

INQUIRY INTO MANDATORY DISEASE TESTING BILL 2020

Organisation: Public Service Association of New South Wales

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SUBMISSION



**Parliament of New South Wales - Legislative Council
Standing Committee on Law and Justice**

Submission to the Inquiry into Mandatory Disease Testing Bill 2020



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About the PSA

The Public Service Association of New South Wales is a state-registered employee organisation. This submission is on behalf of the Prison Officers Vocational Branch of the Public Service Association of NSW (POVB) and will largely focus on correctional officers and other staff within NSW Corrective Services and youth officers in Youth Justice centres

The POVB represents over 5,000 correctional officers in NSW state-run prisons, transport and court locations. The PSA also covers correctional officers in the privatised Parklea (MTC Broad Spectrum) and Clarence (Serco) centres through our federally registered counterpart the Community and Public Sector Union (SPSF Group).

The Association represents all workers within Corrective Services NSW. These roles include:

- Correctional Officers
- Overseers
- Commissioned Officers
- Executive Officers
- Service and Programs Officers
- Community Corrections Officers
- Case Management workers
- Private Correctional Officers and
- Any other workers employed by Corrective Services NSW

The Association represents all workers within NSW Juvenile Justice centres. These roles include:

- Youth Officers
- Assistant Managers
- Unit Managers
- Case Workers
- Vocational Instructors (Trade, Maintenance and Grounds)
- Vocational Instructor Cooks
- Logistics Officers (court movement to and from court/centre and
- Centre Managers

The Association also covers other emergency services public Sector workers impacted by this Bill, including workers in the State Emergency Service (SES), the Rural Fire Service (RFS), civilian NSW Police and selected Fire and Rescue officers.

For the purposes of this submission, the PSA will be referred to as 'the Association'.

Foreword

Every day that frontline public sector workers such as police, health, emergency service workers and prison officers front up to work, they are exposing themselves and their families to danger. In many ways, this is simply due to the nature of the work. However, there are certain policies that can be put in place to minimise these dangers, or at least, minimise the impact these dangers have on the workers. The *Mandatory Disease Testing Bill 2020* currently before NSW Parliament sets out to minimise the impact of one such danger: the stress and anxiety caused by coming into contact with bodily fluids during an assault.

For correctional officers and other staff within NSW Corrective Services and youth officers in Youth Justice NSW centres, experiencing or witnessing violence is a near-daily occurrence. Officers are routinely assaulted with punches, kicks, gaol made weapons, boiling water and body fluids, including (but not limited to) spit, faeces, semen and blood. The following submission focuses on the experiences of these officers, and the impact the proposed law changes set out in the *Mandatory Disease Testing Bill 2020* will have on them.

Over recent years, correctional officers and youth officers have seen an increase in assaults involving contact with bodily fluids. There are instances of inmates chewing the inside of their mouth and then spitting at officers, or inmates cutting themselves and using their blood and other bodily fluids to strike fear or intentionally cause harm to officers. In 2020, there have been 135 incidents (up to 31 October) where correctional officers were exposed to bodily fluids and 93 incidents (up to 7 December) where youth officers were exposed to bodily fluids.

Recovery from a serious assault can be a long and arduous process, not just because of the physical effects but also the effects on the officer's mental health. This is particularly the case when the assault involves contact with bodily fluids, largely due to the fact that the risk of contracting blood-borne diseases in these situations can cause significant stress and anxiety for those workers and their families. Spitting is commonly referred to as the worst of assaults you can face, with many officers saying that they would rather get hit than endure the trauma that follows a spitting assault.

The stress and anxiety brought on by an assault involving bodily fluid is not only from the *immediate* fear of contracting a disease but also the (and in many cases more damaging) *ongoing* fear of contracting a disease into the future. This is because some blood-borne diseases can take up to six months to be detected via blood tests. What this means for that officer is that they essentially enter a period of limbo where the possibility of having contracted a disease forms a dark cloud over their entire lives, particularly their home life: they must become vigilant about how they interact with their families in order to minimise the risk of further transmission. Assaults of this nature therefore have the potential to not just harm individual workers, but families and communities too.

Currently there is no mechanism in New South Wales that requires or compels a person whose bodily fluids were involved in an exposure incident during an assault to be tested for infectious diseases, and

that is the gap this Bill aims to address. This new law is purely designed to minimise the disruption on the victim (the worker) of the assault.

The Association is aware of how blood-borne diseases have been used to discriminate against particular groups in our community in the past, including the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community. This Bill has support amongst our LGBTIQ members who work in corrective facilities as it is considered a work health and safety (WHS) issue. There is a higher prevalence of infectious diseases in the inmate population that does not discriminate based on race or sexual preference, which makes the use of bodily fluids in an assault in corrections more dangerous. The diseases of most concern for our members are the B and C strains of Hepatitis, with Hepatitis C between thirty to forty times higher among inmates compared with the general community.

The Association has a proud history of opposing discrimination, from being a major part of the original 1978 Mardi Gras protest, development of proactive Aboriginal employment in the sector, to support for the recent Yes vote. This issue is not about discrimination but about workplace safety after a worker is assaulted.

The Association will use the following submission to focus on our members in Corrective Services and Youth Justice, due to the prevalence of assaults in these areas. However, the Association notes that this Bill will also provide greater protections for our members in other areas of the public sector, in particular to those in the Rural Fire Service (RFS), the State Emergency Service (SES), Fire and Rescue, and civilian NSW Police.

This submission provides comment on certain elements of the *Mandatory Disease Testing Bill 2020* which we believe will improve the overall effectiveness on the Bill and better secure the safety of our members. The submission will also provide comment on the broader departmental procedures of the Department of Communities and Justice (DCJ) and suggest how these can also be improved to better protect our members.

It is the Association's position on behalf of our Prison Officer Vocational Branch that it is in the health and safety interests of our members and workers in the public sector more broadly for the *Mandatory Disease Testing Bill 2020* to be passed by the NSW Parliament.

The Association thanks the Committee for its work and interest in this important piece of legislation and looks forward to providing any other assistance that may be required.

Yours sincerely,

Stewart Little

Recommendations

The following is a list of all recommendations put forward in this submission.

Recommendation 1

That the timeframe outlined in Section 18 of the Bill for the length of time the senior officer has to serve the order to the third party be amended from 'no later than 5 business days' to 'no later than 14 days'.

Recommendation 2

That the definition of 'senior officer' for 'correctional officer' in the Bill be changed from 'Commissioner of Corrective Services' to 'either Governor, General Manager or Manager of Security – whichever is most applicable.'

Recommendation 3

That Youth Justice NSW incorporate spitting as a separate category in the CIMS reporting process for assaults.

Recommendation 4

That a review be conducted by the Department of Communities and Justice to consider whether the PPE provided to officers in Corrective Services and Youth Justice should be similar to that of the PPE provided to staff in Justice Health.

Recommendation 5

That the Bill is accompanied with an enabling Regulation to include COVID-19 in the definition of blood-borne diseases.

Recommendation 6

That (with consideration of the other recommendations put forward in this submission) the Association on behalf of the Prison Officers Vocational Branch of NSW endorses the *Mandatory Disease Testing Bill 2020*.

The Bill

There are certain elements of the *Mandatory Disease Testing Bill 2020* which we believe will improve the overall effectiveness on the Bill and better secure the safety of our members. The following section will outline the two areas of the Bill in its current form which we believe require improvement.

Section 18

The Association holds concern about the timeframe outlined in Section 18.

Section 18(1) states that, *“As soon as reasonably practicable but no later than 5 business days after a mandatory testing order is made by a senior officer, the senior officer must cause a copy of the order to be personally served on the third party in relation to whom it is made.”*

and

Section 18(3)(a) states that, *“the senior officer must, as soon as reasonably practicable but no later than 5 business days after a mandatory testing order is made, cause a copy of the order to be personally served on the third party”*

What the Bill implies is that once the stated 5 business days have passed, the third party can no longer be subject to the new law, and the opportunity to order a test and bring peace of mind to the affected worker is lost.

For workers in correctional centres across CSNSW and Youth Justice NSW, this is not so much a concern, as the third party is already detained. However, for workers in most other areas of the public sector, including CSNSW workers in areas such as courts, this 5-day timeframe provides a very small window of opportunity to ensure that the third party's blood can be tested.

Essentially, for a third party who is not detained, all they need to do is ensure that they are not contactable for the 5-day period, after which they are no longer obligated to comply with the requirements of this law. For someone wishing to hide from authorities, 5-days is a very short time frame in which to track this person down and serve them the order. The Association therefore believes that the length of this timeframe should be changed to 14 days, with non-business days included, given that many of the public sector workers impacted by this Bill do not work a standard Monday-Friday week.

Recommendation 1

That the timeframe outlined in Section 18 of the Bill for the length of time the senior officer has to serve the order to the third party be amended from 'no later than 5 business days' to 'no later than 14 days'.

'Senior Officer'

The Association also takes issue with the non-uniformed classification across the various public sector workers in terms of who is defined as the 'senior officer' who makes the decision on the application on whether to serve an order to the third party. In particular, we ask why a Police Officer is only required to

apply to an inspector, while a Correctional Officer is required to apply all the way to the Commissioner of Corrective Services.

The person best placed to make a decision about an incident that occurs in a Correctional Centre is the most senior manager of that centre. Depending on the centre, that position will be either the Governor/General Manager or the Manager of Security (MOS), and for courts, the General Manager.

It seems nonsensical to leave the application decision to the Commissioner when they are far removed from the incident, and when this level of 'senior officer' is not the uniformed requirement for all public sector workers who this Bill refers to.

As the Bill states in Part 7, the Chief Health Officer then holds the power to review all application decisions made by the relevant senior officer. This is a uniformed way to review the application and the same uniformity should apply to the senior officer who receives the application.

The highest ranking position with the relevant Correctional Centre should therefore be the 'senior officer' who the worker makes their application to.

Recommendation 2

That the definition of 'senior officer' for 'correctional officer' in the Bill be changed from 'Commissioner of Corrective Services' to 'either Governor, General Manager or Manager of Security – whichever is most applicable.'

Background on other jurisdictions

There are five jurisdictions in Australia that have legislation that allows for mandatory testing of a person whose bodily fluids come into contact with police and/or emergency service personnel: Victoria, Queensland, South Australia, Western Australia and the Northern Territory.

In Victoria, these laws sit under public health legislation. In Queensland, they are framed around the testing of a person accused of sexual assault or a serious offence, although they can be used in relation to other persons who may have been exposed to bodily fluid during or soon after the commission of the offence, which could include first responders. A recent push by police unions and member organisations has resulted in the introduction of new laws specifically relating to assaults against emergency services personnel in South Australia and Western Australia (2015), and in the Northern Territory (2016).

A common mechanism lacking across the various jurisdictions is that of proper reporting lacking from these is a proper reporting mechanism. Where laws are located outside health departments, there are minimal to no monitoring mechanisms in place to assess the use, effectiveness or any unintended consequences of the mandatory disease testing laws.¹ Victoria's law is unique among the jurisdictions because it is public health legislation and the *Public Health and Wellbeing Act 2008* requires the Chief Health Officer to publish the information. No orders have been made under Victoria's law since its commencement in 2014.² Western Australia has released its data via FOI, which showed that of the 387 applications for mandatory

¹ https://napwha.org.au/wp-content/uploads/2019/09/2019_NAPWHA_TheSystemIsBroken.pdf, p6

² https://napwha.org.au/wp-content/uploads/2019/09/2019_NAPWHA_TheSystemIsBroken.pdf, p22

disease testing from 1 January 2015 to mid-December 2018, approval had been granted 377 times (and rejected 10 times).³

Analysis of each jurisdiction has found that overall, transparency and access to information and data regarding the implementation of mandatory testing laws is lacking and requires improvement.

The Association therefore supports Section 35 of the *Mandatory Disease Testing Bill 2020* which requires that the Ombudsman will have oversight of the Act and will be required to regularly report on its implementation.

Background on blood-borne diseases

The Bill describes blood-borne diseases as meaning “HIV infection, Hepatitis B, Hepatitis C or other blood-borne disease prescribed by the regulations.”⁴

The prison setting has been shown to be a high risk environment for blood-borne virus transmission from sharing contaminated injecting equipment, tattooing, fighting and other blood-to-blood contact.⁵

Consequently, both inmates and workers at the centres are at an increased risk of exposure to blood-borne viruses such as Hepatitis B, Hepatitis C and HIV.

A 2016 Australian study found that HIV has been rare among inmates in recent years.⁶ It also cannot be transmitted through saliva and airborne transmission is extremely rare.⁷ These factors means that the possibility of HIV transmission during an assault involving contact with bodily fluids is very low, but not impossible. A scenario where HIV transmission may occur could be where the inmate has chewed the inside of their mouth until it bleeds, and then during the assault, the officer has broken skin come in contact with the mouth fluid. Needles have also been used to stab prison officers with fatal consequences in the past.

Transmission of Hepatitis, particularly Hepatitis C is much more likely. Australian research has shown that hepatitis C is between thirty to forty times higher among inmates compared with the general community.⁸

All three of these diseases can take months to be detected in blood once transmission has occurred. The waiting periods for each are:

- HIV: 15-24 days and often longer⁹
- Hepatitis B: up to six months¹⁰
- Hepatitis C: 2-3 months¹¹

It is these lengthy timeframes that make the *Mandatory Disease Testing Bill 2020* so necessary. Having to wait up to six months for confirmation of test results leads to ongoing stress and anxiety for the affected worker and their family, and can potentially cause long-term psychological damage. Conversely,

³ https://napwha.org.au/wp-content/uploads/2019/09/2019_NAPWHA_TheSystemIsBroken.pdf, p26

⁴ <https://www.parliament.nsw.gov.au/bill/files/3819/Second%20Print.pdf>, p21

⁵ https://kirby.unsw.edu.au/sites/default/files/kirby/report/JHP_National-Prison-Entrants-Report-2004-2007-2010-2013-2016.pdf, p12

⁶ https://kirby.unsw.edu.au/sites/default/files/kirby/report/JHP_National-Prison-Entrants-Report-2004-2007-2010-2013-2016.pdf, p7

⁷ <https://www.healthline.com/health/how-long-does-hiv-live-outside-the-body#how-it-spreads>

⁸ https://kirby.unsw.edu.au/sites/default/files/kirby/report/JHP_National-Prison-Entrants-Report-2004-2007-2010-2013-2016.pdf

⁹ <https://www.health.nsw.gov.au/Infectious/factsheets/Pages/HIV-infection.aspx>

¹⁰ <https://www.betterhealth.vic.gov.au/health/ConditionsAndTreatments/hepatitis-b>

¹¹ <https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/hepatitis-c#:~:text=It%20may%20take%20two%20to,potential%20spread%20of%20the%20virus.>

if the third party already has the disease, it is far more likely to show up in an immediate test. By testing the third party rather than solely relying on testing the worker, a significant amount of suffering can be avoided.

Corrective Services

Figures from Corrective Services show that in the year to 31 October 2020, **135** correctional staff were exposed to bodily fluids. Most unfortunately, another **12** staff suffered needle stick injuries.

In the past three years, an alarming **448** incidents have been recorded of officers being exposed to bodily fluids, including saliva, blood, semen, faeces and urine. This figure includes **32** needle stick injuries.

It has been observed by the Prison Officers Vocational Branch of the Public Service Association of NSW that there has been an alarming increase in assaults of all kind and use of force in NSW prisons in recent years. These all provide an opportunity for exchange of bodily fluids as close contact is necessarily part of the interaction.

There are a number of contributing factors to these increases, including changes to policies, and legislation (particularly around bail), as well as a period of overpopulation of centres, causing a bed crisis and consequently leave to a rapid build of new facilities.

The below table demonstrates the increases to assaults and at-risk interactions recorded by Corrective Services from 2014 to now. These figures were provided to the Association by CSNSW via the Government Information (Public Access) process.

Figure 1. Assaults of staff, inmates and use of force in CSNSW prisons 2014-2020

Year	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020*
Assaults on Staff	53	214	187	193	239	250
Assaults on inmates	1725	2968	3584	3356	3674	3307
Use of Force	1253	1843	1995	2123	2220	2243

*This is up to 30 April 2020

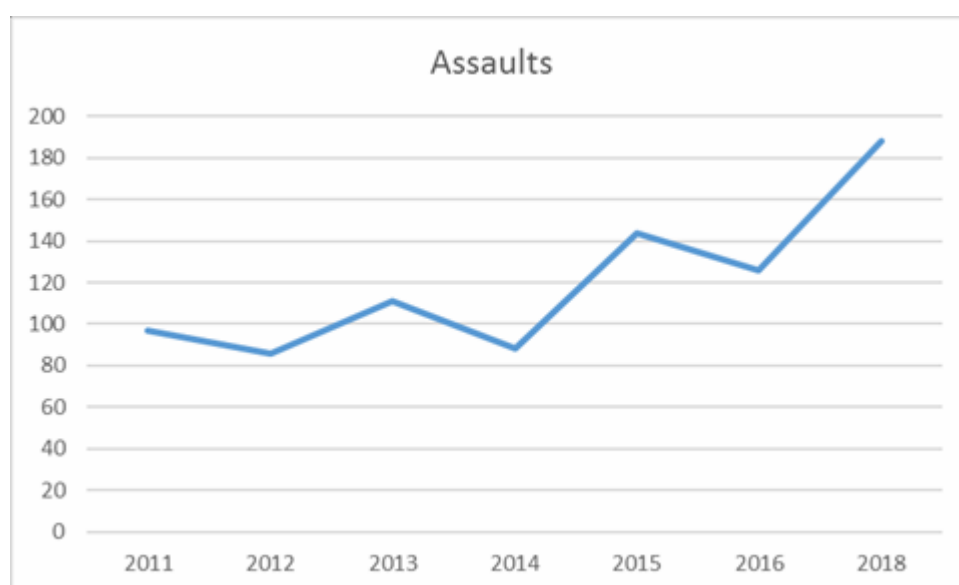
The NSW Audit Office tells us that in six years, the ratio of inmate on staff assaults has tripled. Going from 0.58 assaults per 100 inmates in 2012 to 1.53 per 100 inmates in 2018. Unfortunately, further data beyond 2018 has not been made available at this time but it is generally accepted the upwards trend is continuing.

Youth Justice

As the below graph demonstrates, the number of assaults on staff in Youth Justice NSW has been steadily increasing over the last decade. As the *Ministerial Review into the Riot at Frank Baxter Detention Centre 21 and 22 July 2019*, conducted by Lee Shearer APM, concluded:

“the high numbers of assaults taking place at all Centres confirms the significant amount of personal risk front-line operational staff face in their workplace.”¹²

Assaults on Staff in Youth Justice 2011-2018



Source: 2011-2016 Parliament of NSW, Legislative Assembly, House Papers Questions on Notice, Guy Zangari to Minister Elliott, 5910 - Assaults On Staff At Juvenile Justice Centres 2017 data is only available in part year and has been excluded.

Figures from Youth Justice show that in this year to date to 7 December 2020, there were **93** incidents that documented a detainee spitting at/on staff.

This figure, however, is only an estimate, due to the fact that Youth Justice does not currently record spitting as a separate assault in the CIMS (Client Information Management System) reporting process.

Historically, transparency in Youth Justice (and CSNSW) and under-reporting has been an issue in determining the true extent of assaults. Given the high risk involved in an assault involving contact with bodily fluids, assaults of this kind should have their own category and transparent reporting process.

Recommendation 3

That Youth Justice NSW incorporate spitting as a separate category in the CIMS reporting process for assaults.

¹² <http://www.juvenile.justice.nsw.gov.au/Documents/ministerial-review-into-frank-baxter.pdf>, p8

Work, Health and Safety

Mental Health

Due to the unusual and dangerous conditions of their jobs, correctional officers and youth officers statistically suffer greater levels of mental health issues and PTSD than the average citizen. They deal with violent and antisocial behaviours every day. They respond to fire, death, medical episodes, violence, suicide, self-harm, riots, mentally unwell inmates, transportation of ill and injured inmates and a myriad of other difficult situations on a daily basis and assaulted in far greater numbers than the average worker.

A significant number of officers will spend periods on worker's compensation during their careers with Corrective Services NSW and Youth Justice NSW. The effects of assaults on officers can have lasting physical and psychological effects often for many years after the assault. As this submission has put forward, assaults involving contact with bodily fluids can have damaging and lasting psychological effects.

Between 1 January 2016 and 31 July 2019, 658 claims for workers compensation were lodged against the Workers compensation policy in Youth Justice.¹³

Unfortunately, many assaults (of all varieties) are ultimately ending with medical retirements for the affected officers or staff being moved into new roles due to their inability to continue working in a front-line role.¹⁴ Many of these issues have been explored by the ABC's *Four Corners* in an expose of workers compensation matters whereby those who are injured are injured further through the workers compensation system failing to support the worker.¹⁵

The workers compensation system does not adequately meet the needs of CSNSW and Youth Justice NSW staff. If, after an incident, they go to the doctor and apply for workers compensation for as short a period as one hour they have their pay deducted 5 per cent for a fortnight regardless of whether they have returned to work. Additionally, the access to items such as antivirals is complicated due to the need for the insurer to approve these in advance.

Personal Protective Equipment (PPE) and Personal Protective Clothing (PPC)

Correctional officers and youth officers are currently very limited in the ways they can protect themselves if and when an assault involving contact with bodily fluids occurs.

Furthermore, even when available, PPE and PPC is only effective if officers are prepared for the assault and so the clothing or equipment may not be viable as an ongoing solution to the problem.

An example of this is the use of spit hoods – which it first needs to be noted are not currently authorised for use in NSW Youth Justice or Corrective Services NSW. A spit hood is a piece of PPE that is worn by an inmate who carries a high risk of spitting. In order for this piece of equipment to be effective, the spitting risk needs to already be known, and the PPE needs to be arranged every time the inmate comes in contact with an officer or any other worker. Historically, there has been a reluctance from Justice Health to share relevant information about an inmate that could assist officers in avoiding infections due

¹³ <http://www.juvenile.justice.nsw.gov.au/Documents/ministerial-review-into-frank-baxter.pdf>, p8

¹⁴ <http://www.juvenile.justice.nsw.gov.au/Documents/ministerial-review-into-frank-baxter.pdf>, p8

¹⁵ <https://www.abc.net.au/news/2020-07-27/four-corners-workers-compensation-investigation/12477902>

to the practitioner's need to maintain privacy over-riding the right to know of the prison officer, to enable their safety.

Also, conversely to correctional officers and youth officers, Justice Health staff are provided with a comprehensive set of PPC for when they have direct contact with inmates. The Association would like a similar set of PPC to be considered for our members.

Recommendation 4

That a review be conducted by the Department of Communities and Justice to consider whether the PPE provided to officers in Corrective Services and Youth Justice should be similar to that of the PPE provided to staff in Justice Health.

COVID-19

The COVID-19 pandemic has been a lesson for all of us that social distancing is a necessary measure in preventing the spread of infections viruses and diseases. It has also served as a stark reminder that for those many workers on the frontline in health, emergencies and the public sector, the ability to socially distance can sometimes be beyond their control.

A positive consequence of limiting physical visitations during COVID-19 has been the reduction of contraband entering the prison system. A negative consequence of the change to routine and reduced contraband availability has, however, lead to an increase in behavioural issues in some inmates, including an increase in their propensity to violence, with several riots and assaults having occurred during the lockdown period.

The new potentially fatal disease of COVID-19 has provided an additional reason for inmates to utilise spitting as a means to assault officers. Ironically there is a fine if someone spits at key workers in the community¹⁶, however, no such equivalent when in custody, despite the custodial environment being recognised as a high risk category of environment due to the inability to social distance.

By having the capacity to get a timely test, this enables the prison officer to ensure they can act appropriately to minimise contagion of the disease.

Recommendation 5

That the Bill is accompanied with an enabling Regulation to include COVID-19 in the definition of blood-borne diseases.

¹⁶ https://www.health.nsw.gov.au/news/Pages/20200409_02.aspx

Conclusion

This submission has provided recommendations on the *Mandatory Disease Testing Bill 2020* which we believe will improve the overall effectiveness on the Bill and better secure the safety of our members.

The submission has also provided recommendations for how the Department of Communities and Justice (DCJ) can make procedural changes that will also help to secure the safety of our members.

Correctives Services NSW and Youth Justice NSW workers put themselves on the frontline every day, and this often means putting their lives, and the lives of their communities and families at risk. Their workplaces are significantly less safe than most other workplaces, and therefore their safety must always be at the front of mind of decision makers.

It is for this reason that the Association on behalf of the Prison Officers Vocational Branch of the Public Service Association of NSW supports the *Mandatory Disease Testing Bill 2020*.

Recommendation 6

That (with consideration of the other recommendations put forward in this submission) the Association on behalf of the Prison Officers Vocational Branch of NSW endorses the *Mandatory Disease Testing Bill 2020*.