

Custodial Operations Policy and Procedures

13.14 Mandatory disease testing

Policy summary

The *Mandatory Disease Testing Act 2021* (Act) establishes a scheme to allow for the mandatory blood testing of a third party (whether an inmate, a visitor, or any other person) in circumstances where the third party’s bodily fluid, through deliberate action, has made contact with any staff member and the worker has been placed at risk of contracting a blood borne disease. The result of the blood test is then made known to the worker.

CSNSW staff may make an application for a Mandatory Testing Order which will be decided by the Assistant Commissioner, Custodial Corrections. A worker or the third party may request the Chief Health Officer to review the decision of the Assistant Commissioner.

It an offence for a person not to comply with a Mandatory Testing Order.

Management of Public Correctional Centres Service Specifications

Service specification	Safety and security
-----------------------	---------------------

Scope

This section applies to all correctional centres and other facilities administered by CSNSW, and all CSNSW employees.

Table of contents

1	Mandatory Testing Order (MTO)	4
1.1	Policy	4
1.2	Risk of infection by blood-borne viruses	5
1.3	Seeking advice of a relevant medical practitioner with 24 hours	6
1.4	Applying for MTO	7
2	When the third party is an inmate held by CSNSW	7
2.1	Procedure for Governor/GM/OIC on notification of MDT order application	8
2.2	Administration of applications by Office of the Assistant Commissioner staff	10
2.3	Assistant Commissioner determination	10
2.4	Chief Health Officer's guidelines	11
2.5	Procedure for MTO order applications	11
2.6	Taking and testing of blood for MTO	13
2.7	Use of reasonable force and non-compliant inmates	14
3	When the third party is not an inmate held by CSNSW	14
3.1	Policy	14
4	Application for CHO review	15
4.1	Application for review by CSNSW staff	15
4.2	Application for review by inmate	15
4.3	Content of application for review	15
5	Application for an MTO against an inmate for an incident involving a worker of an external agency	16
5.1	Policy	16
5.2	Procedures	17
6	Quick links	19
7	Definitions	19
8	Document information	21

1 Mandatory Testing Order (MTO)

1.1 Policy

Under the Mandatory Disease Testing Act 2021, a worker (which includes any CSNSW staff member) may apply for a Mandatory Testing Order (MTO) in relation to a third party if:

- the worker has come into contact with the bodily fluid of the third party, and
- the contact occurred:
 - in the execution of the worker's duty, and
 - as a result of a deliberate action of the third party, and
 - without the consent of the worker.
- the third party is not under 14 years old
- the worker has consulted a relevant medical practitioner
- they apply within five business days after the contact

Under the Act, the worker's application is decided by a Senior Officer. For CSNSW staff, the Senior Officer is the Commissioner, who has delegated this function to the Assistant Commissioner.

Before an application is made, the worker must consult with a relevant medical practitioner who must provide the worker with information about:

- the risk to the worker of contracting a Blood Borne Virus (BBV) from the third party as a result of the contact
- The appropriate actions to be taken by the worker to mitigate the risks of contracting a BBV from the third party as a result of the contact, and transmitting a contracted BBV to another person
- The extent to which testing the third party's blood for BBVs may assist in assessing the risk of the worker contracting a BBV

If, after consulting with a relevant medical practitioner, the worker wants to seek mandatory testing of the third party for blood borne diseases, the worker can apply to the Assistant Commissioner for an MTO, using the annexure *Application for MTO*. The application must be sent by email to csnsw-mdt@dcj.nsw.gov.au

The third party must be assessed for whether they are a vulnerable person (as defined in the MDT Act – see *Definitions*), and if not vulnerable, given an opportunity to consent to have their blood tested (MTOs for vulnerable third parties may only be issued by the Court and the Assistant Commissioner will assess the application for whether a referral to DCJ Legal to pursue an MTO in court is appropriate).

If the third party is not a vulnerable person and does not consent to voluntarily give blood for testing, the Assistant Commissioner will assess the application and decide whether to make an MTO.

In determining any application, the Assistant Commissioner is to consider this policy, the Chief Health Officer's guidelines, any other matters the Assistant Commissioner considers relevant, including the incident report, any eyewitness reports, footage and any submission from the third party.

If an MTO is made, an authorised officer must present the third party with a copy of the order, and a *Notice of determination of application mandatory testing order*. If the third party is in the community, the authorised officer may be a representative of the Office of the Sheriff. The officer must fully explain the content of the order and the notice, using interpreter services if required. The third party must comply with the order and be present at the specified place to be tested for BBVs. Failure to comply with the mandatory testing order is an offence.

Under the MTO scheme, the worker's nominated medical practitioner will be advised of the results of the test and will in turn advise the worker of the results. Under most circumstances, it is an offence under the *Mandatory Disease Testing Act 2021* for the worker to disclose the results of the test to any other person.

1.2 Risk of infection by blood-borne viruses

The Chief Health Officer (CHO) Guidelines for the *Mandatory Disease Testing Act 2021* provides information about the level of BBV transmission risk in various scenarios. Many incidents, assuming a third party has a blood borne disease, carry no, very low or low (<0.1%) BBV transmission risk, for example:

- where a third party spits bloody saliva onto the arm of a worker
- where a third party throws faeces onto the face of a worker
- a punch from the bloodied fist of a third party that impacts an area covered in clothing
- a bite from a third party that marked the workers skin but does not break or cut it

Given their low risk, these types of incidents are very unlikely to be considered eligible for mandatory testing orders. Nevertheless, staff should seek medical advice following these incidents.

Many of the injuries, assuming a third party has a blood borne disease, that break the skin or where the eyes or mouth have come into contact with blood or visibly bloody bodily fluid would be classified as moderate (0.1%-1% chance of transmission). However, certain injuries such as a cut by a blade that recently cut an infected person, or a needle-stick injury from a needle recently used by an infected person may carry a much higher risk. For these types of injuries, the risk of infection is:

- 6% - 30% risk of contracting Hepatitis B
- 1.8 - 3% of contracting Hepatitis C
- 0.2% chance of contracting HIV.

The following injuries carry a moderate risk of contracting Hepatitis B, a low risk of contracting Hepatitis C and a less than 0.1% chance of contracting HIV:

- punch from bleeding person to body causing break in skin
- large blood splash e.g. bleeding artery
- blood contact to mouth from giving mouth-to-mouth resuscitation if no protective equipment used

The following exposures would generally warrant Post Exposure Prophylaxis (PEP), which is a short course of HIV medicines taken very soon after possible exposure to HIV to prevent the virus:

- a deliberate needlestick or sharps (stabbing) injury where the staff member's skin is punctured or broken
- bloody saliva spat into the eye of a staff member
- a punch from the bloodied fist of a third party that broke the staff member's skin, or landed on the eye or mouth
- a bite from a third party that broke the workers skin, where there is blood in the mouth of the third party

Staff should always seek medical advice after such exposures.

1.3 Seeking advice of a relevant medical practitioner with 24 hours

A worker who proposes to apply for a mandatory testing order must, as soon as reasonably practicable and within 24 hours after the contact with bodily fluids, consult with a relevant medical practitioner. This consultation can occur up to 72 hours after the contact if reasonable in circumstances.

A relevant medical practitioner is a medical practitioner with qualifications or experience in BBV infection or, if a medical practitioner with qualifications or experience in BBV infection is not available at the time the worker requires a consultation another medical practitioner.

Medical practitioners with expertise in blood-borne diseases, known as prescribers, for Hepatitis A, Hepatitis B and HIV can be found at this website:

<https://www.ashm.org.au/prescriber-maps/>

If the medical practitioner does not have qualifications or experience in the diagnosis, management and treatment of BBVs, they should seek advice from another medical practitioner who does.

When a worker goes to see a relevant medical practitioner, they must bring with them the *Mandatory Disease Testing Act 2021 – Information for relevant medical practitioners* which provides information about the scheme and the advice that they need to provide to enable an application for an MTO.

A worker consulting a relevant medical practitioner post-exposure should seek the following information in writing:

- the risk to the worker of contracting a BBV from the third party as a result of the contact
- the appropriate actions to be taken by the worker to mitigate the risks of contracting a BBV from the third party as a result of the contact, and of transmitting a contracted BBV to another person
- the extent to which testing the third party's blood for BBVs may assist in assessing the risk of the worker contracting a BBV.

A medical practitioner may not be able to provide the necessary written advice without referencing the *MDT Factsheet - Information for relevant medical practitioners* form.

1.4 Applying for MTO

An application for an MTO to the Assistant Commissioner Custodial Corrections must be made within five business days after the contact. Section 10 of the *Mandatory Disease Testing Act 2021* requires that the application must be made in writing and contain the following:

1. a detailed description of the contact, including the date, time, place and surrounding circumstances
2. the nature of the worker's contact with the third party's bodily fluid
3. the correctional centre or location that the third party is housed (if applicable) or the address of the third party
4. a statement that the staff member did not consent to the contact
5. a statement that, in the opinion of the staff member, the contact with the third party's bodily fluid was as a result of a deliberate action of the third party
6. a statement that the worker consulted a relevant medical practitioner

Providing false or misleading information in an application for an MTO is an offence under the Act.

The following information can be provided in a separate section of the *Application for a Mandatory Testing Order form*:

1. the name and contact details of the relevant medical practitioner
2. the name and contact details of a medical practitioner authorised by the staff member to receive, on the staff member's behalf, the results of the testing of the third party's blood.

The following should be attached to the email with the application form:

1. a copy of written advice received from the relevant medical practitioner

To make the application staff must use the *Application for a Mandatory Testing Order* which can be found under *Forms and annexures* on the COPP website.

Applications must be forwarded to csnsw-mdt@dcj.nsw.gov.au.

2 When the third party is an inmate held by CSNSW

If the third party is an inmate in a CSNSW correctional centre or otherwise in CSNSW custody, Custodial Corrections will provide a copy of the staff member's application for an MT order to the Governor/GM/OIC who must, as soon as practicable, complete the following procedures:

2.1 Procedure for Governor/GM/OIC on notification of MDT order application

	Procedure	Responsibility
1.	Provide the third party's Health Problem Notification Forms (HPNFs) to csnsw-mdt@dcj.nsw.gov.au immediately when it is confirmed that an application has been made. Provide information and evidence relating to the incident where the alleged bodily fluid contact occurred via evidence.com to the officers nominated by the Office of the Assistant Commissioner as soon as possible.	Governor/ GM/ OIC or authorised officer
2.	<p>If the inmate <u>is</u> assessed as vulnerable:</p> <ul style="list-style-type: none"> • Ensure any outstanding information and evidence (e.g. reports/footage) relating to the incident is provided as soon as possible. Make the evidence available, via evidence.com to staff in the office of the Assistant Commissioner as directed. • Ensure the third party is provided access to a support person and legal representation • When the support person and/or legal representative has been arranged, provide the third party with: <ul style="list-style-type: none"> ○ a copy of the <i>Application for MDT order</i> (sections of the application which can be issued to the inmate – must not include personal information of the worker) ○ the <i>Factsheet: Information for third parties</i> (also available in Arabic, Simplified Chinese, Traditional Chinese and Vietnamese) ○ A copy of the <i>Third party submission to Senior Officer</i> form to complete. A support person or legal representative may choose to write their own submission to the Assistant Commissioner without using the form. • If a submission is completed by the third party (or their representative), scan the form and send it to csnsw-mdt@dcj.nsw.gov.au • Await further communication from csnsw-mdt@dcj.nsw.gov.au • <u>End of procedure table</u> 	Governor/ GM/ OIC or authorised officer
3.	If the inmate is <u>not</u> assessed as vulnerable, inform the inmate that an <i>Application for MTD order</i> has been made, provide them with:	Governor/ GM/ OIC or authorised officer

	Procedure	Responsibility
	<ul style="list-style-type: none"> a copy of the <i>Application for MDT order</i> (sections of the application which can be issued to the inmate – must not include personal information of the worker) the <i>Factsheet: Information for third parties</i> (also available in Arabic, Simplified Chinese, Traditional Chinese and Vietnamese) <p>If the inmate wishes to seek legal representation, they should be directed to contact their own legal representative or dial 11 of the Offender Telephone System (OTS) Common Auto Dial List (CADL).</p>	
4.	<p>Ask the inmate to complete the <i>Consent to voluntarily provide blood sample to be tested and results disclosed to the medical practitioner for the worker</i> form. If not providing consent, the form also asks whether the inmate intends to make a submission to the Assistant Commissioner, and includes a section for the inmate to nominate a medical practitioner to receive and communicate to them their BBV test result. Email a copy of the <i>Consent to voluntarily provide blood sample to be tested and results disclosed to the medical practitioner</i> to csnsw-mdt@dcj.nsw.gov.au immediately when it is received.</p>	Governor/ GM/ OIC or authorised officer
5.	<p>If the inmate provides consent, email the Executive Director Clinical Operations at JH&FMHN with a copy of the <i>Consent to voluntarily provide blood sample to be tested and results disclosed to the medical practitioner</i> form.</p> <p>If JH&FMHN provides the blood borne disease status to the Worker’s medical practitioner, the process is complete.</p> <p>If JH&FMHN advises that current blood-borne disease test results are not available, continue to step 6.</p>	Staff of the Office of the Assistant Commissioner
6.	<p>If the inmate provides consent, arrange for the inmate to be taken to a location where the blood test can be undertaken by JH&FMHN. Force cannot be used by Correctional Officers to assist JH&FMHN to take blood.</p>	Governor/ GM/ OIC or authorised officer
7.	<p>If the inmate does not consent to the taking of blood, and they intend to make a submission to the Assistant Commissioner provide them with the <i>Mandatory disease testing order: Third party submission to Senior Officer</i> form and necessary stationery (if appropriate). Once completed, scan and email it to csnsw-mdt@dcj.nsw.gov.au. If the inmate subsequently declines to make a submission, report this via email.</p>	Governor/ GM/ OIC or authorised officer
8.	<p>Gather any outstanding incident reports, eyewitness reports, video footage, and any other information that may assist in determining the MTO order, upload to Evidence.com, and make it available to the Assistant Commissioner and assessing officers in the Office of the Assistant Commissioner.</p>	Governor/ GM/ OIC or authorised officer

2.2 Administration of applications by Office of the Assistant Commissioner staff

Applications for an MTO will initially be assessed by staff of the AC. Staff are responsible to:

- receive and initially review applications for MTO
- pre-assess vulnerability status and make a recommendation to the Senior Officer
- provide the Governor/GM/OIC with a copy of the application, and direct them to resources they require to ensure timely progression
- provide Governor/GM/OIC with advice on the MTO scheme as required
- ensure the Governor/GM/OIC provides the outcome of the request for consent and evidence including incident reports and footage as soon as practicable
- assess the application and available evidence and provide a package to the Assistant Commissioner with sufficient time for the Assistant Commissioner to review and make a decision within three business days of application where possible
- issue and distribute to relevant parties orders and determinations and maintain communication with the worker about the status of applications and support services.

2.3 Assistant Commissioner determination

Before determining an application, the Assistant Commissioner must be satisfied that the incident occurred:

- in the execution of the worker's duty, and
- as a result of a deliberate action of the inmate, and
- without the consent of the worker.

An MTO can only be made by the Assistant Commissioner if is satisfied that:

- the inmate is not a vulnerable person (as defined in the Act)
- the Governor (or authorised officer) explained the mandatory disease testing scheme to the inmate, using an interpreter if necessary
- the inmate was given a copy of (in their language if applicable):
 - the completed *Application for an MTO*
 - the *Factsheet: Mandatory disease testing*
 - the *Consent to voluntarily provide blood sample to be tested and results disclosed to the medical practitioner for the worker form*
- the inmate refused to give consent to be voluntarily blood tested
- the inmate was given an opportunity to make a submission
- The bodily fluid type meets the definition as defined in the Mandatory Disease Testing Act 2021
- The bodily fluid contact occurred in the execution of the Worker's duty
- The contact with bodily fluid was as a result of a deliberate action by the Third Party
- The worker did not consent to the contact with the bodily fluid of the Third Party

- The worker’s medical practitioner has provided advice that testing the third party’s blood for blood-borne diseases will assist in assessing the risk to the worker of contracting a blood-borne disease
- There is a risk to the Worker on review of the Chief Health Officer Guidelines
- The third party could be located after making reasonable enquiries
- testing the inmate’s blood for BBVs is justified in all circumstances

An application for an MTO must be determined within 3 business days of receiving the application unless a longer period is necessary in the circumstances.

In determining an MTO application, the Assistant Commissioner is to consider legislation, the Chief Health Officer (CHO) guidelines, the application of the worker, any incident or eyewitness reports or video footage, the submission of the inmate (if any) and any other matters considered relevant.

As soon as practicable once a determination is made, the Assistant Commissioner must provide the *Notice of determination of application mandatory testing order* and the *Mandatory testing order* (if applicable) to:

- the CSNSW staff member
- the third party (via the Governor/GM/OIC for inmates in custody, or using the services of the Office of the Sheriff if not in custody)
- the Ombudsman

2.4 Chief Health Officer’s guidelines

The Chief Health Officer (CHO) has developed guidelines to assist:

- senior officers exercising functions under the Act
- relevant medical practitioners who may consult with workers for the purposes of the Act
- persons taking blood from third parties under a mandatory testing order.

The guidelines also contain information about how BBVs are transmitted and how to minimise risk of infection and onward transmission, and information about the prevention, diagnosis and treatment of BBVs.

The CHO guidelines can be found under *Related documents* in the COPP.

2.5 Procedure for MTO order applications

	Procedure	Responsibility
1.	If exposed to an inmate’s body fluids, seek medical advice from a relevant medical practitioner with 24 hours after the contact, or 72 hours if reasonable in the circumstances.	Staff member
2.	If you believe the inmate’s action was deliberate and you want them to be tested for BBV, ask the medical practitioner to supply information in writing about the risk of contracting BBV (see subsection 1.3 above). Ensure you bring the <i>MDT</i>	Staff member

	Procedure	Responsibility
	<p><i>Factsheet: Information for relevant medical practitioner</i> form to the appointment and present it to the medical practitioner.</p> <p>Note: The medical practitioner may be unable to provide the required advice to progress the application without the <i>MDT Factsheet: Information for relevant medical practitioner</i> form.</p>	
3.	Complete the <i>Application for Mandatory Testing Order</i> and email it to the AC via csnsw-mdt@dcj.nsw.gov.au with attachments (see <i>Subsection 1.4 Applying for MTO</i> above)	Staff member
4.	<p>When the application is received, notify the local Governor/GM/OIC. Request Health Problem Notification Forms (HPNFs) from the correctional centre and access available information on the OIMS. Pre-assess whether the third party is vulnerable, and provide to the Assistant Commissioner for decision.</p> <p>Provide advice and resources to the Worker and the Governor/GM/OIC as necessary.</p>	Staff member in the Office of the Assistant Commissioner
5.	Decide, on the basis of information available, whether the third party appears vulnerable or non-vulnerable according to the definition of <i>vulnerable third party</i> in the Dictionary of <i>Mandatory Disease Testing Act 2021</i> .	Assistant Commissioner
6.	Complete the procedure at <i>Subsection 2.1 Procedure for Governor on notification of MTO application</i>	Governor/GM/OIC/Authorised officer
7.	Assess the application, request further evidence if necessary, and provide the package and a recommendation to the AC.	Staff member in the Office of the Assistant Commissioner
8.	Determine the application within 3 business days of receiving the application, where possible. Consider the CHO guidelines, any submissions and all available material.	Assistant Commissioner
9.	<p>Complete the <i>Notice of determination of application for MTO order</i> including the AC's reasons for decision.</p> <p>If a mandatory testing order is made, liaise with the Governor/GM/OIC so that the location of the blood test can be included on the completed order.</p> <p>If the AC has determined that the inmate is a vulnerable person and a Court Order should be applied for, forward the package and decision to DCJ Legal.</p>	Staff member in the Office of the Assistant Commissioner
10.	As soon as possible, issue the <i>Notice of determination of application for mandatory testing order</i> and, if applicable, <i>Mandatory testing order</i> to:	Staff member in the Office of the Assistant Commissioner

	Procedure	Responsibility
	<ul style="list-style-type: none"> the staff member the inmate (which must be personally served by the Governor/GM/OIC or the Sheriff) the Ombudsman. 	
11.	If the MTO is <u>not</u> made, inform the staff member of their right to seek a review of the decision by the Chief Health Officer. Contact the Governor/GM/OIC of the centre/facility to ensure that support services are available to the worker.	Staff member in the Office of the Assistant Commissioner
12.	If the MTO <u>is</u> made, inform the inmate (with an interpreter if necessary) of their right to seek a review of the decision by the Chief Health Officer. Inform the inmate they must still be tested for BBVs under the MTO, but the test results will not be released until the CHO's review is determined.	Governor/GM/OIC
13.	If a court makes an MTO decision for a vulnerable inmate, ensure the inmate is provided access to a support person and legal representation and serve the MTO on the inmate.	ACCC staff and Governor/GM/OIC

2.6 Taking and testing of blood for MTO

If an MTO is made, it will specify a place that the inmate must attend to have a blood sample taken for testing. The inmate is obliged to attend as soon as practicable, but no later than two business days of being served with the order. The inmate must attend regardless of whether they have sought a review of the order by the CHO.

Generally, for inmates in correctional centres, the specified place will generally be the Health Centre staffed by Justice Health and Forensic Mental Health Network (JH&FMHN). If the inmate is in a location without a health centre such as a Police/Court cell, the inmate may be escorted to the nearest centre staffed by JH&FMHN for their blood to be taken.

The inmate subject to an MTO must be accompanied by a custodial officer (but this must not be the officer applying for the MTO) to the Health Centre, and the JH&FMHN practitioner. Staff taking the sample must:

- be presented with a copy of the order relating to the inmate before taking the inmate's blood
- take blood in a manner consistent with relevant medical and professional standards
- be provided with the pre-filled *Pathology request form* (available on the COPP website)

If it is impractical or otherwise not possible for the inmate's blood to be taken at a JH&FMHN Health Centre, the Governor may arrange for a medical escort to take the inmate to the nearest appropriate hospital or medical centre.

For inmates who have been released before the MTO has been made or are released after an MTO has been made but before a blood test can be arranged, NSW Police and Community Corrections (if released to community supervision) must be notified.

	Procedure for taking and testing of inmate's blood under MDT	Responsibility
1.	Accompany the inmate to the Health Centre	Authorised officer
2.	Present JH&FMHN staff with a copy of the MTO	Authorised officer
3.	If the inmate refuses to comply with the requirements of the MTO, report this to the Governor/OIC for further action	Authorised officer

2.7 Use of reasonable force and non-compliant inmates

Reasonable force may be used to take an inmate to the place where blood is to be taken from the inmate under an MTO, or to prevent loss, destruction or contamination of the blood sample. However, force may not be used to restrain the inmate for the purposes of taking the sample.

If an inmate refuses to have a blood sample taken as specified in the MTO, this is a criminal offence punishable by financial penalty and/or a maximum imprisonment for up to twelve months. Non-compliant inmates should be reminded of this. If still non-compliant, staff must follow procedures outlined in COPP section 14.1 *Inmate discipline*, which may include reporting the offence to Police, and locking the inmate in cell pending adjudication. The inmate may also be placed on a segregated custody direction if such segregation is necessary to secure:

- the personal safety of another person(s)
- the security of the correctional centre
- good order and discipline within the correctional centre

3 When the third party is not an inmate held by CSNSW

3.1 Policy

If the third party is;

- a visitor to a correctional centre
- an offender supervised by Community Corrections
- any other person who is not an inmate

the procedures in *Subsection 2 When the third party is an inmate held by CSNSW* above will vary. A staff member wishing to apply for an MTO where the third party is not an inmate should, in the first instance, consult a relevant medical practitioner (see subsection 1.3 *Seeking advice of a relevant medical practitioner with 24 hours*) and then, as soon as practicable, notify the Assistant Commissioner's office csnsw-mdt@dcj.nsw.gov.au of their intention to apply for an MTO. The Office of the Assistant Commissioner will provide guidance according to the circumstances.

4 Application for CHO review

4.1 Application for review by CSNSW staff

A CSNSW staff member may request a review by the CHO if the Assistant Commissioner has decided not to make an MTO. Application for CHO review must be made in writing within one business day of notification of the decision by the Assistant Commissioner to refuse an MTO. CSNSW staff must use the *Application for review by CHO – worker* form when requesting a review. Applications for review by the CHO should be sent to new.mdt.inbox@health.nsw.gov.au cc'ing csnsw-mdt@dcj.nsw.gov.au

4.2 Application for review by inmate

Once notified that an MTO has been made, an inmate may apply to the CHO to review the determination. Application for CHO review must be made in writing within one business day of notification of the decision by the Assistant Commissioner to make an MTO. If an inmate intends to apply for a review, they be provided the form, *Application for review by Chief Health Officer - third party* from a correctional officer. Once completed, the Governor/GM/OIC or authorised officer must ensure the form is emailed to csnsw-mdt@dcj.nsw.gov.au immediately. The Officer of the Assistant Commissioner will forward the form to the NSW Health Mandatory Disease Testing inbox (new.mdt.inbox@health.nsw.gov.au).

While under CHO review, the MTO is still in effect, and the inmate must comply with the order. However, the pathology supplier will be asked not to supply the results of the blood test to the medical practitioners nominated by the CSNSW staff member, or the medical practitioner nominated by the inmate, or the CHO, while the order is under review.

4.3 Content of application for review

All applications must be in writing, use the *Application for review by Chief Health Officer - third party* or *Application for review by Chief Health Officer - worker* and should include:

- a copy of the application for an MTO by the CSNSW staff member
- a copy of the medical advice provided to the CSNSW staff member by the relevant medical practitioner
- the Assistant Commissioner's determination to make or not make an MTO
- inmate's submissions (if any)
- any other material or submission considered relevant

Because the staff member and the inmate may not have access to all of the above documents, when the Staff member of the Office of the AC receives an email to the CHO requesting review, they must supply the CHO with any outstanding documentation or evidence from the list above.

The review to the CHO application package must be sent via email to:

new.mdt.inbox@health.nsw.gov.au cc'ing the csnsw-mdt@dcj.nsw.gov.au.

The CHO must make a determination within three business days of the review application being received. The CHO will notify:

- the worker/CSNSW staff member
- the third party/inmate or their guardian (if vulnerable)
- the Senior Officer
- the Ombudsman

5 Application for an MTO against an inmate for an incident involving a worker of an external agency

5.1 Policy

An inmate may be the third party in an application for an MTO by a staff member in another agency. For example, a third party may, through their deliberate action, cause a police or ambulance officer to come into contact with their bodily fluid, and subsequently enter CSNSW custody. In such circumstances, the Senior Officer of the external agency is obliged to assess, in the first instance, whether the third party is a vulnerable third party.

In order for the external Senior Officer to make the assessment of vulnerability, they may request information held by CSNSW, such as case notes and alerts. Section 257(1) of the *Crimes (Administration of Sentences) Act 1999* ('CAS Act') provides that information obtained by CSNSW must not be disclosed unless the disclosure is made in a number of circumstances. One of those circumstances is with lawful excuse including if authorised by the Commissioner in accordance with an official policy made by the Commissioner. COPP section **13.14 Mandatory Disease Testing** is an official policy under 257(3)(b) of the CAS Act and the Commissioner authorises the Assistant Commissioner Custodial Corrections (ACCC) or General Manager Statewide Operations (GM, SWO) to disclose information relevant to the assessment of vulnerability to the Senior Officer (or their representative) of an external agency to assist them to determine whether, on the information available, the third party is a vulnerable third party under the *Mandatory Disease Testing Act 2021*.

The Senior Officer of an external agency must contact the CSNSW MDT contact person in the Office of the ACCC to assist in the assessment of vulnerability, and staff in the Office of the ACCC may retrieve alerts and case notes relating to the third party. The GM, SWO may then forward the relevant information (under 257(3)(b)) to the external Senior Officer or their representative within their agency.

If the external Senior Officer assesses the inmate as not vulnerable, they may either:

- request access to the inmate at the correctional centre (e.g. in an interview room) to inform them of the application for an MTO, present them with a copy of the application, ask their consent to give blood voluntarily for testing, and if not

- consenting, ask if the inmate wishes to make a submission to the Senior Officer, or
- request CSNSW officers to carry out these procedures (steps 3 and 4 in 2.1 *Procedure for Governor/OIC on notification of MDT order application*) and inform the Senior Officer of the outcomes.

COPP section **13.14 Mandatory Disease Testing** is also an official policy under 257(3)(b) of the CAS Act and the Commissioner authorises the ACCC or GM, SWO to disclose information about whether the third party consented (or otherwise) to voluntarily provide blood, to return any consent form (or other documentation) completed by the third party, to advise whether the inmate will be providing a submission and to provide a copy of the submission to the Senior Officer.

If the inmate does consent to give blood voluntarily, the Governor/GM/OIC must email csnsw-mdt@dcj.nsw.gov.au immediately, who will liaise with the Justice Health and the external agency about whether existing blood test results can be provided to the Worker's Medical Practitioner with consent from the inmate. If existing blood test result are available JH&FMHN will liaise with the Worker's Medical Practitioner for a request of those blood test results, and JH&FMHN will request the inmate's consent for disclosure. If existing blood test results are not available to JH&FMHN, the Office of the Assistant Commissioner, Custodial Corrections will direct the Governor/GM/OIC to arrange for the blood testing on the third party at a JH&FMHN clinic.

If consent is not provided and an MTO is issued by the Senior Officer of the external agency, the Governor/GM/OIC or authorised officer may be asked to serve the order (and determination) on the inmate, and should arrange with JH&FMHN for blood testing to be conducted in a Health Centre as soon as possible. In such cases, subsection 2.6 *Taking and testing of blood for MTO*, subsection 4.2 *Application for review by inmate* and 4.3 *Content of application for review* applies. The ACCC and GM, SWO is also authorised under section 257(3)(b) of the CAS Act to provide any other information in relation to the progression of an MTO application and order, for example information provided to the external agency about whether the inmate was blood tested following the issuing of an order, and the circumstances of any refusal.

If the inmate wishes to apply to the Chief Health Officer for a review of the decision of the Senior Officer of the external agency, this may be facilitated by the Governor/GM/OIC or Authorised officer by providing the inmate with a copy of *Application for review by Chief Health Officer – Third party* and stationery (if appropriate). Completed applications for review should be scanned and emailed by the Governor/GM/OIC or authorised officer to csnsw-mdt@dcj.nsw.gov.au who will forward it to the NSW Health Mandatory Disease Testing inbox (new.mdt.inbox@health.nsw.gov.au).

5.2 Procedures

	Procedure	Responsibility
1.	On request from the office of the Senior Officer of an external agency, with the approval of the GM,SWO, provide relevant information regarding the vulnerability status of the inmate from OIMS.	Staff in the Office of the ACCC

	Procedure	Responsibility
2.	<p>If informed by the Office of the ACCC that the third party has been assessed by the Senior Officer of the external agency as not vulnerable present the third party with a copy of the application, ask their consent to give blood voluntarily for testing, and if not consenting, ask if the inmate wishes to make a submission to the Senior Officer.</p> <p>If the third party would like to make a submission, provide them with a copy of the <i>Mandatory disease testing order: Third party submission to Senior Officer</i> and stationery (if appropriate).</p> <p>Inform the Office of the ACCC of the outcomes and provide documentation completed by the third party.</p>	Governor /GM/ OIC
3.	<p>If the inmate consents to give blood voluntarily provide the <i>Consent and nomination of medical practitioner</i> form to csnsw-mdt@dcj.nsw.gov.au. The Office of the Assistant Commissioner will contact Justice Health and enquiries will be made about whether existing blood test results can be released to the Worker's medical practitioner. If current blood test results are available, JH&FMHN staff may seek the consent of the inmate to release the results. If current blood test results are not available, the Office of the Assistant Commissioner will direct you to arrange for the blood testing of the inmate by JH&FMHN at a health centre. If a blood testing is not available at your correctional centre or location, arrange for transport for the inmate to a location where blood testing is available.</p>	Governor /GM/ OIC
4.	<p>If the inmate does not consent and an MTO order is made by the Senior Officer of the external agency, serve the order (and determination) on the inmate, and arrange with JH&FMHN for blood testing to be conducted in a Health Centre. In such cases, subsection 2.6 <i>Taking and testing of blood for MTO</i> applies. If blood testing is not available at the correctional centre or location, arrange for transport for the inmate to a location where blood testing is available.</p>	Governor /GM/ OIC
5.	<p>If a court makes an MTO decision on a vulnerable inmate ensure the vulnerable person is provided access to a support person and legal representation and serve the MTO on the inmate. Follow procedures subsection 2.6 <i>Taking and testing of blood for MTO</i>. If blood testing is not available at the correctional centre or location, arrange for transport for the inmate to a location where blood testing is available.</p>	Governor /GM/ OIC

6 Quick links

- [Related COPP](#)
- [Forms and annexures](#)
- [Related documents](#)

7 Definitions

BBV	A blood borne virus, corresponding to blood borne disease defined in the Dictionary of the <i>Mandatory Disease Testing Act 2021</i> .
BBV infection	Blood borne virus infection, an established infection with HIV, hepatitis B and/or hepatitis C, corresponding to blood borne disease defined in the Dictionary of the <i>Mandatory Disease Testing Act 2021</i> .
Bodily fluids	Blood, faeces, saliva, semen or other bodily fluid or substance prescribed by the <i>Mandatory Disease Testing Regulation 2022</i> .
CADL	Common Auto Dial List
CHO	Chief Health Officer
GM	General Manager
Governor	Governor includes a MOS in charge of a correctional centre (see Crimes (Administration of Sentences) Act 1999 subsection 233(3) and the definition of Governor at section 3)
HBV	Hepatitis B virus
HCV	Hepatitis C virus
HIV	Human immunodeficiency virus
MTO	Mandatory Testing Order
OIMS	Offender Integrated Management System
OTS	Offender Telephone System
Relevant medical practitioner	A medical practitioner with qualifications or experience in managing BBV infection or, if a medical practitioner with qualifications or experience in managing BBV infection is not available at the time the worker requires a consultation under section 9 of the Act, another medical practitioner as defined in the Dictionary of the <i>Mandatory Disease Testing Act 2021</i> .
Senior officer	In CSNSW, for the purposes of the <i>Mandatory Disease Testing Act 2021</i> , the senior officer is the Commissioner, whose function is delegated to the Assistant Commissioner.
Third party	A person aged 14 and over from whom the bodily fluids originated (see section 8 of the <i>Mandatory Disease Testing Act 2021</i>)

Vulnerable person	<ul style="list-style-type: none"> • is at least 14 years of age but under 18 years of age, or • has a mental health impairment or cognitive impairment within the meaning sections 4 and 5 of the Mental Health and Cognitive Impairment Forensic Provisions Act 2020 that significantly affects the person's capacity to consent to voluntarily provide blood.
Worker	A worker specified in the Table at the end of the Dictionary of the Mandatory Disease Testing Act 2021.

8 Document information

Business centre:	Custodial Operations	
Approver:	Craig Smith	
Date of effect:	6 October 2022	
EDRMS container:	22/16804	
Version	Date	Reason for amendment
1.0	06/10/22	Initial publication