

Reprint
as at 26 November 2018



Social Security (Work Test Obligations—Drug Testing Obligations) Regulations 2013 (SR 2013/253)

Social Security (Work Test Obligations—Drug Testing Obligations) Regulations 2013: revoked, on 26 November 2018, by regulation 295(23) of the Social Security Regulations 2018 (LI 2018/202).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 10th day of June 2013

Present:

His Excellency the Governor-General in Council

Pursuant to section 132 (read in the light of sections 88A, 102C(3) and (4), and 116C(2)(e)) of the Social Security Act 1964, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Social Development.

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Regulations

1 Title

These regulations are the Social Security (Work Test Obligations—Drug Testing Obligations) Regulations 2013.

2 Commencement

These regulations come into force on 15 July 2013.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Social Security Act 1964

AS/NZS 4308:2008 means the Australian/New Zealand Standard AS/NZS 4308:2008—Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine

sample includes a sample that is or is referred to as a specimen

suitably qualified,—

- (a) for a person and a screening drug test, means that the person is qualified to provide that test because the person complies with (and is therefore a collector under) clause 1.3.14 of AS/NZS 4308:2008; and
- (b) for a person and recognised services for drug issue assessment and assistance (as defined in regulation 7(3)), means a health practitioner, or other person, who the chief executive is satisfied on reasonable grounds is suitably qualified to provide those services

testing, of a sample, includes collection, storage, handling, and dispatch of the sample.

- (2) In these regulations, unless the context otherwise requires,—

- (a) terms used and not defined, but defined in AS/NZS 4308:2008, have the meanings given to them by AS/NZS 4308:2008; and
- (b) terms used and not defined, but defined in the Act, have the meanings given to them by the Act.

4 Evidential drug test: standard prescribed

- (1) This regulation prescribes a standard—

- (a) for the purposes of the definition (in section 88A of the Act) of evidential drug test; and
 - (b) as contemplated by paragraph (c) of that definition.
- (2) The standard that this regulation prescribes for those purposes is the following provisions of AS/NZS 4308:2008 (if, or insofar as, the following provisions apply to evidentiary testing):
- (a) section 1:
 - (b) section 2:
 - (c) section 3:
 - (d) section 5:
 - (e) Appendices B to E.
- (3) **Evidentiary testing**, of a sample, means testing of the sample—
- (a) for evidential purposes (but not for screening purposes); and
 - (b) that involves use of laboratory confirmatory procedures for the unequivocal identification and quantitation of controlled drugs.

5 Screening drug test: standard prescribed

- (1) This regulation prescribes a standard—
- (a) for the purposes of the definition (in section 88A of the Act) of screening drug test; and
 - (b) as contemplated by paragraph (c)(iii) of that definition.
- (2) The standard that this regulation prescribes for those purposes is the following provisions of AS/NZS 4308:2008 (if, or insofar as, the following provisions apply to screening testing, and subject to the modification in subclause (4)):
- (a) section 1:
 - (b) section 2:
 - (c) section 3:
 - (d) section 4 (except the requirement in clause 4.10 that samples with results equal to, or greater than, the cut-off in Table 1, shall be subjected to confirmatory testing):
 - (e) Appendix A (if the screening testing is carried out not by way of laboratory screening, but on-site):
 - (f) Appendices B to E.
- (3) **Screening testing**, of a sample, means testing of the sample—
- (a) for screening purposes (and evidential purposes); and
 - (b) that involves use of a procedure for on-site or laboratory screening for controlled drugs; and

- (c) that does not involve laboratory confirmatory procedures for the unequivocal identification and quantitation of controlled drugs.
- (4) The modification referred to in subclause (2) is that the requirements in clauses 2.4 and 2.5, and in Appendix A, clause A3.2, paragraph (i), for dispatch of the sample to the laboratory do not apply if, after receiving from the potential employer or training provider advice that complies with subclause (5) on the effect of a waiver of those requirements, the beneficiary waives (in any manner) those requirements.
- (5) Advice from the potential employer or training provider on the effect of a waiver of those requirements must communicate that a waiver of those requirements—
 - (a) results in the sample not being available for evidentiary testing (as defined in regulation 4(3)) for any purposes (for example, for the purposes of the beneficiary's disputing under section 102D of the Act a sanction to be imposed under section 117 of the Act); and
 - (b) is therefore also a waiver of evidentiary testing (as so defined) for all purposes of the sample; and
 - (c) results (in the absence of a good and sufficient reason described in section 116C(2) of the Act) in a sanction under section 117 of the Act being able to be imposed on the beneficiary based solely on the beneficiary's having failed a screening drug test.
- (6) Nothing in this regulation limits or affects the right under section 102B(4)(b) of the Act of a candidate for employment or training to waive (in any manner) an evidential drug test requested by a potential employer or a training provider.
- (7) Nothing in this regulation limits or affects the right of a beneficiary to whom section 102D of the Act applies to dispute under that section a sanction to be imposed on the beneficiary (his or her benefit being reduced, suspended, or cancelled), under section 117 of the Act, based on the beneficiary's having failed a screening drug test, by having the sample taken from the beneficiary for the screening drug test (if the beneficiary has not waived the requirement for dispatch of that sample to the laboratory) subjected to an evidential drug test.

6 Maximum reimbursement amounts prescribed

- (1) This regulation prescribes for the purposes of section 102C(3) of the Act maximum amounts that the chief executive may reimburse an employer for the actual and reasonable costs of a screening drug test, an evidential drug test, or both that the employer has (in accordance with section 102B(1) to (3) of the Act) requested in respect of a work-tested beneficiary.
- (2) The maximum reimbursement amounts that this regulation prescribes are set out in the Schedule.

7 Good and sufficient reason for specified failures to comply: ground specified

- (1) This regulation prescribes for the purposes of section 116C(2)(e) of the Act a ground on which a beneficiary may for the purposes of section 116B of the Act have a good and sufficient reason for (as the case may be) either or both of the following specified failures:
- (a) not complying with a drug testing obligation under section 102B(1) of the Act;
 - (b) failing to apply for suitable employment that requires candidates to undertake drug tests.
- (2) The ground prescribed by this regulation is that—
- (a) the person has completed a screening process that has identified the person (based on information the person provided) as—
 - (i) a user of (even if not dependent on, or addicted to) 1 or more controlled drugs; and
 - (ii) a person who does or may require support in addressing the person's use (including, without limitation, the causes of the person's use) of 1 or more controlled drugs; and
 - (b) the person has (in any manner) agreed to receive services for drug issue assessment and assistance for a period that—
 - (i) is reasonable for that purpose; and
 - (ii) has been recommended by a suitably qualified provider of services of that kind; and
 - (c) the period referred to in paragraph (b) has not expired.
- (3) **Recognised services for drug issue assessment and assistance** means services—
- (a) to (as the case requires) assess any needs of the recipient for support in addressing the recipient's use (including, without limitation, the causes of the recipient's use) of 1 or more controlled drugs, give the recipient support of that kind, or both; and
 - (b) that will be, or have been, provided by a suitably qualified provider of services of that kind.

Schedule

Maximum reimbursement amounts

Item	Drug test	Amount (\$)
1	Screening drug test— <ul style="list-style-type: none">(a) provided by a suitably qualified employee of the employer	30

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	(b) provided by a suitably qualified person other than an employee of the employer	70
2	Evidential drug test	120

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 15 July 2013, are made under the Social Security Act 1964 (the **Act**). They relate to a beneficiary's drug testing obligations under section 102B(1) of the Act. Those drug testing obligations are included in, and form part of, each of the following work test obligations of the beneficiary (under the following sections of the Act):

- to be available for, and take reasonable steps to obtain, suitable employment (section 102A(1)(a));
- to attend and participate in an interview for any opportunity of suitable employment to which the beneficiary is referred by the chief executive (section 102A(1)(c));
- when required by the chief executive, to participate in or, as the case requires, undertake any of the following activities that the chief executive considers suitable for the beneficiary to improve the beneficiary's work-readiness or prospects for employment (section 102A(1)(f)(ii) and (iv) respectively):
 - any programme or seminar specified by the chief executive to increase particular skills or enhance motivation;
 - employment-related training specified by the chief executive.

These regulations—

- prescribe a standard for evidential drug tests; and
- prescribe a standard for screening drug tests; and
- prescribe maximum reimbursement amounts for a screening drug test, an evidential drug test, or both, requested by the employer; and
- specify a ground on which the chief executive may be satisfied that a beneficiary has a good and sufficient reason for not complying with a drug testing obligation, for failing to apply for suitable employment that requires candidates to undertake drug tests, or for both.

The standards are prescribed in the manner contemplated by section 22 of the Standards Act 1988. That section authorises regulations referring to or incorporating in whole or in part, and with or without modification, any New Zealand standard relating to goods, services, processes, or practices. The standard prescribed for screening

drug tests, for example, includes a modification for cases in which the beneficiary, after having been advised of the consequences of doing so, waives dispatch of the sample to the laboratory. The standards prescribed also identify, as contemplated by the definitions in section 88A of the Act of the terms fail and pass, the minimum levels of 1 or more controlled drugs the presence of which in a person's body, if indicated or detected for evidential purposes by a screening drug test or an evidential drug test, results in the person's failing (or not passing) that drug test. These levels are the cut-offs specified (for a screening drug test) in Table 1 in clause 4.10, and (for an evidential drug test) in Table 2 in clause 5.14, of the Australian/New Zealand Standard AS/NZS 4308:2008—Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine.

The ground specified by these regulations, and that may be a good and sufficient reason for any non-compliance or failure mentioned above, is, in summary, having been identified by a screening process as a person who does or may require, and being a person who has (in any manner) agreed to receive for a recommended and reasonable period, recognised services for drug issue assessment and assistance.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 13 June 2013.

Reprints notes

1 *General*

This is a reprint of the Social Security (Work Test Obligations—Drug Testing Obligations) Regulations 2013 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Social Security Regulations 2018 (LI 2018/202): regulation 295(23)