

Response to Question on Notice

Question

The Hon. CATHERINE CUSACK: It sounds as though you have actually put in a budget submission for this?

Mr MILLER: Yes.

The Hon. CATHERINE CUSACK: What were the resources that you requested?

Mr MILLER: Essentially it is four people—four people plus some capital funding to support the collection of relevant data and analysis of data.

The Hon. CATHERINE CUSACK: What is the bottom line?

Mr MILLER: It is between a half and a million dollars. I do not know the exact figure.

The Hon. CATHERINE CUSACK: Can you, perhaps on notice, obtain that information for us and just the details of how you arrived at that?

Mr MILLER: Yes. Sure.

Answer

The Ombudsman's Office will need additional funding if it is to undertake the proposed new statutory functions under clause 35 of the Mandatory Disease Testing Bill 2021 (**Bill**).

As foreshadowed in our written submission, we have submitted to NSW Treasury a request for additional funding as part of our 2021/22 budget bid.

However, it is not possible at this time to estimate with any precision the additional resourcing that will be required to undertake the function (and therefore the additional funding required).

This is due to uncertainty about:

- (a) whether the Bill may be amended prior to passage, including potentially as a result of recommendations made by this Committee,
- (b) the final scope of our functions and ancillary powers under the Bill (noting that our written submission has recommended amendments be made to the Bill in this regard), and

- (c) the extent to which, and how, the elements of the mandatory disease testing (**MDT**) regime will operate in practice, including the volume of incidents and the volume of applications made.

In regard to the last of those matters above, we note that there is limited publicly available information about the number of past incidents that might, if the Bill had been in place, potentially have triggered an MDT application.

In framing our budget submission, we had regard to publicly available information, including the following quantitative data sources:

- In its 2018 MDT Options Paper,¹ the Department of Communities and Justice reported the data in relation to incidents of bodily fluid exposure involving emergency services personnel, including 450 incidents per year on average for NSW Police of which 60 on average comprised human bite or needle stick injury.
- A Parliamentary Committee report on assaults on members of the NSW Police Force² reported that there were 2,500 assaults on NSW Police Officers in 2019.
- A 2019 publication of the National Association of People with HIV Australia³ reported that there were ~100 applications made per year under the Western Australian MDT regime, which applies to its Police only. WA has less than 7,000 Police Officers; NSW has slightly more than 17,000.

However, none of the publicly available data enables us to estimate the number of incidents of “bodily fluid” exposure by all relevant front-line “workers” as a result of “deliberate action” by the relevant third party (as those terms are used in the Bill).

Given these inherent uncertainties, the budget submission we have put to NSW Treasury is at this stage *indicative* only and intended to set out the *minimum* level of additional funding we would need to undertake the proposed functions.⁴

In broad terms, we will need resources to review and analyse:

- the policy objects of the Bill, and the expected (or apprehended) costs, benefits and risks that were considered by Parliament and/or raised by stakeholders
- the guidelines, protocols, training materials and systems developed by agencies to support implementation of the scheme

¹ <https://www.justice.nsw.gov.au/justicepolicy/Documents/mandatory-disease-testing-options-paper.pdf>

² <https://www.parliament.nsw.gov.au/ladocs/inquiries/2608/Report%20-%20Assaults%20on%20members%20of%20the%20NSW%20Police%20Force.pdf>

³ https://napwha.org.au/wp-content/uploads/2019/09/2019_NAPWHA_TheSystemIsBroken.pdf

⁴ Of course, if the commencement of the Bill is significantly delayed, then the time profile of the funding we need will also shift, with less funding required in 2021/22.

- data about the number, type and location of all incidents of bodily fluid exposure involving front-line workers (overall and disaggregated by agency)
- data about incidents of bodily fluid exposure to front-line workers involving deliberate action (overall and disaggregated by agency) including:
 - the number, type and location of incidents
 - demographic characteristics of third parties
 - applications for orders, refusals, reviews, appeals
 - actions relating to vulnerable third parties
 - outcomes – including positive tests
 - complaints
- material that shows decision making processes and outcomes in response to incidents of bodily fluid exposure to front-line workers involving deliberate action, including information about:
 - the assessment of risk and the provision of medical advice
 - adherence during (and after) incidents to legislative provisions, and agency guidelines/protocols
 - records kept about decisions and decision-making processes
 - post-incident responses (eg. support provided to workers).

We will also require resources to:

- establish a portal and data system to allow collection and analysis of data and information provided by agencies
- develop and conduct agency surveys/audits
- undertake other research tasks, such as field work
- draft reports, ensuring agency consultation and procedural fairness requirements are met.

The budget submission we have given to NSW Treasury seeks the following funding:

	FY 21-22	FY 22-23	FY 23-24	FY 24-25
	\$m	\$m	\$m	\$m
Recurrent				
4 ongoing roles (1 x 11/12, 1 x 9/10, 2 x 7/8)	\$0.577	\$0.586	\$0.595	\$0.610
Establishment costs - Set Up Procedure, templates, consulting tools, communications and Ongoing costs - Travel, meeting expenses, publications, IT and office overheads	\$0.150	\$0.050	\$0.050	\$0.050
Depreciation for new capital requests	\$0.030	\$0.030	\$0.030	\$0.030
Total recurrent	\$0.757	\$0.666	\$0.675	\$0.690
Capital				
Data system and agency portal	\$0.150	\$0	\$0	\$0