

Mandatory Disease Testing Act 2021

Information for third parties

If you were recently involved in an incident with a law enforcement, emergency services or NSW Health worker, and your bodily fluid (blood, faeces, saliva, semen) came into contact with them, you may be served with a Mandatory Testing Order (MTO).

The rules and process for a MTO are set out in the [Mandatory Disease Testing Act 2021](#).

What is a MTO?

A MTO is an order made by a government authority or court that 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
- without their consent.

What should I do if a worker seeks a MTO?

In most cases, you will first become aware of a MTO application when the worker's senior officer contacts you to request a voluntary blood sample. You can choose whether or not you want to voluntarily provide a blood sample; you are under no obligation to consent.

A senior officer cannot ask you to provide a voluntary blood sample if you:

- are between the ages of 14 and 18; or
- have a mental health condition or cognitive impairment that affects your ability to consent to providing blood.

The senior officer will consider you a 'vulnerable third party' (VTP) if either of these circumstances apply. If you think you are a VTP, you should immediately inform the senior officer and your parent or guardian, if any.

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The senior officer will also offer you (and your parent or guardian if they consider you to be a VTP) the opportunity to make a submission before deciding the application. Submissions should be made in writing, if possible. It is an offence to knowingly provide false or misleading information to the senior officer.

You may want to seek legal advice before you volunteer a blood sample or make a submission. The senior officer is generally required to make a decision to make or refuse an MTO within 3 business days, so if you decide to seek legal advice or make submissions, you should do so as soon as possible.

What happens next?

The senior officer will usually decide the worker's application within three business days. They will notify you of the decision, as well as the reasons for the decision in writing.

If you are a VTP and the senior officer believes that a MTO should be made, they cannot make the MTO themselves. The senior officer must instead apply to the Local Court or Children's Court to decide the application. This is likely to take longer than three business days.

What do I do if a MTO is made?

If a MTO is made, it will be personally served on you. The order will specify a location you must attend to provide a blood sample within two business days of being served.

You must comply with the MTO even if you are seeking a review of the order (more information below). If you don't comply, it is a punishable offence and you could face a fine of up to \$11,000, 12 months imprisonment, or both.

Can I appeal a MTO?

If you are not a VTP, 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. Your application must include a copy of:

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

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The CHO may request further information from you as part of the review. Send your review application by email to NSWH-MDT@health.nsw.gov.au

The CHO must consider and decide your application within three business days. The CHO will notify you of their decision in writing. If the CHO supports your application, your blood test results will not be released to the worker's doctor.

If you are a VTP and the Local Court or Children's Court grant the MTO, you cannot seek a review of the court's decision by the CHO.

What happens after I give blood?

After your blood is collected, it will 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 CHO.

Can my test results be used against me?

Information or documents you provide to the senior officer, your blood sample, and any test results or other information that has been derived from your blood sample cannot be used against you as evidence in any court proceedings, unless the proceedings relate to the offences of not complying with a MTO, or knowingly providing false or misleading information to a senior officer.

Oversight by NSW Ombudsman

The NSW Ombudsman will monitor the operation and administration of the Mandatory Disease Testing Act. For more information, visit ombo.nsw.gov.au/about-us/what-we-do/oversight-of-mandatory-disease-testing-act

More information

For more information about mandatory disease testing, please visit the Department of Communities and Justice website at dcj.nsw.gov.au/justice/mandatory-disease-testing-scheme

For legal help, call LawAccess NSW on 1300 888 529 or visit lawaccess.nsw.gov.au