

Private Lives v Saving Lives: Privacy Intrusions Of Little Consequence When Drug Testing in Australia



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There has been a long running battle in Australia about whether an employer, when testing for drug use, can ask employees to provide a urine sample. Many unions have resisted the introduction of urine testing, arguing that saliva testing is sufficient and, as such, the process of sampling urine is an unjustified invasion of privacy. Employers, however, want to have both methods available, arguing that saliva testing has recognised limitations.

Last month, the Fair Work Commission (**Commission**) sided with an employer by granting them the right to perform both saliva and urine testing on its employees for drug use.

The significant issue in this case arose from the Construction, Forestry, Mining and Energy Union's (**Union's**) firm opposition to random urine sampling on the grounds that saliva testing '*provided superior or equivalent means for identification of the presence of drugs*' and, as such, the right to perform random urine and saliva testing was an '*unreasonable / unjust obligation on employees*'.

After careful consideration, the Commission backed the employer's proposal for random saliva and urine testing on the grounds that the '*evidence in this case, as with previous matters ... has established that each method has certain benefits and*

shortcomings with urine sampling successfully detecting *'intoxication associated with long-term drug use'* and saliva testing enabling the *'detection of more acute intoxication associated with recent drug use'*.

With this in mind, the Commission found that the necessity to protect the health and safety of employees through the adoption of urine and saliva sampling for drug testing *'significantly outweigh[ed] any privacy detriments that could be identified'*.

In summary, the Commission described the contest in this case *'as a choice between private lives or saving lives'* and in upholding an employer's right to randomly sample both saliva and urine, the Commission *'opted for saving lives'*.

Construction, Forestry, Mining and Energy Union v Port Kembla Coal Terminal Limited
[2015] FWC 2384 (8 April 2015)

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