



Drug and alcohol FAQs

1. How did random testing come about? Why didn't the Union do something to block it?

The battle over an employer's right to workplace drug and alcohol testing was essentially fought and decided well before now by other employers and unions in other industries, including mining, police, aviation and the railways. This right was subsequently reinforced by the recent *Work Health and Safety Act 2011*.

When the FBEU notified the IRC of a dispute over the Department's proposed policy, it soon became a question of not if we would end up with random testing, but rather how it would operate. The Union was subsequently successful in amending many aspects of the Department's original proposal, including the substitution of oral testing in lieu of urine testing.

There are a series of Union notices that trace the history of this matter commencing with SITREP 41/2012 on 19 October 2012 through to SITREP 34/2013 on 6 September 2013, all of which can be found on the Union's website. The final Policy and Procedures documents were the result of extensive disputation and conciliation before the IRC, resulting in the variation of both the Permanent and Retained Awards to replace the previous D&A Protocol with the new arrangements. So the new arrangements are not only Departmental policy, they are also an Award-governed condition of employment.

2. The old Drug and Alcohol Protocol had an alcohol limit of 0.05 unless you were driving a heavy vehicle, but now it's 0.02 for everyone. Why the change?

The Union argued this line in the IRC, unsuccessfully as it turned out, despite the Judge's apparent sympathy for our argument that it was both an unnecessary and unreasonable impost on all firefighters, but on retained firefighters in particular. Ultimately, this limit appeared to have been decided on the grounds that one standard would be easier to administer. The Union placed on record its expectation that due consideration - and relative leniency - would be given to any positive result from non-drivers in the 0.02 to 0.05 range.

3. But it's none of their business what I do in my own time, isn't it?

We agree. The testing is for possible impairment to safely and effectively do the job, not to see what someone might have done off-duty several days or even weeks ago. This is in part why we pressed for oral (saliva) testing over urine testing, which can detect the use of recreational drugs over a considerably longer period of time.

4. Can I refuse to be tested?

Random, targeted and post accident / serious injury drug and alcohol testing is now a condition of employment. Nobody can force you to undertake the breath or oral test, but to refuse to undertake a drug and alcohol test will result in you being ordered to leave the workplace and may result in disciplinary action.

5. What if I object to having the employer taking samples of my urine? What is the policy on privacy when supplying a urine sample in the field, or in the station for that matter?

There is no urine testing because the Union successfully argued for oral (saliva) testing instead.

6. What if I go sick?

A Manager /Station Commander is responsible “In the event a worker leaves prior to testing (i.e. due to sickness or emergency), making a notation on the roster, timesheet or occurrence book and inviting the worker to sign the notation.

Nobody can stop you from reporting sick and leaving the workplace immediately, but if you do then you can also expect to then be subject to further and perhaps ongoing targeted tests at a later date (or dates).

The Manager or Station Commander is required to invite (not force) you to sign the notation they make in the Occurrence Book. We recommend that any member who needs to leave the station with such urgency that they do not have the time to undergo a test should not wait to sign the Occurrence Book.

7. Can I be tested at any time? Can the testers turn up anytime on a night shift, ie, between 2200 and 0600 hours?

Yes.

8. What about shift changes? Can they test both the off-going and the on-coming shifts?

No. The Policy and Procedures documents are both silent on this so the Union’s position and advice for FBEU members, permanent and retained, is simply this: if you are on-duty then you can be tested and if you are off-duty then you cannot, and should refuse if you are asked. For retained members, this can easily be confirmed one way or the other by reference to the Occurrence Book.

There is one exception to the on-duty/off-duty rule. The Policy provides at Point 4 that “Off duty employees impaired by alcohol/prohibited drugs are not permitted in the workplace. This includes any designated station where sleeping accommodation has been made for the purposes of overnight stay,” so off-duty permanent members who are staying overnight at a station may also be subject to testing.

In any other circumstance – for example, dropping into the station when off-duty to collect something from your locker – then you should not be subject to testing and should not agree to be tested if asked.

9. What if my relief arrives just as the testers do?

When it comes to changes of shift for permanent members, then obviously only one of the members – off-going or on-coming – can be on duty at any one point in time. If testers did arrive at the station and two firefighters disagreed as to whether one has relieved the other, then the firefighter who was technically still rostered on would be considered to be the on-duty firefighter, who would then be tested.

10. What if my relief arrives during the testing but before I've been tested?

The testers arrive armed by the Department with a list of on-duty staff who are to be tested. This list is then checked against the staff actually present before testing commences. The Union’s position is that the firefighters to be tested will be those who were confirmed on this pre-test check, so if you have not been relieved before this check is concluded then you will be tested, and if you have been relieved (see question 9 above) then you won’t.

If all of the off-going shift have already been tested then an on-coming shift member may agree to be tested prior to the commencement of their shift, or they can refuse to be tested until the official starting time of their shift.

11. How does random testing for retained staff work? Are the retained staff alerted to a false incident and tested as they arrive at the station? Or will it be arranged for drill nights instead?

This remains to be seen, but potentially yes. The difficulty for the testers is that while they can arrive at any station or workplace at any time, the retained system's absence of rosters and non-compulsory attendance means that they may find that they have nobody to test. See our answers at questions 8 and 24.

12. If the testing is being conducted at a mixed-staff station and one or more of the station's retained staff are either already on site or arrive while the testing is underway, should they also be subject to the testing, or only the permanent crews?

See questions 8 and 9. If the retained staff are on-duty then the answer is yes, but if the retained staff are off-duty then the answer is no.

13. Are RFS, SES and other volunteers included? How will it work for volunteers?

Yes. The Policy and Procedures, including apply to all "workers" in the "workplace". This includes other non-FRNSW employees and volunteers at any incident or location at which FRNSW employees are in attendance.

The Policy provides at Point 5.1 that *"such tests are a condition of attendance at an FRNSW workplace. Any refusal by a worker on site to undertake a drug and alcohol test will result in the worker being ordered to leave the workplace."* In order to give practical effect to this, the Policy also provides at Point 5.3 that *"Duty Commanders will also have the capacity to administer impromptu incident ground alcohol tests using breath testing units provided by FRNSW."*

See question 24 also.

14. What should I do if the testers arrive and I think I might test positive for alcohol and/or drugs?

There are only three possible options: submit to the test, refuse the test (see question 4) or report sick and immediately leave the station/workplace (see question 6).

15. What should I do if I do test positive for alcohol?

Members who test positive for alcohol (ie a reading of 0.02 or above) will be required to undertake a second test after a waiting period of 20 minutes. Members who test positive after this second test will be immediately relieved of duty and directed to leave the workplace and:

- Placed on sick leave;
- Provided access to support services if requested or required; and
- Immediately required to undertake a 'return to work drug and alcohol test' when they next start work.

Members who find themselves in this situation are strongly advised to say or admit nothing before speaking to the Union (see question 17).

Any member who tests positive will be subject to ongoing 'no notice' targeted testing for 12 months following the test result. This is in addition to any further occasions where their workplace may be subject to random drug and/or alcohol testing.

In the case of targeted breath testing by a FRNSW Senior Officer on the incident ground, safety dictates that a worker who tests positive will be directed to immediately leave the incident ground without waiting for a second test 20 minutes later. A Senior Officer may (or may not) then arrange for a subsequent targeted test of the worker by the testing contractor, and must arrange for such testing if the worker requests this (which you would do if, for example, you disputed the initial breath test result).

16. What should I do if I return a “non-negative” drug test result?

Firstly, members who return a “non-negative” oral test result for drugs may (not must) complete and sign a Medical Declaration Form and have their test results sent for laboratory analysis. If you are certain that your “non-negative” oral test result is due solely to your use of legal medications (eg, prescribed medicines or codeine and/or cold and flu tablets), then you may fill out the Medical Declaration Form and remain at work while Workplace Standards waits for the laboratory result. If that result is clear then you will be too. If, however, the laboratory result confirms the presence of a prohibited substance (ie, a positive result) then the consequences may be severe. If you choose not to fill out the Medical Declaration Form then you will be stood down on sick leave pending the laboratory test result which, if clear (ie, a negative result), will result in your sick leave being re-credited. So think carefully before you agree to fill out and sign a Medical Declaration Form.

Secondly, a member who returns a “non-negative” oral test result can choose to either accept that result or challenge it. If you choose to accept a “non-negative” result then it will be treated as a positive result and your sample will not be sent for laboratory analysis, which is more sensitive and which produces quantitative results as opposed to simply an indication of whether readings exceed the ‘cut-off’ levels. So while you have the right to a full laboratory test of a “non-negative” result, you also have to the right to avoid one.

17. Will confessing to the testers or my Inspector make things better for me?

No. While nothing you say can alter your test results or reduce their consequences, it can (and very likely will) later be used against you. Members are strongly advised to say or admit nothing before speaking to the Union.

20. What should I do if I know I’ve got a drug or alcohol problem?

The Policy and Procedures documents encourage members who believe they may have a substance misuse problem to seek qualified support and assistance to manage their situation – a position fully supported by the Union.

However, the documents also provide that members “*may self disclose substance misuse and/or abuse to the Workplace Standards Branch or the Health & Safety Branch*”, that “*any disclosure of prohibited substance misuse and/or abuse will be considered and assessed by Workplace Standards*” and that members who do so “*will be required to undertake an assessment of their fitness for duty and a drug and/or alcohol test*” and “*may also be subject to ongoing no-notice targeted testing for a period of 12 months*”.

So if you stick your hand up then your fitness for duty will come under immediate review and you’ll more than likely be subject to ongoing targeted testing. The upside of self-disclosure is that any member who does so “*will not be subject to disciplinary action as a result of a positive drug and/or alcohol test result if they are genuinely participating in an approved rehabilitation/support program*”. It is also expressly provided that “*self disclosure (of a drug and/or alcohol dependency) needs to occur outside of any compulsion the employee may feel should a random drug and alcohol test be underway at their workplace (i.e. it will not be accepted as a means to avoid the consequences of a drug or alcohol test)*”. Put simply, it’s too late to self disclose if the testers have just arrived at the station.

So should members who suspect they have substance dependency issues self disclose? This is for the individual to decide, but all members should be aware that they have options. Self disclosure is voluntary, not mandatory. It is also possible to seek assistance independently of the employer, including through the employer-subsidised but confidential Employee Assistance Program (EAP). Members may of course also contact the Union for confidential advice and assistance.

21. How many times can my crew or station be tested within 3 months, 6 months, 12 months?

There is no limit on the number of times a station or platoon may be tested. That said, we'll keep this under review and any member who believes they are being unreasonably targeted should contact the Union for further advice and assistance.

22. Why are contractors being used to do this rather than senior officers?

The Union's preference was for senior officers, not external contractors, to do this - not least because the maintenance of operational standards and discipline has always been a key role of uniformed senior officers and we did not want to see this contracted out. The Department opposed this on several grounds, but mainly because it didn't trust its senior officers to conduct the testing without tipping off the stations to be tested in advance. It also argued, with some justification unfortunately, that the senior officers themselves did not want to do it. The IRC went with the Department on this point, with one exception: portable breath testing devices. See question 24.

23. We can request the attendance of the Duty Commander while the testing is carried out, but what if the Duty Commander can't get there? Do the contractors wait for them to arrive, or commence testing anyway?

It is not necessary for the Duty Commander to be present and the contractors are not required to wait for the Duty Commander to arrive before testing commences. We think it good practice for all concerned that the Duty Commander is present if possible, particularly in these early stages of testing, but it is not essential.

24. Why are Duty Commanders being issued with portable breath testing devices?

Because the Union successfully argued for this to occur. If the testing regime is about safety in the workplace then there is no more important workplace at which to be safe than the incident ground. The unexpected times and often large distances involved would mean that the contractors would often be unable to attend the incident "workplace", if required, for many hours.

Without portable breath testing devices there would have been no practical capacity to test (or even threaten to test) all workers (including RFS and SES volunteers) on the incident ground. In other words, the Union's success in arguing that the Policy must apply equally to everyone in our operational workplaces (where non-firefighting staff shouldn't be present anyway) would have been meaningless without the capacity to actually give effect to it.

25. Will all firefighters be required to be tested on arrival at large and/or protracted incidents before they can be assigned to a sector/task?

No. Incident ground testing by Senior Officers is targeted testing, not random testing. It should really only occur where there is an allegation by others or a suspicion by the senior officer him/her self that "workers" (from any agency) on the incident ground may be under the influence, in which case those particular "workers" only would then be tested.

25. Will the RFS or other workers be tested at jobs?

Yes, any worker in any FRNSW workplace may be tested (see question 24), however non-FRNSW workers cannot be subject to the same directions or disciplinary provisions as FRNSW employees.

The capacity of FRNSW Senior Officers to direct a non-FRNSW worker (eg, a volunteer firefighter) will be determined by whether or not the incident ground in question is within a FRNSW Fire District and/or FRNSW is in charge of the incident as the combat agency (eg, Hazmat). If the answer is yes then a non-FRNSW worker who either refuses to submit to testing or who tests positive can and should be immediately ordered to leave the incident ground. If the answer is no and a non-FRNSW worker either refuses to submit to testing or tests positive then that worker or

workers should be requested to leave the incident ground and, if they refuse to do so, serious consideration should be given to withdrawing all FRNSW workers from the incident ground. In either case, the matter should be documented and reported to Zone management.

26. Who will test the senior officers at jobs?

Senior Officers are potentially subject to the same targeted, random and post-accident testing as any other worker, so a test would be conducted either by another Senior Officer from an adjoining Zone, or by the contractors.

The Procedures provide that *"where .. a Manager/Station Commander [is] suspected of substance misuse and/or abuse, the worker may report this to their Senior Manager/Senior Officer or directly to Workplace Standards."* Members who do so should be aware that *"a knowingly false or vexatious notification will be subject to disciplinary action"*.

27. How can we know that the contractors testing us are not affected by drugs or alcohol themselves?

The contractors are also workers under the Policy and Procedures, and therefore also potentially subject to the same targeted, random and post-accident testing as members are. Members who suspect the contractors of substance abuse/misuse may therefore report this to their supervising officer and/or Workplace Standards, noting again that *"a knowingly false or vexatious notification will be subject to disciplinary action"*.

28. Will there be a list published of which stations were tested and will there be a count of how many tests were conducted and what the results were?

This has not yet been confirmed, but we consider it a reasonable and responsible expectation of management after subjecting the workforce to the implicit yet unfounded suggestion that firefighters were sufficiently drunk and drug-addled to require the replacement of the successful Joint FBEU/NSWFB D&A Protocol with the new AOD random testing regime.

29. How much is this testing costing the Department?

Management has consistently refused to answer this question, saying only that "we can afford it" – a singularly unique response from a Department which has spent the last decade complaining about it's ability to afford anything.

30. How can the Department justify this additional labour-related cost when management is closing stations?

How indeed. Particularly when, prior to testing, there was no obvious drug or alcohol problem. The Union supports a safe workplace free of the risk of alcohol and drugs. Whether or not random testing was the best way to achieve that is another question, but that takes us back to question 1.