Instead arrangements will be made by the relevant manager/supervisor to ensure the affected worker gets home safely. Council will accept no responsibility for any vehicles belonging to a worker who has been stood down nor will Council staff be permitted to drive an affected worker’s vehicle for them.
Dealing with Aggressive or Abusive Behaviour

If a worker displays aggressive or violent behaviour when required to undertake an alcohol and/or other drug test, the Supervisor or Manager should remain calm and not argue with or mirror the worker's behaviour.

Emphasis should be placed on getting the worker to calm down and discussion kept away from personal issues. The worker should be asked to comply with the management direction and be informed that the worker will have the opportunity to dispute the decision through the normal grievance process utilised by Council.

If the worker refuses to modify their behaviour, the worker should be advised that the discussion is terminated and that they must leave the workplace immediately. The worker should be reminded that acts of aggression or violence in the workplace are in breach of the Code of Conduct, not in line with Council’s Values and may result in dismissal.

In the case of actual or apprehended violent behaviour, the worker is to be advised that the police will be called. This option is to be used as a last resort.

Confidentiality

Confidentiality is fundamental to dealing with problems in the workplace that are related to the misuse or abuse of alcohol and other drugs.

All information regarding counselling or treatment will be treated confidentially. Workers must give their permission in writing for information to be disclosed by their counsellor. Only work-related information may be disclosed and will be used to support the most effective management of work performance and the reintegration of the worker into the workplace.

In most cases, no information is to be released to a third party, without the written consent of the worker unless it is considered that the matter, if neglected, could endanger persons/property or the matter concerned is subject to a Police/ Relevant Regulator investigation.

In the event of a conflict between the maintenance of confidentiality and duty of care, the General Manager has the authority to determine the most appropriate course of action.

Records

The Supervisor or Manager must keep written records of any discussions relating to drug and/or alcohol use in the workplace, performance standards, review periods, ongoing performance monitoring and meeting(s).

Unlawful activities associated with drug and alcohol use

Being affected by alcohol or other drugs at work, particularly in a high risk work environment (e.g. where plant and equipment is involved), can seriously compromise the health, safety and welfare of workers, volunteers, contractors and visitors.

Impairment by alcohol or other drugs can reduce an individual’s ability to perform their work safely, competently and professionally.

Council is committed to the following key factors regarding illicit drug and alcohol use:

- Unlawful conduct arising from alcohol or drug use will be referred to the Police.
- All legal limits for the operation of plant, equipment will be adhered to.
- All workers are required to report to work in a fit state at all times, unimpaired by any substance.

Additionally, Bega Valley Shire Council will not tolerate workers:

- Consuming alcohol while at work (except in circumstances where the General Manager has given prior approval for a work related function);
• Possessing, selling, distributing or consuming prohibited drugs in the workplace;
• Being affected by alcohol or other drugs, including medically prescribed or over-the-counter drugs, such that they are unable to work safely, competently and professionally and in accordance with Council’s Code of Conduct.

Under the Work, Health and Safety Act 2011 (NSW):

• Council has a duty to ensure the health, safety and welfare of their workers and other people in the workplace (s19),
• workers have a duty of care to take reasonable care for their own health and safety, as well as other people in the workplace and to co-operate with their employer in providing a safe working environment (s28), and
• other persons at a workplace must take reasonable care for his or her own health and safety, take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and comply, so far as the person is reasonably able, with any reasonable instruction that is given by the employer to allow the employer to comply (s29).

There are penalties, under legislation for employers and through the application of disciplinary procedures in the Local Government (State) Award 2017, for workers who fail to take their work health and safety responsibilities seriously.

It is an offence under Road Transport Act 2013 to drive or attempt to drive a motor vehicle, truck or mobile equipment when under the influence of alcohol or other drugs in excess of legal limits.

Breaches of this procedure

Any other breaches of this procedure will be considered a breach of Council’s Code of Conduct and may result in disciplinary action (as per BVSC Disciplinary Action procedures), which in turn may lead to termination of employment.

Grievances/Disputes Relating to this Policy

Any dispute relating to the application of this procedure shall be settled in accordance with the Grievance and Dispute Settlement Procedure of the NSW Local Government (State) Award 2017.

References

Road Transport (Safety and Traffic Management) Act 1999
Work Health and Safety Act 2011 (NSW)
Work Health and Safety Regulation 2011 (NSW)
WorkCover Authority of NSW – Facts Sheet: Establishing a Policy to Manage Alcohol and Other Drugs in the Workplace
WorkCover Authority of NSW – Guide to Developing a Workplace Alcohol and Other Drugs Policy
Appendix 1: Notifiable Incident Testing Criteria

The following criteria will be used to determine whether or not a worker involved in an incident will be subject to Alcohol or Other Drug testing:

<table>
<thead>
<tr>
<th>Incident Type</th>
<th>Definition</th>
<th>Excluding</th>
</tr>
</thead>
</table>
| Injury        | Any notifiable injury caused during the course of work for which the worker requires treatment over and above first aid only treatment. | Testing will **not** be undertaken by Council where it is identified:  
  - the incident was not within the control of the worker involved and the correct procedures were followed  
  - first aid treatment only is required unless the worker develops a pattern of reporting first aid only injuries which subsequently require medical treatment  
  - journey accidents (before the start of the shift or after the shift has finished)  
  - a member of the NSW Police Force attend an accident site, irrespective of whether or not the worker is tested for alcohol or other drugs by the police officer  
  - the injury is hearing loss, skin cancer or other occupationally induced disease  
  - the injury is of a diagnosable psychological condition. |
| Vehicle       | Any work related incident involving a Council vehicle (vehicle includes any type of road registrable plant) where damage to the vehicle and/or third party property is sustained and is notifiable to WorkCover NSW | Testing will **not** be undertaken by Council where it is identified:  
  - that the incident was not within the control of the worker involved  
  - journey accidents (before the start of the shift or after the shift has finished)  
  - minor damage where the worker is not at fault (e.g. tail light, less than $2,000, minor scratch) unless a pattern develops of minor incidents involving a specific worker  
  - a member of the NSW Police Force attend an accident site, irrespective of whether or not the worker is tested for alcohol or other drugs by the police officer. |
| Property Damage | Any notifiable incident resulting in equipment, property or environmental damage | Testing will **not** be undertaken where by Council where it is identified:  
  - that the incident was not within the control of the worker involved and the correct procedures were followed  
  - minor damage where the worker is not at fault (e.g. tail light, less than $2,000, minor scratch) unless a pattern develops of minor incidents involving a specific worker  
  - a member of the NSW Police Force attend an accident site, irrespective of whether or not the worker is tested for alcohol or other drugs by the police officer. |
Any incident that has the potential for significant risk of harm or injury to persons or equipment | Dangerous occurrences or behaviour that could have resulted in injury or property damage | Testing will not be undertaken by Council where it is identified:
- that the incident was not within the control of the worker involved and the correct procedures were followed
- the potential was for minor damage where the worker is not at fault (e.g. tail light, less than $2,000, minor scratch) unless a pattern develops of minor incidents involving a specific worker.
- first aid treatment only is likely to have been required
Appendix 2: Notifiable Incident Testing Process

The following steps will be followed whilst undertaking a testing process for notifiable incidents:

<table>
<thead>
<tr>
<th>Step #</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Secure work area and if necessary direct the worker to move to a safe area that is supervised at all times.</td>
</tr>
<tr>
<td>2</td>
<td>Injured persons will receive immediate medical attention, if required (may only be tested when it is appropriate and will be determined in consultation with suitably trained medical personnel). In such cases, testing procedures other than breath or saliva may be used in accordance with the appropriate Australian Standards.</td>
</tr>
<tr>
<td>3</td>
<td>The Supervisor must ask the worker if they have consumed any alcohol and/or drugs within the past 12 hours, or if they believe that any other worker involved in the incident may be impaired by alcohol or drugs.</td>
</tr>
<tr>
<td>4</td>
<td>If yes to either of the above questions, worker to remain where they are and an alcohol or drugs test will be arranged by the Supervisor.</td>
</tr>
<tr>
<td>5</td>
<td>All workers directly involved in the incident to undergo an initial alcohol and/or other drug test.</td>
</tr>
<tr>
<td>6</td>
<td>If test or tests are negative, proceed with normal incident investigation.</td>
</tr>
<tr>
<td>7</td>
<td>If test or tests are non-negative confirmed, determine action according to Supportive Culture and Disciplinary Action sections, contained in this Procedure.</td>
</tr>
</tbody>
</table>
Appendix 3: Alcohol Testing Flowchart

Staff member tested is to be selected using a random selection process or upon reasonable suspicion.

Person selected for testing will be asked if they have anything to declare e.g. Prescribed Medication.

Testing (using a calibrated breath testing device) will be conducted in a private location away from the immediate place of work.

A second test must be conducted 15 minutes after the first test. The worker being tested must be supervised during this period. No food or drinks are allowed to be consumed unless medically required. Smoking is not permitted during this time either.

Worker is taken to suitable practitioner for confirmatory testing and is stood down on leave awaiting confirmed results of the second alcohol test.

Worker returns to work

Worker returns to work – leave is reimbursed.

Worker is stood down disciplinary process will be followed.

Worker is stood down on leave.

Positive Result

Positive Result of Second Test

Positive alcohol test result

Worker voluntarily leaves work

Worker returns to work

Worker is stood down on leave

YES

NO

YES

NO
Appendix 4: Drug Testing Flowchart

Staff member tested is to be selected using a random selection process or upon reasonable suspicion.

Person selected for testing will be asked if they have anything to declare e.g. Prescribed Medication.

Oral Swab Drug Testing conducted in a private location away from the immediate place of work.

NOTE
If testing is due to reasonable suspicion the staff conducting the initial assessment must establish reasonable suspicion using a fitness for work checklist with accompanying comments in the form agreed upon by both assessors.

This result is deemed an ‘unconfirmed result’ – the worker will be given the choice to accept that this result is indicative that they are not fit for work and voluntarily proceed on sick or another type of leave where no disciplinary action will be taken OR the worker can disagree with this result and request a confirmatory test. Worker will be informed that the confirmatory test will conducted at capital pathology where a urine sample will be used to screen for drugs.

Worker is taken to suitable practitioner for confirmatory testing and is stood down on leave awaiting confirmed results of the second drug test.

If testing is due to reasonable suspicion the staff conducting the initial assessment must establish reasonable suspicion using a fitness for work checklist with accompanying comments in the form agreed upon by both assessors.

YES

Worker returns to work – leave is reimbursed.

Worker is stood down disciplinary process will be followed.

Worker leaves the worksite on leave – no disciplinary process

Worker is stood down on leave

NO

Negative drug test result

Second Drug Test

Worker voluntarily leaves work

Negative drug test result

Worker returns to work

Worker is stood down on leave

Worker leaves the worksite on leave – no disciplinary process

Worker is stood down on leave

Worker voluntarily leaves work
### Appendix 5: Glossary of terms used

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration Action</td>
<td>Any action taken by Council in relation to any non-negative confirmed test results or refusal to take tests including counselling, rehabilitative and training.</td>
</tr>
<tr>
<td>Adversely affected</td>
<td>Adversely affected is where a person’s functioning is impaired by the consumption of alcohol and/or other drugs.</td>
</tr>
<tr>
<td>Alcohol</td>
<td>The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols in methyl and isopropyl alcohol, no matter how it is packaged, stored, utilised or found.</td>
</tr>
<tr>
<td>Alcohol and Other Drugs</td>
<td>Alcohol, alcohol based products, illegal drugs and medically prescribed and non-prescribed substances which may adversely affect a worker’s performance and/or conduct in the workplace.</td>
</tr>
<tr>
<td>Authorised Functions</td>
<td>Authorised Functions means a function on or away from company premises where alcohol may be served and consumed. An authorised function will require approval from General Manager or his/her representative.</td>
</tr>
<tr>
<td>Certified Laboratory</td>
<td>a laboratory which meets minimum Australian performance standards set by an accrediting agency being the National Australian Testing Authority (NATA).</td>
</tr>
<tr>
<td>Confirmatory Test means</td>
<td>Confirmatory Test means a second analytical test performed to identify the presence of alcohol and/or other drugs in accordance with Australian Standard AS3547:1997 and AS4760:2006.</td>
</tr>
<tr>
<td></td>
<td>For drugs this means any confirmatory sample returning a result at, or in excess of, the levels contained in AS4760: 2006.</td>
</tr>
<tr>
<td></td>
<td>For alcohol this means any confirmatory sample returning a result at, or in excess of, the levels prescribed in NSW for the operation of motor vehicles. NSW has three blood alcohol content limits: zero, &gt;0.02 grams per 100 Millilitres and &gt;0.05 grams per 100 Millilitres.</td>
</tr>
<tr>
<td></td>
<td>The limit which applies to workers at Council is dependent on the category of the worker’s licence and the type of vehicle the worker is required to operate.</td>
</tr>
<tr>
<td>Confirmed negative</td>
<td>Confirmed negative means a result at or below the target concentration following confirmatory testing.</td>
</tr>
<tr>
<td>Confirmed non-negative</td>
<td>Confirmed non-negative means a result above the target concentration following confirmatory testing.</td>
</tr>
<tr>
<td>Dangerous incident</td>
<td>Dangerous incident means if a person is exposed to a serious risk from immediate or imminent exposure to a hazard.</td>
</tr>
</tbody>
</table>
| **Drugs** | means any controlled substance or other substances determined by medical authorities to affect a persons’ ability to perform their duties safely but does not include medication which has been prescribed for a worker by a medical practitioner. Illegal/Illicit Drugs include:  
- Any drugs defined and specified as prohibited or illegal under any Federal, State or Territory legislation;  
- Drugs for which a medical prescription has not been issued to the person using/taking the drug; and/or |

| **Worker Assistance Program (EAP)** | A programme incorporating established procedures for the referral to specialist counselling service of workers with personal problems which may impact upon job performance. The EAP is provided via an independent organisation in order to ensure confidentiality. |

| **Fit state** | Competent physical and mental state; Capable of performing duties to an acceptable standard. |

| **Initial Testing** | Initial Testing is defined as a valid method used to exclude the presence of alcohol and/or a drug or a class of drugs as provided by Australian Standard AS3547:1997 and AS4760:2006. |

| **Major and Minor Plant** | Major and Minor Plant is mechanical apparatus either hired, leased or owned by Council including earth moving, materials handling or agricultural equipment. Mechanical apparatus is deemed to include machinery, appliances, accessories and equipment deemed plant by the Fleet & Procurement Manager. This includes vehicles fitted with plant equipment. Minor plant is determined as items with a value of up to $10,000. |

| **Manager** | In this procedure a Manager is a member of staff who reports directly to a Group Manager and has staff who in turn report directly to them. |

| **Drugs** | Negative Result means a result at or below the nominated or target concentration used for initial testing. |

| **Non-Negative Result** | Non-Negative Result means an initial positive test as yet unconfirmed by confirmatory testing by an accredited tester. |

| **Notifiable Incident** | Notifiable Incident is an accident or incident that is required by law to be notified to WorkCover NSW that: causes death; causes serious injury or illness; or dangerous incident. |

| **PCA** | prescribed concentration of alcohol |

| **Pharmaceutical Drugs** | Pharmaceutical Drugs – means drugs, which can be purchased from a pharmacy (over-the-counter medicines). They include drugs, which can contain various chemicals, including pseudoephedrine and codeine. |

| **Positive Result** | Positive Result means the initial test result has been confirmed by further testing that the person is under the influence of alcohol and/or drugs above a prescribed limit as per current legislation and/or Australian standards. |
### Prescription medication
Prescription medication means medication that is prescribed by a doctor to treat medical conditions and should be taken in accordance with the prescribed dosage.

### Preliminary Testing
Testing conducted by Council staff or other suitably qualified third parties used as an indication of impairment due to alcohol or other drugs. Preliminary testing is indicative of impairment only and will not result in disciplinary action unless the worker disagrees with the results and requests confirmatory testing.

### Prohibited, illicit or illegal drugs
Those drugs which are prohibited according to schedule1of the Drug Misuse and Trafficking Act 1985. Examples include cocaine, heroin, ecstasy, cannabis.

### Random testing list
Persons will be added to this list who have either failed (tested nonnegative) a test or refused unreasonably a request for a drug and/or an alcohol test. Individuals placed onto the limited random list can be targeted tested at any time, in addition to the standard random testing undertaken by the council.

### RSA
RSA means a worker who holds a current Responsible Service of Alcohol certificate.

### Tester

### Unconfirmed results
Unconfirmed results is where a potential result for drugs has been obtained on the initial oral swab and the collection is sent to a certified laboratory for further confirmation.

### Worker
Worker has the same meaning as Worker under Section 7 of the Work Health and Safety Act 2011, being: an worker, or a contractor or subcontractor, or an worker of a contractor or subcontractor, or an worker of a labour hire company who has been assigned to work in the person’s business or undertaking, or an outworker, an apprentice or trainee, or a student gaining work experience, or a volunteer, or a person of a prescribed class and Councillors.

### Workplace
Workplace means a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. Place includes: a) a vehicle, vessel, aircraft or other mobile structure, and b) any waters and any installation on land, on the bed of any waters or floating on any waters, in accordance with Section 8 of the Work Health and Safety Act 2011.