

Australian Capital Territory

# Children and Young People (Drug Testing) Standards 2008 (No 1)

Disallowable instrument DI2008–277

made under the

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

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**1 Name of instrument**

This instrument is the *Children and Young People (Drug Testing) Standards 2008*.

**2 Commencement**

This instrument is to commence the day after notification.

**3 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*.

Katy Gallagher  
Minister for Children & Young People

5 November 2008

# Drug Testing Standards for the ACT

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## Introduction and Purpose

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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

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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

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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 Chief Executive;

Executive Director

Director, Care and Protection Services

Senior Manager, Care and Protection Services

Operational Manager, Centralised Intake Service

Operational Manager, Response & Intervention Team

Operational Manager, Care Orders Team

Designated staff of the Integrated Court Unit

## Definitions

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### What is urine analysis

Urine analysis is the process of testing a urine 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.

Urine 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.

### Types of urine analysis

Urine analysis may be requested by Care and 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.

### What is a test sample

60ml of unadulterated urine collected in accordance with Standard 3 of the *Children and Young People (Drug Testing) Standards 2008*.

# Standards

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## Standard 1: When to request urine analysis

Care and Protection Services only requests urine analysis when it is clearly linked to the best interests of children<sup>1</sup>.

- 1.1 Urine analysis should only be requested by Care and Protection Services (Department of Disability, Housing & Community Services) when an assessment by a case manager indicates that drug use 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 urine analysis

Care and Protection Services seeks to engage individuals in urine analysis through voluntary processes where possible.

- 2.1 In seeking information about the drug use of a stated person, Care and Protection Services will always offer the individual an opportunity to participate in urine analysis on a voluntary basis. Where this occurs, an agreement between the stated person and Care and Protection Services will be agreed and signed<sup>2</sup>.
- 2.2 Where a stated person is unwilling to participate in urine analysis and Standard 1.1 of the *Children and Young People (Drug Testing) Standards 2008* is met, the Chief Executive will apply to the Children's Court for either a care and protection order or an interim care and protection order, with a drug use provision (s488).

Prior to this application the stated person will be notified in writing by Care and

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

<sup>2</sup> This agreement may take the form of a signed and dated Care Plan.

Protection Services.

- 2.3 Testing arrangements will be discussed by the child's case manager or team leader and the relevant individual.
- 2.4 Testing arrangements will be articulated in the care plan in terms of frequency and type of testing (random or regular). When testing arrangements are altered, a new 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 Care and Protection Services policy and procedure.

### **Standard 3: Sample collection**

**All samples will be collected by an approved pathology service.**

- 3.1 The method of collecting a urine sample needs to ensure that the sample is not invalid – or tampered with in any way (eg. substitution). All samples must be collected by an approved pathology service which operates in accordance with standards and meets its chain of custody requirements.

### **Standard 4: Valid and invalid samples**

**All samples must be valid before testing.**

- 4.1 A valid sample is 60ml of urine:
  - collected by a pathology service; and
  - which has not been diluted; and
  - either measures a temperature of between 33°C and 38°C; or
  - was collected by a pathology service which supervises the collection process.
- 4.2 Samples which do not meet these criteria are considered invalid.

## **Standard 5: When a sample tests positive**

**A positive sample will be confirmed through a second testing process.**

- 5.1 A sample will first be tested to identify a drug or class of drugs, this is known as an initial test or a screening test. This test will also eliminate samples not containing the specified drugs or those containing drugs in quantities below the designated cut-off.
- 5.2 Where a sample does not contain specified drugs or sufficient quantities of specified drugs, a negative result will be given.
- 5.3 Where a sample tests positive for a class of drugs at the initial test, a second or confirmatory test, will take place. The second procedure will be done on a fresh test portion taken from the original sample.
- 5.4 When a pathology services determines that a test is positive, Care and Protection Services will record this information on the relevant child/ren's paper and electronic files.

## **Standard 6: How to enforce compliance with urine analysis testing**

**Compliance with urine testing will be enforced by the Children's Court where appropriate.**

- 6.1 Where a care and protection order or interim care and protection order is in place with a drug use provision and Care and Protection Services are aware that the stated person is not complying with this order, the Chief Executive may take steps to improve future compliance.
- 6.2 Non-compliance is defined by the Chief Executive as a failure to attend three scheduled drug test appointments in a three month period, without a valid reason for non-attendance.



- 6.3 Steps to ensure future compliance may include:
- A further application to the Children's 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).
- 6.4 These reassessments may have an impact on the relevant child/ren's care plan with regard to residence and contact arrangements.
- 6.5 A stated person will be notified in writing that these steps are being considered by Care and Protection Services, so that they have an opportunity to voluntarily re-engage with the court ordered testing process within an agreed timeframe.

## **Standard 7: Provision of results**

**Results of urine analysis will be properly recorded and provided to the stated person.**

- 7.1 All urine analysis results will be recorded on the relevant child/ren's hard and electronic files.
- 7.2 Individuals will always be notified in writing by Care and Protection Services when a result tests positive.

## **Standard 8: Use of results**

**Urine analysis results may be used as evidence in the Children’s Court where appropriate.**

- 8.1 Compliance with testing and the results of urine analysis results may be submitted as evidence to the Children’s Court in support of an application for, or the revocation of, a care and protection order or an interim care and protection order.
- 8.2 Where an unexpected result is obtained, an assessment of the relevant child/ren’s safety may be completed by Care and Protection Services.

## **Standard 9: Costs of testing**

**Care and Protection Services will fund the cost of urine analysis.**

- 9.1 There will be no cost to a stated person for completing urine analysis when it is part of an agreed Care Plan.
- 9.2 Transportation to and from a drug test is to be funded by the individual unless discussed and agreed by Care and Protection Services.