

## Custodial Operations Policy and Procedures

### 14.4 Drug test offences

#### Policy summary

It is a correctional centre offence for an inmate to refuse or fail to comply with a direction to supply a drug test sample, or to fail a prescribed drug test.

An inmate fails a prescribed drug test when, as a result of accredited laboratory analysis, his or her sample tests positive to the presence of prohibited or non-prescribed drugs.

The reporting requirements for drug test offences are different to those for other correctional centre offences.

The *Crimes (Administration of Sentences) Act 1999* provides that a Governor or Visiting Magistrate may impose a penalty of withdrawal of privileges for up to 6 months for a drug test offence.

#### Management of Public Correctional Centres Service Specifications

|                       |   |
|-----------------------|---|
| Service specification | Professionalism and accountability<br>Safety and security |
|-----------------------|---|

## Scope

This policy applies to all Governors, delegated officers and correctional officers dealing with drug test offences in correctional centres except the Compulsory Drug Treatment (CDT) correctional centre.

Local procedures may vary this policy in respect of therapeutic program inmates who fail program drug tests.

For the purposes of this policy, all references to Justice Health & Forensic Mental Health Network (JH&FMHN) includes St Vincent Hospital (where St Vincent Hospital provide medical services at Parklea Correctional Centre).

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# 1 Drug test offences

## 1.1 Offence relating to random and program testing

It is an offence under clause 160(3) of the *Crimes (Administration of Sentences) Regulation 2014* for an inmate to refuse or fail to comply with a direction to supply a drug test sample to a correctional officer, regardless of whether or not drug use is suspected.

This clause is cited when reporting and charging an inmate who has refused or failed to supply a drug test sample as part of a random or program drug test.

## 1.2 Offence relating to target testing

It is an offence under clause 159(3) of the *Crimes (Administration of Sentences) Regulation 2014* for an inmate to refuse or fail to comply with a direction to supply a drug test sample to a correctional officer where the test was authorised for suspected drug use.

This clause is cited when reporting and charging an inmate who has refused or failed to supply a drug test sample pursuant to an authorised target drug test.

## 1.3 Offence for failing a prescribed drug test

It is an offence under clause 153 of the *Crimes (Administration of Sentences) Regulation 2014* for an inmate to fail a prescribed drug test. An inmate fails a prescribed drug test if the inmate's test sample, as a result of accredited laboratory analysis, shows the presence of a drug in the inmate's body or urine.

The detection of a drug during a preliminary test does not constitute a failed prescribed test, unless a subsequent accredited laboratory analysis confirms the presence of a drug in the test sample.

An inmate is not guilty of failing a prescribed drug test if the detected drug was administered to or by the inmate when they were not an inmate, e.g. prior to coming into custody (refer to subsection **2.5 Cannabis concentration levels and window period** of this policy).

An inmate who has tested positive for a drug does not commit an offence under clause 153 if the inmate has been administered the drug by a registered medical practitioner, registered dentist or registered nurse for medical, dental or nursing reasons.

## 2 Reporting drug test offences

### 2.1 Refuse to supply a drug test sample

Where an inmate refuses to comply with the direction to supply a drug test sample, the correctional officer who issued the direction must report the matter to the Drug Testing Coordinator (DTC) using the form *Misconduct report – refuse to supply a urine sample*.

An inmate's refusal to comply with a direction includes a refusal to comply with directions as to how a sample is to be supplied (e.g. the inmate disobeyed a direction to keep his or her hands in sight while passing urine).

The DTC must collate and submit the misconduct package to the Governor or Officer in Charge (OIC) for hearing. The refuse to supply misconduct package consists of the following documents:

- *Urinalysis test and data capture sheet* (annotated);
- *Misconduct Report – refuse to supply a urine sample*;
- *Incident/witness report* (only if earlier reported for suspected drug use).

|    | Procedure  | Responsibility                            |
|----|--|---|
| 1. | Submit a <i>Misconduct report – refuse to supply a urine sample</i> and all relevant documents to the DTC before ceasing duty. | Correctional officer who issued direction |
| 2. | Collate and submit the misconduct package to the Governor or OIC.  | DTC                                       |

### 2.2 Fail to supply a drug test sample

Where an inmate failed to comply with a final direction to supply a drug test sample, the correctional officer who issued the direction must report the matter to the DTC using the form *Misconduct report – fail to supply a urine sample*.

The DTC must collate and submit the misconduct package to the Governor or OIC for hearing. The fail to supply misconduct package consists of the following documents:

- *Urinalysis test and data capture sheet*;
- *Misconduct report – fail to supply a urine sample*;
- *Incident/witness report* (only if earlier reported for suspected drug use).

|    | Procedure  | Responsibility                            |
|----|--|---|
| 1. | Submit a <i>Misconduct report – fail to supply a urine sample</i> and all relevant documents to the DTC before ceasing duty. | Correctional officer who issued direction |
| 2. | Collate and submit the misconduct package to the Governor or OIC.  | DTC                                       |

## 2.3 Fail prescribed drug test

The DTC must report an inmate who has failed a prescribed drug test to the Governor or OIC using the *Misconduct report – positive urine sample* form. There are some exceptions where inmates test positive for cannabis (refer to subsections **2.5 Cannabis concentration levels and window period** & **2.6 Cannabis concentration levels outside window period** of this policy).

The DTC is responsible for collating and submitting the misconduct package for the hearing which consists of the following documents:

- *Urinalysis test and data capture sheet*;
- *FASS Chain of Custody Form – Request for Urinalysis*;
- *FASS Drug Analysis Report/s*;
- *Misconduct report – positive urine sample*;
- *Incident/witness report* (only if earlier reported for suspected drug use); and
- *Analyst's certificate* (only if the charge is referred to a Visiting Magistrate).

An *Analyst's certificate* can be requested through the Urinalysis Unit.

|    | <b>Procedure</b>  | <b>Responsibility</b> |
|----|---|-----------------------|
| 1. | Complete a <i>Misconduct report – positive urine sample</i> .                         | DTC                   |
| 2. | Collate and submit the misconduct package to the Governor or OIC before ceasing duty. | DTC                   |

## 2.4 Inmate transferred before test results received

Where a DTC receives results showing an inmate has failed a prescribed drug test, but the inmate has been transferred to another correctional centre, then the DTC must forward the misconduct package to the DTC at the inmate's current correctional centre.

The DTC at the receiving centre must submit the misconduct package to the Governor or OIC without delay.

|    | <b>Procedure</b>   | <b>Responsibility</b>    |
|----|--|--------------------------|
| 1. | Forward the misconduct package to the DTC at the inmate's current correctional centre. | DTC (originating centre) |
| 2. | Submit the misconduct package to the Governor or OIC without delay.                    | DTC (receiving centre)   |

## 2.5 Cannabis concentration levels and window period

CSNSW provides inmates with a window period of 42 days from their initial reception into CSNSW custody to clear cannabis from their body. An inmate must not be charged for a positive test to cannabis if the sample was taken in the window period.



Where an inmate has tested positive in such circumstances, the inmate will be subject to a subsequent target test outside the window period in order to determine whether or not the cannabis levels are residual from pre-custody use.

If a subsequent target test reveals that an inmate has an unchanged or increased level of cannabis in the body, then the inmate must be charged with failing a prescribed drug test. If the cannabis level has decreased or is equivocal (indeterminate or uncertain), then the inmate must not be charged.

## 2.6 Cannabis concentration levels outside window period

An inmate who has tested positive for cannabis and is retested from a sample taken within 42 days of the first sample, must not be charged unless the second sample shows an unchanged or increased level of cannabis.

# 3 Hearing of charges by Governor or delegated officer

## 3.1 Charging an inmate

The policy and procedures for charging an inmate with a drug test offence are the same as for other correctional centre offences.

The Governor or delegated officer may charge an inmate with failing a prescribed drug test regardless of whether the drug test sample was taken at another correctional centre.

|    | Procedure   | Responsibility                |
|----|---|-------------------------------|
| 1. | Charge the inmate with a correctional centre offence. | Governor or delegated officer |

## 3.2 Referral to Visiting Magistrate

The policy and procedures for the referral process and arranging for Visiting Magistrate hearings are at **COPP section 14.2 Visiting magistrate hearings**.

In addition to the required documents, an *Analyst's certificate* must be obtained through the Urinalysis Unit and submitted with the misconduct package where a charge of failing a prescribed drug test is referred.

|    | Procedure  | Responsibility                |
|----|--|-------------------------------|
| 1. | Ensure an <i>Analyst's Certificate</i> is included in the misconduct package for a referred charge of fail prescribed drug test. | Governor or delegated officer |

### 3.3 Conducting inquiries

The policy and procedures for conducting inquiries into drug test offences are the same as for other correctional centre offences. The only exception is where an inmate pleads not guilty to failing a prescribed drug test and claims that a detected drug was prescribed or administered lawfully.

If an inmate pleads not guilty, but gave consent to Justice Health & Forensic Mental Health Network (JH&FMHN) disclosing his or her medical records for drug testing, then written confirmation must be obtained from JH&FMHN that their advice as provided on the *FASS Chain of Custody Form – Request for Urinalysis* form was correct and that the inmate was not prescribed or administered the drug.

If the inmate pleads not guilty, but did not consent to JH&FMHN disclosing his or her medical records for drug testing purposes, then the inmate must establish that the drug was prescribed or administered lawfully.

|    | Procedure  | Responsibility                |
|----|--|-------------------------------|
| 1. | Conduct inquiry into drug test offence.  | Governor or delegated officer |
| 2. | Obtain written confirmation from JH&FMHN concerning prescribed medications if inmate pleads not guilty to fail prescribed drug test and claims drugs were prescribed or administered by JH&FMHN.           | Governor or delegated officer |
| 3. | Where an inmate pleads not guilty, but did not consent to JH&FMHN disclosing his or her medical records, request the inmate produce/submit evidence that the drug was prescribed or administered lawfully. | Governor or delegated officer |

### 3.4 Penalty for drug testing offences

Section 57 of the *Crimes (Administration of Sentences) Act 1999* provides that a Governor or Visiting Magistrate may impose a penalty of withdrawal of privileges for up to 6 months for a drug test offence.

The following penalties must be imposed for drug test offences unless exceptional circumstances exist which justifies a lesser or greater penalty.

For a drug test offence, a maximum period of up to **56 days** may be imposed for the withdrawal of telephone privileges.

|                              |                                     |
|------------------------------|-------------------------------------|
| First offence                | 42 days withdrawal of privilege/s.  |
| Second offence               | 84 days withdrawal of privilege/s.  |
| Third offence                | 126 days withdrawal of privilege/s. |
| Fourth or subsequent offence | 168 days withdrawal of privilege/s. |



|    | Procedure   | Responsibility                |
|----|---|-------------------------------|
| 1. | Impose the applicable penalty unless exceptional circumstances exist which justify a lesser or greater penalty. | Governor or delegated officer |

The policy and procedures for imposing penalties are the same as for other correctional centre offences.

### 3.5 Recording of offences and penalties

The policy and procedures for recording offences and penalties for refusing or failing to supply drug test samples are the same as for other correctional centre offences.

The procedures for recording offences and penalties for failing a prescribed drug test are as follows:

|    | Procedure   | Responsibility                |
|----|---|-------------------------------|
| 1. | Forward the completed <i>Inmate discipline action form</i> and misconduct package to the to the DTC for upload to OIMS.   | Governor or delegated officer |
| 2. | Record the offence and penalty details in the OIMS <i>Offences in Custody</i> module. Take note of the incident log number which will be required for entering the charge details in the OIMS <i>Urinalysis</i> module. | DTC                           |
| 3. | Record the charge details in the OIMS <i>Urinalysis</i> module.   | DTC                           |
| 4. | Ensure <i>Inmate discipline action form</i> and misconduct package is placed in the inmate's case management file.  | DTC                           |

## 4 Quick links

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

## 5 Definitions

|                     |  |
|---------------------|--|
| Authorised officer  | In relation to a function of the Governor of a correctional centre, means the Governor or a correctional officer authorised by the Governor to exercise the function.<br>(See definition of 'authorised officer', clause 3 of the <i>Crimes (Administration of Sentences) Regulation 2014</i> .) |
| CDT                 | Compulsory Drug Treatment  |
| COPP                | Custodial Operations Policy and Procedures   |
| CSNSW               | Corrective Services NSW  |
| Correctional centre | Any premises declared to be a correctional centre by a proclamation in force under the <i>Crimes (Administration of Sentences) Act 1999</i>  |

|   |  |
|---|--|
|   | and any police station or court cell complex in which an offender is held in custody under that Act or any other Act.  |
| Delegated officer                           | Any officer who occupies or acts in the following positions which the Governor has delegated certain Governor's functions to deal with correctional centre offences: <ul style="list-style-type: none"> <li>• Manager of Security</li> <li>• Functional Manager.</li> </ul>  |
| Directing officer                           | The correctional officer who verbally directs an inmate to provide a drug test sample.   |
| Drug test offence                           | An offence against clauses 153, 159(3) or 160(3) of the <i>Crimes (Administration of Sentences) Regulation 2014</i> .  |
| Drug test sample                            | A sample of the person's breath, urine or oral fluid.<br>(See definition of 'drug test sample', clause 3 of the <i>Crimes (Administration of Sentences) Regulation 2014</i> .)   |
| JH&FMHN                                     | Justice Health & Forensic Mental Health Network  |
| OIC   | Officer in Charge  |
| OIMS  | Offender Integrated Management System  |
| Prescribed drug test                        | A drug test carried out in accordance with directions given by the Governor of a correctional centre or a correctional officer holding office or acting in a rank that is of or above the rank of Chief Correctional Officer.<br>(See clause 153 of the <i>Crimes (Administration of Sentences) Regulation 2014</i> .) |
| Program drug test                           | A mandatory drug test of inmates who are undertaking pre-release, external leave, and certain therapeutic programs.  |
| Random drug test                            | A drug test ordered pursuant to a random list of inmates to be drug tested at a correctional centre.   |
| Target drug test                            | A drug test ordered due to suspicion that an inmate is under the influence of drugs or has used drugs.   |
| Urinalysis Administration Coordinator (UAC) | The Urinalysis Unit officer responsible for coordinating CSNSW inmate drug testing state-wide.   |
| DTC   | Drug Testing Coordinator. The correctional officer responsible for coordinating drug testing at the correctional centre. Includes the transitional centre officer responsible for that function at a transitional centre.  |
| Urinalysis Unit                             | The unit responsible for coordinating CSNSW inmate drug testing.   |

## 6 Document information

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|-------------------------|----------------------|
| <b>Business centre:</b> | Custodial Operations |
| <b>Approver:</b>        | Kevin Corcoran       |
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| <b>Version</b> | <b>Date</b> | <b>Reason for amendment</b>   |
|----------------|-------------|---|
| 1.0            |             | Initial publication ( <i>Replaces sections 16 and 19 of the superseded Operations Procedures Manual</i> ).  |
| 1.1            | 30/04/19    | Update to responsibilities table under subsection 3.5 to clarify responsibilities between Urinalysis Coordinator and Governor or Delegated Officer.     |
| 1.2            | 11/09/19    | Minor update  |
| 1.3            | 12/03/20    | General formatting update and improvements  |
| 1.4            | 17/01/22    | Insertion at subsection 3.4 <i>Penalty for drug testing offences</i> which makes 56 days the maximum period for the withdrawal of telephone privileges. |

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