

Australian Capital Territory

Children and Young People (Drug Testing) Standards 2021 (No 1)

Disallowable instrument DI2021–69

made under the

Children and Young People Act 2008, Section 887 (Standard-making power)

1 Name of instrument

This instrument is the *Children and Young People (Drug Testing) Standards 2021 (No. 1)*.

2 Commencement

This instrument commences on the day after it is notification.

3 Revocation

This instrument revokes *Children and Young People (Drug Testing) Standards 2008 (DI2008-277)*.

4 Declaration

Under section 887 of the *Children and Young People Act 2008*, I declare that these drug testing standards apply to the drug use provisions found at section 488 of the *Children and Young People Act 2008*.

Rachel Stephen-Smith
Minister for Families and Community Services
14 May 2021

Drug Testing Standards for the ACT

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Introduction and Purpose

These standards address the conduct of drug testing under a drug use provision in a care and protection order, or interim care and protection order. A drug use provision in a care and protection order is defined at section 488 of the *Children and Young People Act 2008*.

Legal Authority and Obligations

The drug testing standards are made pursuant to sections 887 and 488 which allow the Minister to make drug testing standards for the *Children and Young People Act 2008*.

Authorisations and Delegations

The following positions are delegated the power to apply for a care and protection order or an interim care and protection order with a drug use provision, by the

Director-General

Deputy Director-General

Executive Group Manager, Children, Youth and Families

Executive Group Manager (Deputy) Child and Youth Protection Services

Executive Branch Manager, Child and Youth Protection Services

Senior Manager, South Region, Child and Youth Protection Services

Senior Manager, North Region, Child and Youth Protection Services

Operations Manager, Intake Service, Child and Youth Protection Services

Operations Manager, South 0-12, Child and Youth Protection Services

Operations Manager, South 12+, Child and Youth Protection Services

Operations Manager, North 0-12, Child and Youth Protection Services

Operations Manager, North 12+, Child and Youth Protection Services

Designated staff of Legal Services, Child and Youth Protection Services

Definitions

What is drug testing?

Drug testing is the process of testing a biological sample to determine the presence of legal and illegal drugs. Through testing for specific substances, it provides a means to identify ongoing substance use or confirm the abstinence of drug use.

Drug testing is limited in its ability to determine dependence and/or impairment in relation to parenting ability. The results of testing are one component of a broad assessment of parenting capacity and planning for the safety and wellbeing of a child and family.

What is a test sample?

A sample taken for the purpose of drug testing may be a sample of urine, hair or saliva.

All samples will be collected in accordance with Standard 3 of the *Children and Young People (Drug Testing) Standards 2021*.

Methods of drug testing

Child and Youth Protection Services (Community Services Directorate) will request urine analysis as the preferred drug testing method. If urine analysis does not meet the purpose for which drug testing has been requested, Child and Youth Protection Services may request hair analysis or oral fluid drug testing. For example, hair analysis can be used in circumstances when attempts are being made to identify consistent past drug use.

Drug testing schedule

Drug testing may be requested by Child and Youth Protection Services on either a random basis or by regular arrangement. The decision about which type of testing is appropriate will be determined on a case-by-case basis.

Standards

Standard 1: When to request drug testing

Child and Youth Protection Services only requests drug testing when it is clearly linked to the best interests of children¹.

- 1.1 Drug testing should only be requested by Child and Youth Protection Services when an assessment by a case manager indicates that drug misuse may be affecting a stated person's capacity to provide proper care and/or protection for a child.
- 1.2 This may be an assessment which demonstrates either a history of drug use, or current use, by a stated person.

Standard 2: How to request drug testing

Child and Youth Protection Services seeks to engage individuals in drug testing through voluntary processes where possible.

- 2.1 In seeking information about the drug use of a stated person, Child and Youth Protection Services will always offer the individual an opportunity to participate in drug testing on a voluntary basis. Where this occurs, an agreement between the stated person and Child and Youth Protection Services will be agreed and signed. This agreement may take the form of a signed and dated Case Plan, Care Plan or Safety Plan.
- 2.2 Where a stated person is unwilling to participate in drug testing and Standard 1.1 of the *Children and Young People (Drug Testing) Standards 2021* is met, the Director-General will apply to the Childrens Court for either a care and protection order or an interim care and protection order, with a drug use provision (s488).

¹ All references to 'child' or 'children' also refer to 'young people' as defined by the *Children & Young People Act 2008*.

Prior to this application the stated person will be notified in writing by Child and Youth Protection Services.

- 2.3 Testing arrangements will be discussed by the child's case manager or team leader and the relevant stated person.
- 2.4 Testing arrangements will be articulated in the Case Plan and/or Care Plan in terms of method of testing and basis (random or regular). When testing arrangements are altered, a new Case Plan and/or Care Plan will be issued and provided to the specified person.
- 2.5 Random testing arrangements will be facilitated by administration staff in accordance with Child and Youth Protection Services policy and procedure.

Standard 3: Sample collection

All samples will be collected by an accredited pathology service.

- 3.1 All samples must be collected by a National Association of Testing Authority (NATA) accredited pathology service which operates in accordance with current Australian or internationally equivalent standards and meets its chain of custody requirements.
- 3.2 All samples will be collected by a pathology service accredited by NATA to collect, detect and quantify drugs of abuse and provides a supervised or witnessed collection process.
- 3.3 The method of collecting a sample for drug testing needs to ensure the sample is not invalid. A sample will be invalid if it is found to be adulterated, substituted or diluted in any way.
- 3.4 Child and Youth Protection Services will notify the stated person when a sample they have provided is found invalid. The stated person will be given the opportunity to provide another sample.

Standard 4: How to enforce compliance with drug testing

Compliance with drug testing will be enforced by the Childrens Court where appropriate.

- 4.1 Where a care and protection order or interim care and protection order is in place with a drug use provision and Child and Youth Protection Services are aware that the stated person is not complying with this order, the Director-General may take steps to improve future compliance.
- 4.2 Non-compliance is defined by the Director-General as a failure to attend three scheduled drug test appointments in a three month period, without a valid reason for non-attendance.
- 4.3 Steps to ensure future compliance may include:
- Consultation with the stated person regarding strategies to support compliance.
 - Advising the stated person of the implications for ongoing non-compliance.
 - A further application to the Childrens Court in relation to the breach.
 - A reassessment of the stated person's parenting capacity and of the child/ren's exposure to risk in the home environment.
 - A reassessment of the viability of a future restoration plan (where appropriate).
- 4.4 These reassessments may have an impact on the relevant child/ren's Case Plan and/or Care Plan with regard to residence and contact arrangements.
- 4.5 The stated person will be notified in writing that these steps are being considered by Child and Youth Protection Services, so that they have an

opportunity to voluntarily re-engage with the court ordered testing process within an agreed timeframe.

Standard 5: Provision of results

Results of drug testing will be properly recorded and provided to the stated person.

- 5.1 The NATA accredited pathology service will provide drug testing results to Child and Youth Protection Services.
- 5.2 All drug testing results will be recorded in accordance with relevant Community Services Directorate record keeping policies and procedures.
- 5.3 The stated person will always be notified in writing by Child and Youth Protection Services when a tests result is positive.

Standard 6: Use of results

Drug testing results may be used as evidence in the Childrens Court where appropriate.

- 6.1 Compliance with drug testing and the results of drug testing may be submitted as evidence to the Childrens Court in support of an application for, or the revocation of, a care and protection order or an interim care and protection order.
- 6.2 The results of drug testing may lead to an assessment of the relevant child/ren's safety. This assessment will be completed by Child and Youth Protection Services.

Standard 7: Costs of testing

Child and Youth Protection Services will fund the cost of drug testing.

- 7.1 There will be no cost to a stated person for completing drug testing when it is part of an agreed Case Plan or Care Plan.
- 7.2 Transportation to and from a drug test is to be funded by the stated person unless discussed and agreed by Child and Youth Protection Services.

Standard 8: Disputed results

Disputed drug test results may be challenged.

- 8.1 In the event of a result being challenged by the stated person, additional testing may be made available with the consent of the stated person.
- 8.2 The stated person will request Child and Youth Protection Services to facilitate additional testing within three months of the original testing.
- 8.3 Testing shall be carried out by a laboratory accredited by NATA to collect, detect and quantify drugs of abuse.
- 8.4 Reports shall be sent to the Child and Youth Protection Services.
- 8.5 Child and Youth Protection Services will notify the stated person of the results in writing.