

Mandatory Disease Testing Act 2021

Information for workers

Under the *Mandatory Disease Testing Act 2021*, frontline workers who have come into contact with another person's bodily fluid (blood, faeces, saliva, semen) can apply for a Mandatory Testing Order (MTO) if there's a risk they can contract a bloodborne virus (BBV).

A MTO requires the other person involved in the contact (the third party) to get a blood test for HIV, Hepatitis B and Hepatitis C.

Consult a doctor

Before you can apply for a MTO, you must speak to a doctor about the contact as soon as possible after the incident. This should be **within 24 hours, and no later than 72 hours**. If you do not consult a doctor within this time, you cannot apply for a MTO.

Your employer might refer you to a doctor with expertise in BBVs. If no such doctor is available, you can consult another doctor, such as your general practitioner.

The doctor should advise you of:

- the risk of transmission arising from the incident
- steps you should take to reduce the risk of contracting a BBV or transmitting a BBV to another person
- whether testing the third party could help assess the risk.

If possible, you should get written advice from the doctor.

When can I apply for an order?

You can only apply to the dedicated senior officer in your organisation for a MTO if:

1. you have come into contact with the bodily fluid (blood, faeces, saliva, semen) of a third party
2. the third party is at least 14 years old
3. the contact occurred:
 - while you were on duty
 - due to a deliberate action of the third party
 - without your consent.

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What are the risks of BBV transmission?

There is some risk of transmission where the exposure involved sexual contact, an injury involving a contaminated syringe or other sharp implement, or where blood (including where blood is visible in other bodily fluids) has come into contact with broken skin, your eyes, or mouth.

In other cases, such as where there is no contact with your eyes, mouth, or broken skin, or where the bodily fluid did not contain any visible blood, there is no risk of transmission. For more information on the risks of BBV transmission, refer to the [Chief Health Officer guidelines](#).

If you apply for a MTO, the person considering your application will need to be satisfied that testing the third party's blood is justified. It is less likely that a MTO will be made where the nature of the contact does not give rise to any risk of transmission.

How do I apply?

An application must be made within 5 business days of the contact. To apply, you'll need to complete a MTO application form and send it to a senior officer within your organisation. Your organisation may have an agency specific form. If not, a generic form is available to download on the [Department of Communities and Justice website](#).

Your application form must be completed in full to be considered. You should include any written advice from your doctor.

Your application must include the name and address of the third party, if known. This is important information, as the senior officer is required to personally serve a copy of a MTO on the third party once it is made. A senior officer may refuse an application for a MTO if, after making reasonable inquiries, the senior officer cannot locate the third party to whom the application relates.

If you have any questions about completing an application, please speak with the relevant business unit within your agency.

Knowingly providing false information in a MTO application is an offence punishable by up to 12 months imprisonment.

What happens after I submit my application?

Your application will usually be decided by the senior officer within three business days. If the third party appears to be a vulnerable third party, the senior officer must apply to the Local Court or Children's Court for a decision. In this case, it may take longer to decide your application.

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A third party may be considered vulnerable if:

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

In most cases, the senior officer will first contact the third party to request a voluntary blood sample. If the third party agrees, a MTO will be unnecessary. The senior officer will also offer the third party an opportunity to make a submission, which they must consider before deciding your application.

The senior officer must consider the [Chief Health Officer guidelines](#) when they review your application. Once the senior officer makes a decision, they must inform you and provide the reasons for the decision.

If a MTO is made and the third party complies with the order, their blood test results will be sent directly to the doctor you nominated in your application.

What if my application is refused?

If a senior officer refuses your application for a MTO, you can apply to the Chief Health Officer of the Ministry of Health (CHO) to review their decision.

You must make an application in writing **within 1 business day** of being notified of the senior officer's decision. Your application must include a copy of your own application, the senior officer's decision and reasons for their decision.

The CHO may contact you to request more information as part of the review. You can send your review application by email to NSWH-MDT@health.nsw.gov.au

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