

c2021-017D  
GRNS--The Greens

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LEGISLATIVE COUNCIL

Mandatory Disease Testing Bill 2020

Second print

Proposed amendments

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- No. 1 **Chief Health Officer to be senior officer for all workers**  
Page 2, proposed section 5(2), line 37. Insert “or 7” after “Part 4”.
- No. 2 **Chief Health Officer to be senior officer for all workers**  
Page 2, proposed section 5(2), line 38. Omit all words on that line.
- No. 3 **Consultation with medical practitioners**  
Page 3. Insert after line 7—  
**6A Chief Health Officer to consult with medical practitioners**  
In exercising a function under this Act, the Chief Health Officer must consult with a medical practitioner who has qualifications or experience in blood-borne diseases.
- No. 4 **Minimum age for third party**  
Page 4, proposed section 7(2), line 10. Omit “14 years”. Insert instead “18 years”.
- No. 5 **Grounds for making mandatory testing order**  
Page 6, proposed section 10(5). Insert after line 25—  
(aa) the impact of making a mandatory testing order on the third party’s privacy, and
- No. 6 **Grounds for making mandatory testing order**  
Page 6, proposed section 10. Insert after line 36—  
(7A) Testing a third party’s blood for blood-borne diseases is justified for the purposes of subsections (6) and (7) only if the senior officer is satisfied on the basis of medical advice that the order is necessary, and there are no suitable alternatives, for the purposes of the diagnosis and clinical management of blood-borne diseases for the worker and third party.
- No. 7 **Chief Health Officer to be senior officer for all workers**  
Page 8, proposed section 13(3)(c) and (4), lines 14–16. Omit all words on those lines.

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- No. 8      **Chief Health Officer to be senior officer for all workers**  
Page 8, proposed section 14(1), line 18. Omit “or the Chief Health Officer”.
- No. 9      **Content of mandatory testing order**  
Page 10, proposed section 17. Insert after line 19—  
    (1A) A mandatory testing order must also contain the following—  
        (a) information about blood-borne diseases, including information about transmission, prevention, diagnosis and treatment,  
        (b) the name and contact details of a medical practitioner with qualifications or experience in blood-borne diseases and a counsellor who are available to assist the third party,  
        (c) the name and contact details of a support person who is available to explain the order, and the third party’s rights of appeal, to the third party and, if requested by the third party, to assist the third party in making an application for review.
- No. 10     **Chief Health Officer to be senior officer for all workers**  
Page 10, proposed section 17(2), line 21. Omit “or the Chief Health Officer”.
- No. 11     **Transport of detained third party**  
Page 11, proposed section 20(1)(a), line 21. Insert “, as quickly as possible,” after “transport”.
- No. 12     **Use of force on detained third party**  
Page 11, proposed section 20(2), line 25. Insert “, in exceptional circumstances only,” after “officer”.
- No. 13     **Appeal to Local Court**  
Pages 12 and 13, proposed Part 7, line 1 on page 12 to line 23 on page 13. Omit all words on those lines. Insert instead—

## **Part 7    Appeal to Local Court**

### **22    Appeal to Local Court**

- (1) A worker may appeal to the Court against a decision by the senior officer to refuse an application for a mandatory testing order.
- (2) A third party in relation to whom the senior officer makes a mandatory testing order may appeal to the Court against the decision to make the mandatory testing order.
- (3) An appeal to the Court must be made by notice of appeal filed with the Court no later than 1 business day after being notified of the senior officer’s decision.
- (4) The notice of appeal must specify the grounds of appeal.
- (5) An appeal against a senior officer’s decision to make a mandatory testing order operates to stay the decision pending the determination of the appeal.
- (6) An appeal may not be made in relation to a decision by the senior officer to make an application to the Court for a mandatory testing order for a vulnerable third party.

### **23    Determination of appeal**

- (1) An appeal under this Part is to be heard and determined by the Court.
- (2) An appeal is to be held in the absence of the public.



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- (3) The Court may determine an appeal by—  
(a) affirming the senior officer’s decision, or  
(b) setting aside the senior officer’s decision.
- (4) If the Court sets aside a decision to refuse to make a mandatory testing order, the Court may make a mandatory testing order.
- (5) The decision of the Court in relation to an appeal is final and binding on the appellant and the senior officer.
- No. 14     **Personal liability**  
Page 15, proposed section 31. Insert after line 29—  
(5A) To avoid doubt, this section extends to a medical practitioner, nurse or a person taking blood from a third party who is exercising, or assisting in the exercise of, functions under this Act.
- No. 15     **Obligations on health practitioners**  
Page 15. Insert after line 33—  
      **31A Obligations on health practitioners and others**  
(1) This Act does not impose an obligation on a medical practitioner, nurse or other person to take blood from a third party in relation to whom a mandatory testing order is made.  
(2) A person is not taken to have breached professional etiquette or ethics or departed from accepted standards of professional conduct if the person refuses to take blood from a third party under a mandatory testing order.
- No. 16     **Chief Health Officer to be senior officer for all workers**  
Page 16, proposed section 32(1)(a), line 4. Omit all words on that line.
- No. 17     **Chief Health Officer to be senior officer for all workers**  
Page 16, proposed section 34(1), lines 41–43. Omit all words on those lines.
- No. 18     **Education for workers about blood-borne diseases**  
Page 18. Insert after line 19—  
      **35A Education for workers about blood-borne diseases**  
(1) An employer of a worker must ensure that the worker receives regular education and training about blood-borne diseases.  
(2) The education and training must be provided by an organisation with relevant expertise, such as the Aids Council of NSW (ACON), Positive Life NSW or the Australasian Society for HIV Medicine (ASHM).
- No. 19     **Meaning of “vulnerable third party”**  
Page 20, Schedule 2.2, lines 7–13. Omit all words on those lines.
- No. 20     **Meaning of “bodily fluid”**  
Page 21, proposed Dictionary, definition of *bodily fluid*, line 5. Omit “saliva,”.
- No. 21     **Meaning of “bodily fluid”**  
Page 21, proposed Dictionary, definition of *bodily fluid*, line 6. Insert “, but does not include saliva” after “regulations”.
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No. 22     **Chief Health Officer to be senior officer for all workers**

Page 21, proposed Dictionary, definition of *senior officer*, lines 34 and 35. Omit all words on those lines. Insert instead—

*senior officer* for a worker means the Chief Health Officer.

No. 23     **Meaning of “vulnerable third party”**

Page 21, proposed Dictionary, definition of *vulnerable third party*, lines 37–42. Omit all words on those lines. Insert instead—

*vulnerable third party* means a third party who has a mental health impairment or cognitive impairment, within the meaning of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, that significantly affects the third party’s capacity to consent to voluntarily provide blood to be tested for blood-borne diseases.

No. 24     **Chief Health Officer to be senior officer for all workers**

Page 22, proposed Dictionary, Table, line 1. Omit “, senior officers”.

No. 25     **Chief Health Officer to be senior officer for all workers**

Pages 22 and 23, proposed Dictionary, Table. Omit the column with the heading “Senior officer”.