

25 February 2021



Standing Committee on Law and Justice
NSW Legislative Council
via email: law@parliament.nsw.gov.au

Dear Committee Members

Response to Question on Notice from Hearing 11 February 2021

I am writing to provide a response to a question I took on notice during my appearance at the Committee's 11 February 2021 hearing into the Mandatory Disease Testing Bill 2020.

Specifically, I took the following question on notice:

The Hon Anthony D'Adam: Mine is a bit more of an abstract question. The central controversy of this bill is about when the state should infringe on the bodily autonomy of a person. We have heard in some submissions that this is a foundational principle in medical ethics but what is the root principle at law that underpins the assumption that this is an inappropriate step for the State to take?

First, I would endorse the comments provided by my fellow panellist at the hearing, Ms Sanders, representing the Law Society of NSW, in response to the same question:

I can answer briefly but it is, as Mr Khan has just said, a physical assault. Of course different cultures, different countries, different regimes have different values or different priorities but certainly our society and our legal system value personal liberty and bodily integrity very highly. Any kind of forced medical treatment without the person's consent is an assault, unless of course it is justified by being emergency treatment to save someone's life in circumstances where they cannot consent because they are unconscious, for example. And just remember the mandatory testing of a person, the person who has done the allegedly deliberate act, is of no therapeutic value.

So generally, medical testing or medical procedures can only be done without someone's consent if they are necessary for the person's wellbeing – if they have some therapeutic value.

Second, I would highlight that the right to bodily autonomy both underpins and is reflected in international human rights law. This includes Articles 3¹ and 5² of the *Universal Declaration of*

¹ 'Everyone has the right to life, liberty and security of person.'

² 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

Human Rights, as well as in the *International Covenant on Civil and Political Rights* (ICCPR), including Articles 7³ and 10.⁴

Third, I do acknowledge that there may be rare circumstances in which the State could potentially be justified in interfering with the bodily autonomy of an individual.

However, the Mandatory Disease Testing Bill 2020 is not such a circumstance. This is because of the flaws contained in the Bill itself, as articulated in our submission to the inquiry.

Legislation that cannot deliver 'peace of mind' to workers who may have been exposed – because of the window periods involved between transmission and detection – and which diverts resources away from more effective health interventions, cannot possibly satisfy the very strict test which should be applied when considering whether to interfere with a person's right to bodily autonomy.

Thank you again for the opportunity to appear before the Committee to provide the Public Interest Advocacy Centre's views about the Mandatory Disease Testing Bill 2020.

Yours sincerely

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³ 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.'

⁴ 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'