

Mandatory Testing Orders



This factsheet provides information to people who are the subject of a Mandatory Testing Order (MTO).

What is a Mandatory Testing Order (MTO)?

The *Mandatory Disease Testing Act 2021* is a new law that gives police and other public service workers in New South Wales the power to force people to test for HIV and other blood-borne diseases.

A Mandatory Testing Order requires you to get a blood test for HIV, Hepatitis B, and Hepatitis C.

A law enforcement, emergency services or NSW Health worker can apply for a MTO against you if they came into contact with one or more of your bodily fluids, you are at least 14 years old, and the contact happened:

- while they were on duty;
- due to your deliberate action; and
- without their consent.

Bodily fluids include blood, faeces (poo), saliva (spit), and semen (cum).

Applications for a Mandatory Testing Order are reviewed by 'senior officers' within health, emergency services, and law enforcement Government agencies. Senior officers must follow the [Chief Health Officer's guidelines](#). A senior officer could be a Commissioner, Inspector or Secretary of the Government agency, or a similar level of seniority.

What can I do if I am asked to get a test?

The worker's senior officer must contact you first to

1. request a voluntary blood sample, and
2. offer you the opportunity to make a submission to explain why you should not get tested.

At this stage, you are under no obligation to consent to a blood test.

We strongly recommend getting urgent legal advice as soon as possible after being asked to provide a blood sample. **See information and support on the next page.**

You can choose whether or not you want to *voluntarily* provide a blood sample. At this stage, you are under no obligation to consent. If you do consent, you will need to go to a testing site. If you do not consent, the MTO application will be reviewed by the senior officer who will decide whether or not you will be forced to get a test.

The senior officer is generally required to make or refuse a MTO within **three business days**. We strongly recommend seeking legal advice as soon as possible due to the short time frame. A senior officer is required to consider any submissions you make during this time when making their decision and a lawyer may be able to assist you in preparing a submission.

What to do if you receive a Mandatory Testing Order

If you are served a Mandatory Testing Order, you will be required to provide a blood sample within 2 days. The order will specify where you must go to provide the sample. You can find a full list of collection centres on the [NSW Health website](#).

Your blood will likely be tested for HIV, Hepatitis B and Hepatitis C. The results will be provided to **both your doctor and the worker's doctor**. If you don't nominate a doctor, the results will be provided to the Chief Health Officer of the NSW Ministry of Health.

At this stage, you must comply with the MTO. Not complying with a Mandatory Testing Order is a punishable offence and you could face a fine of up to \$11,000, 12 months' imprisonment, or both.

How can I appeal a Mandatory Testing Order?

You can apply to the Chief Health Officer of the NSW Ministry of Health (CHO) to review the decision.

You must make an application in writing within 1 business day of receiving the senior officer's decision. We strongly recommend seeking legal advice for the development of your application for review.

Send your review application by email to NSWH-MDT@health.nsw.gov.au

Your application must include a copy of:

- the MTO;
- a copy of the written notice of determination of the senior officer; and
- any written submissions you made to the senior officer.

- It is important to note that if you apply to the CHO to review the decision to make a MTO, you must continue to comply with the MTO even if they have not made a final decision. This includes attending an appointment to provide a blood sample.

Again, we **recommend seeking legal advice as soon as possible** due to the limited time frame to apply for a review of the decision. The CHO must consider any submissions you make during this time when making their decision and a lawyer may be able to assist you in seeking a review. **See information and support below.**

Vulnerable People

People who are considered vulnerable (a 'vulnerable third party') have additional rights under the *Mandatory Disease Testing Act 2021*. You are considered a vulnerable person if you:

- are at least 14 years of age but under 18 years of age, or
- have a mental health impairment or cognitive impairment that significantly affects your capacity to consent to providing blood.

If you are a vulnerable person, senior officers:

- cannot ask you to provide a voluntary blood sample; and
- must apply to the Court for a Mandatory Testing Order, or refuse the application when deciding on an application for a MTO.

As with other adults under the Act, senior officers must provide you, or your parent or guardian, if any, with an opportunity to make submissions, and consider your submissions in determining the application for a MTO.

If you are a vulnerable person, you should immediately inform the senior officer and your parent or guardian, if any, and seek legal advice.

Where to Get Information and Support

To get legal support, contact:

The HIV AIDS Legal Centre (HALC)
(02) 9206 2060
halc.org.au

The Inner City Legal Centre
0466 724 979
www.iclc.org.au

Legal Aid

Call LawAccess NSW on 1300 888 529 or contact your [local legal aid office](#)

If you have recently been diagnosed with HIV, you can get support through the NSW HIV Support Program, ACON or Positive Life NSW.

NSW HIV Support Program
www.health.nsw.gov.au/endinghiv/Documents/newly-diagnosed-with-hiv.pdf

ACON
02 9206 2000 or 1800 063 060
www.acon.org.au

Positive Life NSW
(02) 8357 8386 or 1800 245 677 (freecall)
www.positivelife.org.au

If you have been diagnosed with hepatitis, you can call the NSW Hepatitis Infoline on 1800 803 990 or visit www.hep.org.au

The NSW Department of Communities and Justice provides further information on Mandatory Disease Testing Orders
www.dcj.nsw.gov.au/justice/mandatory-disease-testing-scheme.html