

## Australia: Union wins drug test concessions

An Australian construction union has negotiated major concessions on a random drug testing policy introduced by oil giant Shell. CFMEU described the deal, which prohibits urine tests, as a "significant decision in protecting employees' privacy and improving drug and alcohol testing standards throughout the workforce." Legal officer Judy Gray, who ran the case on behalf of CFMEU members employed at Shell's Clyde Refinery and Gore Bay Terminal, said that the decision to introduce oral fluid testing rather than urine samples in random drug testing would end "a widespread practice that is not only a violation of privacy but also not as accurate in detecting possible employee impairment in the workplace". Shell had opposed the move, so the dispute was referred to an official arbitrator. The union won this case and, after Shell took it to appeal, also won the review. The Review Panel said the arbitrator in the original ruling "made three critical findings. First, he found that a urine test can detect the use of drugs some days, rather than hours, beforehand ("the wide 'window of detection'"). Secondly, he found that oral fluid testing detects recent use only and is therefore less likely to detect drug use in an employee's own time. Finally, he concluded that while neither test measures impairment, a positive oral fluid test is far more likely to indicate actual impairment than a positive urine test. In the circumstances His Honour decided that it would be unjust and unreasonable to permit random urine testing..." Edward Wray-Bliss, a lecturer at Sydney's University of Technology who has researched the topic internationally, described the verdict as "enlightened". He said: "This is a very important decision for rolling back and giving that extra privacy that an employee should have in their own time." He said lack of sleep and excessive workloads were more likely to be accident factors than drug use, adding: "Drug testing - intervening into an employee's body, breaking that corporal boundary... at the moment the evidence for it is not there."

- [CFMEU news release](#). [Sydney Morning Herald](#).