



## Functional Governance

### Better Practice Guide on Fixed-Site Drug Checking Service at 1 Moore Street Canberra (ACT)

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#### Disclosure and classification

This document is **OFFICIAL** and is intended for internal AFP use. Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on information management](#).

#### Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on professional standards \(CO2\)](#) outlines the conduct expected of AFP appointees. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

This document is a functional governance instrument as defined in the [AFP Commissioner's Order on governance \(CO1\)](#).

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## Introduction

The AFP provides police services to the ACT in accordance with s 8(1) of the *Australian Federal Police Act 1979* (Cth) (AFP Act). AFP members are empowered to enforce both the Australian Capital Territory (ACT) and Commonwealth laws as they may apply in the ACT. The purpose of this document is to provide members exercising duties in the ACT with operational guidance and considerations for decisions made in relation to persons who may attend the fixed-site drug checking service to be based in the Canberra Civic Centre (1 Moore Street), ACT.

Drug checking, also known as pill testing, is a harm reduction service. Individuals provide a sample of a drug they intend to take for analysis by chemical analysts, and the results are discussed with trained counsellors, alcohol and other drug workers or peer drug educators. As substances in the form of pills, capsules, powders, crystals and liquids can be tested, the term 'pill testing' was revised to drug checking.

This Better Practice Guide applies to the pilot of the fixed site drug checking service which is expected to commence on 21 July 2022 and is due to run for a minimum of six months. This BPG will only operate for the duration of the pilot, unless extended or amended to apply otherwise.

On 20 August 2020, the ACT Legislative Assembly passed a motion on a range of harm reduction measures which included the exploration of a fixed-site drug checking service pilot. The exploration of a fixed-site drug checking service includes consultation with the ACT Health Directorate, ACT Policing, ACT Ambulance Service, and the Justice and Community Safety Directorate.

The ACT Government's approach to illicit substances is harm minimisation, as outlined in the *ACT Drug Strategy Action Plan 2018-2021*, which aligns with the framework provided by the *National Drug Strategy 2017-2026*. The next ACT Drug Strategy Action Plan from 2022 onwards is currently in development. ACT Policing supports harm minimisation and health protection initiatives such as drug checking services and has been actively engaged with the ACT Government and other stakeholders on this issue.

At present, no other Australian jurisdictions have a fixed or event-based drug checking service in place, however it should be noted that some jurisdictions have fixed safe injecting sites.

As a harm reduction measure, drug checking at a fixed-site drug checking service facility would allow for an individual in possession of a suspected illicit substance to provide a sample of the drug they intend to consume for further analysis by chemical analysts, followed by a discussion of the results with trained counsellors, alcohol, and other drug workers or peer drug educators. The incorporation of a fixed-site drug checking service would provide further harm minimisation efforts around demand reduction, supply reduction, and harm reduction.

## Legal Situation

The ACT Government understands that AFP members continue to have the independent office of Constable, meaning that members retain a discretion that should they have reasonable suspicion of any offence being committed, they should consider taking enforcement action. As the fixed-site drug checking service pilot is being held at a site where other health services are provided, AFP members may not directly form a reasonable suspicion a person is in possession of controlled drugs solely on the basis of their presence at the testing site. However all powers for police relating to offences of illicit drug possession, supply and trafficking remain the same.

The potential criminal offences impacting on the pilot for users of the service, the service provider and ACT Policing include:

- Possession offences under s 169 and s 171 of the *Drugs of Dependence Act 1989* (ACT) (DODA);

- Sale or supply offences under s 164 (2) and s 164 (3) of the DODA;
- Possession and supply offences under Chapter 4 of the *Medicines, Poisons and Therapeutic Goods Act 2008* (MPTGA); and,
- Possession and supply offences detailed under Part 9.1 and 9.2 of the *Criminal Code Act 1995* (Cth).

Currently there are the proposed amendments under the *Drugs of Dependence (Personal Use) Amendment Bill 2021* which proposes to decriminalise possession of certain amounts of illicit substances in the ACT. This is currently going through the ACT Legislative Assembly at the time of writing and has not been passed. Despite this, the possession of certain prescribed amounts of illicit substances remains an offence under the *Criminal Code 1995* (Cth).<sup>1</sup>

Any changes to the ACT legislation may trigger Commonwealth defence provisions on the basis that the conduct otherwise constituting the offence is “justified or excused by a law of a State or Territory”<sup>2</sup> depending on what changes are made and passed through the ACT Legislative Assembly. However, the availability of the Commonwealth defence will be a matter for judicial interpretation.

AFP members have a discretion whether to exercise their duties to prevent crime. ACT and Commonwealth laws are applicable and discretion is available in relation to investigations and charges. Without seeking to impede the discretion of any member relating to the exercise of their powers, consideration should be given to applying the ACT criminal law in the first instance when undertaking policing duties in the ACT. However, ACT Policing members should also be mindful of the Commonwealth law and apply it where appropriate, particularly where a relevant ACT law does not apply to the circumstances or is not appropriate in the circumstances. Discretion in relation to the execution of police powers is bestowed on the individual AFP members. Consequently, ACT Policing cannot collectively be obliged to exercise discretion, for instance, whether or not to act upon witnessing or becoming aware of an offence.

## Design of the Pilot to Obfuscate Access to the Drug Checking Service

The pilot is designed so the fixed-site drug checking service will be linked to other Health Services at 1 Moore Street Canberra ACT. Additional information provided by ACT Health including an overview of the fixed-site pilot, service provider, service operation, additional off-site testing and disposal, and drug alerts is included at [Attachment A](#).

Other health services will be operating on the premises where the drug checking service is located, during the same opening times, and access to the specific drug checking service will be discreet and not in view of the public. Accordingly AFP members may not directly form a reasonable suspicion a person is in possession of controlled drugs solely on the basis of their presence at the testing site. Other services intended for the premises include general health, sexual health and mental health services, however the health services offered at the premises may vary and grow over time.

This approach is consistent with that taken at previous festival-based drug checking sites in the ACT. In a practical sense, there may be instances where AFP members would be highly likely to form a reasonable suspicion that the person possesses an illicit substance for the purpose of supply, thereby creating a responsibility to act. This

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<sup>1</sup> *Criminal Code 1995* (Cth), s 308.1.

<sup>2</sup> *Criminal Code 1995* (Cth), s 313.1.

may include individuals frequenting the location to supply illicit substances. In these situations, it may be appropriate to target the facility to take action against those offenders supplying drugs rather than using the facility to test illicit substances.

## Policy

ACT Policing supports the ACT Government's focus to reduce the levels of harm within the community. The establishment of this better practice guide will contribute to reduce the risks of service users interacting negatively with police, and that officers will not be prevented from undertaking specific duties, particularly the detection, disruption and prosecution of sale and supply offences.

When appropriate and within existing guidelines, AFP members should continue to support the intent of harm minimisation policy through the diversion of illicit drug users away from the criminal justice system. These guidelines include the Standard Operating Procedure on Alcohol and Other Drug Diversion Program referral procedure.

## Additional Guidance

### Individuals under 18

Although there is currently a future plan to raise the minimum age of criminal responsibility in the ACT, at the time of writing, this does not have an impact on the establishment of the fixed-site drug checking service. Currently juveniles are not excluded from associated potential criminal liability associated with the fixed-site drug checking service. AFP members should consider appropriate options (generally SCOs or drug diversion).

### Interstate residents in the ACT

The fixed-site drug checking service does not require the individual to be a resident of the ACT. Therefore, the same rules – that criminal liability is not excluded – applies to all users of the facility, regardless of whether or not they are an ACT resident.

### Interaction with s 188 of the DODA (emergency search)

The establishment of the fixed-site drug checking service does not inhibit the operation of an emergency stop/search under section 188 of the *Drugs of Dependence Act 1989* (ACT) if the member believes on reasonable grounds that the search is necessary to prevent the concealment, loss or destruction of evidence connected with an offence and the circumstances are serious and urgent. Noting the establishment of a fixed-site drug checking service does not remove the offence provision, an emergency search may still be considered irrespective of the quantity or type of illicit substance it may be suspected a person may have in their possession. However please note that section 188 requires the circumstances to be of such seriousness and urgency to require the immediate exercise of the power. The nature and quantity of any drugs may play a role in that consideration.

However, given the intent behind the ACT Government's initiative, members should consider whether or not exercising such a power in respect to the fixed-site drug checking service is in the public interest having considered all the circumstances including, but not limited to, the quantity of a controlled drug an individual is suspected to be in possession of, and apparent associated broader community harms.

### Recording in PROMIS, Mobile Responder and CAD

When an AFP member is called to respond or patrol the fixed-site drug checking service, new common place names have been created for 1 Moore Street, to enable members to record these interactions in PROMIS, Mobile Responder and CAD. Any of the following common place names can be used for any incident relating to the fixed-site drug checking pilot:

- DRUG CHECKING PILOT
- ACT HEALTH DRUG CHECKING PILOT
- FIXED DRUG CHECKING PILOT SITE
- HEALTH DRUG CHECKING PILOT
- PILL TESTING PILOT
- PILL TESTING PILOT ACT HEALTH

This will also enable any statistics about ACT Policing's interaction with the fixed-site to be easily extracted, which will support any reporting requirements associated with the pilot.

Instructions on how to create an event and how to create a field event are at [Attachment B](#) and [Attachment C](#) respectively.

### Further Advice

A Memorandum of Understanding between AFP (ACT Policing) and the ACT Health Directorate regarding the Fixed Site Drug Checking Pilot is under development and will be available on the Hub once finalised. This will provide further detail around the roles and responsibilities of each party in relation to this pilot.

Queries about the content of this document should be referred to the Legislation and Policy Team within the Legislation & Governance portfolio – ACT Policing ( s 47E(d) [@afp.gov.au](mailto:actpol@afp.gov.au)).

### Attachments

[Attachment A: Information on fixed-site drug checking pilot for ACT Policing](#)

[Attachment B: Instructions on how to create an event for ACT Health Fixed-Site Drug Checking Pilot](#)

[Attachment C: Instructions on how to create a field event for ACT Health Fixed-Site Drug Checking Pilot](#)

## ATTACHMENT A

### INFORMATION ON FIXED-SITE DRUG CHECKING SERVICE PILOT FOR ACT POLICING | 24 MAY 2022, UPDATED 7 JULY 2022

#### Fixed-site Drug Checking Service Overview

Drug checking, also known as pill testing, is a harm reduction service. Individuals provide a sample of a drug they intend to take for analysis by chemical analysts, and the results are discussed with trained counsellors, alcohol and other drug workers or peer drug educators.

The fixed-site drug checking service operates under a health model, ensuring that individuals having drugs tested are also receiving accurate and current health advice from health professionals and peer educators. Health advice will outline the dangers associated with drug use and advice on what steps to take to prevent harm or respond to any adverse reaction/s an individual or their friends experience after taking a drug. The information provided is intended to encourage choices that reduce overall drug use and the harms associated with taking drugs.

A nurse is available on site during opening hours to provide general health, sexual health and mental health advice to individuals attending the facility regardless of whether they require drugs tested. A qualified medical practitioner will be on call to provide medical assistance and advice as needed.

#### Service Operation

The fixed-site drug checking service, 'CAN TEST Health and Drug Checking Service', will run for a minimum of a 6-month pilot period beginning in mid-July 2022. The service is located on the ground floor in the City Community Health Centre at 1 Moore Street, Civic.

The service is accessible every Thursday from 10am-1pm and every Friday from 6pm-9pm. These hours may be subject to change over the course of the pilot to respond to service need.

The 'CAN TEST Health and Drug Checking Service' pilot provides:

- chemical analysis of pills/drugs;
- tailored information, harm reduction advice and counselling based on the test results and any other issues raised, provided by qualified alcohol and other drug workers, and peer workers and nurses; and,
- drop-in nurse consultations offering general health, sexual health and mental health advice to service clients regardless of whether clients are having drugs tested.

The service is free and confidential. The service is available to people of all ages.

Substances in the form of pills, capsules, powders, crystals and liquids can be tested.

Individuals may access the service solely to consult with the nurse or other staff on health issues and may not be in possession of illicit substances.

Testing can be performed with as little as a few milligrams of a substance. The service will not test quantities of drugs that are intended for supply to other persons.

### **Service Provider**

The fixed-site drug checking service pilot is operated by Directions Health Services with the technical assistance of Pill Testing Australia. Directions Health Services delivers a range of alcohol and other drug treatment and support services in the ACT, including the Needle and Syringe Program.

Service staff who are required to handle illicit substances are appropriately licenced under the *Medicines, Poisons and Therapeutic Goods Act 2007* (MPTGA) to do so legally.

The pilot is funded by the ACT Government through the ACT Health Directorate. ACT Health is providing the site for the service.

The pilot will be independently evaluated and the results will be used to inform any future fixed-site drug checking service.

### **Additional Off-site Testing and Disposal**

Residues of all samples tested will be retained for follow-up quality assurance testing at the ACT Government Analytical Laboratory (ACTGAL). Samples will be stored securely in a drug safe only accessible to licenced staff and be collected by ACTGAL staff on a weekly basis.

Individuals accessing the service can surrender a drug at the drug checking site for further analysis and/or safe disposal. Surrendered drugs will be stored securely in a drug safe only accessible to licenced staff for off-site disposal by ACTGAL.

Some samples will be transported to the Australian National University for follow-up testing with different equipment. Samples will be handled in accordance with the MPTGA by staff licensed under the MPTGA.

### **Drug Alerts**

If a particularly high-risk substance is identified, the drug checking service will notify ACT Health. ACT Health will conduct a risk assessment and may notify first responders, including ACT Ambulance Service, emergency departments and ACT Policing. Depending on the level of risk determined, the alcohol and other drug sector or relevant health sector stakeholders may be notified and if recommended, a public drug alert will be distributed across ACT Health social media channels and published on the ACT Health website. ACT Policing will be notified if a public drug alert is issued.



Pages 9 through 18 redacted for the following reasons:

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