

Australian Capital Territory

Children and Young People (Drug Testing) Standards 2008 (No1)

Disallowable instrument DI2008–277

made under the

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

EXPLANATORY STATEMENT

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*.

1. Legal authority and obligations

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

2. 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 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 from Integrated Court Services

3. Definitions

This section outlines what is meant by 'urine analysis', what is a 'test sample' and the two types of urine analysis, relevant to the application of drug testing standards.

4. Principles

In applying these drug testing standards, staff of Care and Protection Services will be directly informed by the objects, principles and considerations of the *Children and Young People Act 1999*, the provisions relevant to applications for care and protection orders and will act in accordance with the information, secrecy and sharing provisions of the same legislation.

5. Summary of Standards

Standard 1 - When to request urine analysis

Care and Protection Services will only request urine analysis when it is clearly linked to the best interests of children. It will only be requested following completion of an assessment by Care and Protection Services which indicates that drug use may be affecting a person's capacity to provide proper care and/or protection for a child or young person.

Standard 2 - How to request urine analysis

Care and Protection Services seeks to engage individuals in urine analysis through voluntary processes where possible. The purpose of the testing, type of testing (random or regular) and future use of test results, will be discussed by Care and Protection Services with the stated person (usually a parent or caregiver) in order to obtain informed consent. The stated person will be made clearly aware of Care and Protection Services' concerns about the child/ren's wellbeing and the impact on the child of suspected drug use.

Where an individual is not willing to participate in urine analysis voluntarily and Standard 1 is met, an application to the Children's Court for either a care and protection order or an interim care and protection order, with a drug use provision, will be initiated by Care and Protection Services.

Random testing arrangements will be facilitated by administrative staff within Care and Protection Services using a standard procedure.

Standard 3 - Sample collection

All samples will be collected by an approved pathology service.

Standard 4 - Valid and invalid samples

All samples must be valid before testing. All samples will be collected by a pathology service which may also supervise the collection process.

Standard 5 - When a sample tests positive

A positive sample will be confirmed through a second testing process. Where a test sample is positive, an assessment of the relevant child/ren's safety will be completed by Care and Protection Services.

Standard 6 - How to enforce compliance with urine analysis testing

Compliance with urine testing will be enforced by the Children's Court where appropriate. Non-compliance is defined by Care and Protection Services as a failure to attend three scheduled drug test appointments (regular or random) in a three month period, without a valid reason for non-attendance.

Steps to ensure future compliance may include; a further application to the Children's Court, a reassessment of the stated person's parenting capacity and of the child/ren's exposure to risk in the home, and a reassessment of the viability of a future restoration plan (where appropriate).

Standard 7 - Provision of results

Results of urine analysis will be provided to the stated person in writing by Care and Protection Services. All test results will also be recorded on the child/ren's paper and electronic files.

Standard 8 - Use of results

Urine analysis results may be used as evidence in the Children's Court where appropriate. This may be to support an application for, or the revocation of, a care and protection order or an interim care and protection order.

Standard 9 - Costs of testing

There should be no cost to a stated person for completing urine analysis when it is part of an agreed Care Plan. Transportation to and from a drug test will not usually be funded by Care and Protection Services.