Submission No 24

INQUIRY INTO MANDATORY DISEASE TESTING BILL 2020

Organisation: Australasian Society of HIV, Viral Hepatitis and Sexual Health Medicine (ASHM)

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Parliament of NSW
Legislative Council
Standing Committee on Law and Justice

Re: Inquiry into Mandatory Disease Testing Bill 2020

Thank you for the opportunity to provide feedback on the *Mandatory Disease Testing Bill 2020*. Please find below a detailed submission in response to the Bill, from the Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM), including a series of recommendations.

Our submission is informed by ASHM's expertise as a peak body representing the BBV and sexual health clinical workforce in Australia and New Zealand. ASHM has also been consulted on mandatory disease testing legislation in several Australian jurisdictions, and we continue to be a leading voice in advocating for a public health approach to preventing the transmission of HIV and other BBVs, rather than a criminal one. As such, we have in-depth knowledge of the Bill and the issues involved, and we are well positioned to provide an informed, clinical perspective as part of this consultation.

ASHM recognises the difficult, stressful and often dangerous situations that correctional officers, police and other emergency services workers enter into on a daily basis. Along with our sector colleagues, we condemn any and all assaults inflicted on them in the course of their work. The safety and welfare of all law enforcement and emergency services personnel is important and essential to the entire community.

However, as we have indicated in previous feedback, ASHM maintains that the *Mandatory Disease Testing Bill 2020* will not in fact meet its stated Objects. It will not "encourage health, emergency and public sector workers to whom this Act applies to seek medical advice and information about the risks of contracting a blood-borne disease while at work". Nor will it "protect and promote the health and wellbeing of health, emergency and public sector workers to whom this Act applies". Our existing laws, policies and procedures are effective at preventing the transmission of HIV and other BBVs, and in fact have made NSW a global leader in public health responses to these diseases.

We appreciate that ASHM was invited to provide feedback on a draft of the *Mandatory Disease Testing Bill 2020* in May of this year. Many of the concerns we outlined in our feedback then remain in the current version of the Bill. In addition, subsequent additions to the

Bill, notably allowing the use of force in carrying out a mandatory testing order, not only further undermine public health efforts, but place members of the clinical workforce who will be carrying out testing orders in real and significant danger.

ASHM recognises that public consultation processes are an important mechanism for considering the potential impact of new legislation. We were disheartened to see that the feedback we provided earlier this year and in numerous other pieces of correspondence with the Government was not reflected in the updated draft Bill. However, we remain optimistic that this public consultation will lead to better outcomes for all parties: police and emergency services workers; the clinical workforce; and those being tested.

In our submission below we have outlined our numerous specific concerns with the current version of the Bill. We hope that this consultation will inform amendments to the Bill to ensure appropriate oversight in the application of mandatory testing orders, and to ensure the legislation meets its stated Objects.

We appreciate the opportunity to provide this feedback, and if you have questions about any of the issues raised, citations provided or recommendations made in ASHM's submission, please do not hesitate to contact us.

Regards,

Alexis Apostolellis
CEO, ASHM

Mandatory Disease Testing Bill 2020 [NSW] — Inquiry

Submission by the Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM)

Contents

1. About ASHM

The Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM) is a national peak body representing health professionals in Australia and New Zealand who work in HIV, viral hepatitis, other blood-borne viruses (BBVs) and sexual health. We are a professional, not-for-profit, member-based organisation, supporting our members, sector partners and collaborators in clinical management and research, education, policy and advocacy in Australasia and internationally. ASHM represents specialists, general practitioners, other doctors, nurses, scientists, researchers and other health professionals working in in HIV, viral hepatitis, other BBVs and sexual health.

ASHM is a standing member of the Blood Borne Viruses and Sexually Transmissible Infections Standing Committee (BBVSS) of the Australian Health Protection Principal Committee (AHPPC). Through this membership we provide the clinical expertise which shapes national leadership and advice on strategic policy, social issues, emerging risks and priority actions related to HIV, hepatitis B and hepatitis C.

ASHM provides key clinical input into Australia's five national strategies relating to BBVs and STIs, and we are listed in these strategies as a peak organisation.

We also develop national clinical BBV and sexual health guidelines, consensus statements and other clinical tools, as the authoritative voice in Australia on BBV and STI prevention, testing, treatment and care. These materials include:

- HIV Management in Australasia
- Guide to Australian HIV Laws and Policies for Healthcare Professionals
- Sexual Transmission of HIV and the Law
- Australian STI Management Guidelines

In our position as a leader in the BBV and sexual health sectors, ASHM also regularly provides clinically informed expertise as part of legislative and other policy review and reform. This includes advocating for a public health rather than a criminal approach to BBVs and sexual health, including prevention.

2. Overview of issues relating to mandatory testing laws

ASHM has been consulted on mandatory disease testing legislation in several Australian jurisdictions, and we continue to be a leading voice in advocating for a public health approach to preventing the transmission of HIV and other BBVs, rather than a criminal one.

ASHM joins our colleagues in the sector in opposing laws—in NSW and elsewhere—that allow for the mandatory disease testing of people whose bodily fluids come into contact with frontline workers. We do not believe the Mandatory Disease Testing Bill 2020 should become law. Our concerns with mandatory testing are outlined below, followed by specific recommendations relating to the current version of the Bill.

There is no evidence that mandatory testing laws protect frontline workers who come into contact with a person's bodily fluids from the transmission of HIV and other BBVs. ASHM agrees that the safety and welfare of all law enforcement and emergency services personnel is important and essential to the entire community. Along with our sector colleagues, we condemn any and all assaults inflicted on them in the course of their work. However, most incidents involving contact with bodily fluids carry either an extremely negligible risk of BBV transmission, or in most cases, none. As stated in a 2019 audit of Australia's mandatory testing laws by the National Association of People with HIV Australia (NAPWHA) and the HIV Justice Network:

> "Fewer than 0.1% of the Australian population is living with HIV and HIV is not easily transmitted. There is no possibility of HIV transmission via contact with the saliva of an HIV positive person…and no possibility of HIV from where the HIV positive person's saliva contains a significant quantity of blood and their blood comes into contact with a mucous membrane." [1]

Further, in extremely rare situations when serious exposure to HIV can't be ruled out, a worker can be supplied with post-exposure prophylaxis for HIV (PEP), which, if begun within 72 hours of a potential exposure, significantly reduces the risk of infection[2]. For other BBVs, all officers

[1] Cameron, S 2019, *The System is Broken: Audit of Australia's Mandatory Disease Testing Laws to Test for HIV*, HIV Justice Network & National Association of People with HIV Australia, p. 4
[2] ASHM 2020, Post-Exposure Prophylaxis After Non-Occupational and Occupational Exposure to HIV: Australian National Guidelines (Second edition), [Online], Accessed 16/12/2020: http://www.pep.guidelines.org.au/

are vaccinated against hepatitis B, and hepatitis C is now curable. Further, neither hepatitis B nor hepatitis C can be transmitted via saliva.

ASHM believes, mandatory testing laws will not bring peace of mind to those who have experienced assault; in fact, they are likely to exacerbate fears of BBV transmission based on outdated and unscientific understandings of transmission risks. Alleviating the anxiety of frontline workers who experience dangerous situations resulting in the intentional transmission of bodily fluids is a laudable goal. However, education for frontline workers about the real risks of BBV transmission will do more to alleviate such fears than perpetuating misinformation.

Mandatory testing is not in line with the Australian National HIV, hepatitis B or hepatitis C Testing Policies, or supported by global health bodies. The key principles guiding BBV testing in Australia are that "testing is conducted ethically, is voluntary and performed with the informed consent of and is beneficial to the person being tested."[3] Mandatory testing meets none of these requirements. Further, mandatory testing laws are not supported by global health bodies such as UNAIDS and the World Health Organisation on the basis that it breaches human rights, compromises public health initiatives and other efforts to eliminate HIV and other BBV transmission.

ASHM is concerned mandatory testing laws may place healthcare workers carrying out testing orders in unnecessarily dangerous situations. As an organisation representing the clinical workforce in relation to BBVs, ASHM is particularly concerned about the impact on health workers who may feel compelled to assist in carrying out blood testing. In particular, the allowance of the use of force by police and correctional officers in carrying out mandatory testing orders may place these workers in situations of real danger. In its current form, the Bill undermines the occupational safety of the clinical workforce.

ASHM is concerned mandatory testing laws may be used disproportionately against the already marginalised communities who are most likely to come into contact with police and other frontline workers. This includes homeless people, people who experience mental illness, people struggling with addiction issues, and Aboriginal and Torres Strait Islander people.

Considering these issues, ASHM opposes the introduction of mandatory testing laws. However, if the *Mandatory Disease Testing Bill 2020* is to become law in NSW, we also make the below recommendations for amendments to the Bill. Our recommendations aim to ensure better outcomes for frontline workers, healthcare workers involved in testing, and those being tested.

The next section of our submission addresses the *Mandatory Disease Testing Bill 2020* specifically, and outlines ASHM's recommendations.

[3] ASHM 2020, ASHM Testing Portal, [Online], Accessed 16/12/2020: http://testingportal.ashm.org.au

3. Review of the *Mandatory Disease Testing Bill 2020* and recommendations

Please find below ASHM's review of the *Mandatory Disease Testing Bill 2020*, and associated recommendations.

Definition of "bodily fluids"

The definition of "bodily fluids" used throughout the Bill is overly broad, grouping together bodily fluids associated with varying levels of transmission risk, from low (blood) to non-existent (saliva). Further detail on transmission risks for HIV are outlined in the previous section. Hepatitis C and hepatitis B are also not transmitted via saliva[4][5]

Unless accompanied by a clearer understanding of the transmission risks associated with specific kinds of contact associated with specific bodily fluids, the Bill will serve to perpetuate false information about actual BBV transmission risks.

In incidents where a frontline worker comes into contact with a person's bodily fluids, a mandatory testing order should not be allowed to be made if the transmission risk associated with that contact is zero. For example, a mandatory testing order for HIV, hepatitis B or hepatitis C should not be allowed following situations when a frontline worker only came into contact with a person's saliva.

> RECOMMENDATION 1: The Bill should be amended to ensure mandatory testing orders are only allowed following an actual risk of transmission, and that these risks are specifically named and confirmed in the application for an order.
>
> RECOMMENDATION 2: The Bill should be amended to disambiguate the risks of transmission for specific diseases associated with specific kinds of exposures.

Inappropriate age of application

ASHM strongly opposes the fact that, as stated in section 7(2), mandatory testing orders may be made for children as young as 14. Subjecting anyone, but particularly someone under the age of 18 years, to coerced—and potentially forced—disease testing is a gross violation of the bodily autonomy of children.

This allowance is unnecessary, as the prevalence of HIV in people under the age of 18 is negligible. Only three people under the age of 18 were diagnosed with HIV in NSW in the previous year, and current treatment practices mean those people would be on effective

[4] Hepatitis Australia 2020, Preventing hepatitis C, [Online], Accessed 17/12/2020: https://www.hepatitisaustralia.com/hepatitis-c-prevention
[5] Hepatitis Australia 2020, What is hepatitis B?, [Online]: Accessed 17/12/2020: https://www.hepatitisaustralia.com/what-is-hepatitis-b

treatment within weeks, making it impossible in most cases for them to transmit HIV. The processes required to obtain a court order to successfully determine an application would also place unnecessary additional burden on the court system.

> RECOMMENDATION 3: The Bill should be amended to only apply to people over the age of 18 years.

Opinion of the prescribed worker in making an application

We assert that relying on the opinion of the prescribed worker as to whether an exchange of bodily fluids occurred is insufficient grounds for initiating an application for a mandatory testing order, as indicated in section 9(1)(e) of the Bill. We also assert that relying on the opinion of the prescribed worker as to whether this occurred "as a result of a deliberate action of the third party" is insufficient grounds for initiating an application for a mandatory testing order. The prescribed worker cannot be objective in their assessment of whether the action is "deliberate," and will likely have insufficient knowledge to assess whether an exchange of bodily fluids has occurred.

> RECOMMENDATION 4: The Bill should be amended to require an application for a mandatory testing order to include evidence (such as eyewitness accounts) that the contact with a person's bodily fluids occurred and was the result of a deliberate action.

> RECOMMENDATION 5: The Bill should be amended to require that in the determination of an application for a testing order, the senior officer (in section 10) or the Court (in section 14) must be satisfied that contact with bodily fluids was the result of a deliberate action.

Timeframe for consultation with a relevant medical practitioner

We welcome the indication in section 8(1) of the Bill that a prescribed worker must consult a relevant medical practitioner within 24 hours after the incident, as a course of post-exposure prophylaxis for HIV (PEP) must be started within a maximum of 72 hours following possible exposure in order to be effective[6].

Although provision is made in section 8(2) for consultation with a relevant medical practitioner "up to 72 hours after the contact occurred if reasonable in the circumstances", we advise against delay in seeking consultation due to the need to begin PEP immediately where appropriate. A 72-hour window may not allow sufficient time to determine actual transmission risk, or to consider the impact of PEP on the need for a mandatory testing order.

[6] AHSM 2020, Post-Exposure Prophylaxis after Non-Occupational and Occupations exposure to HIV: Australian National Guidelines (Second edition), [Online], Accessed 17/12/2020: http://www.pep.guidelines.org.au/

RECOMMENDATION 6: The Bill should be amended to remove section 8(2), and therefore require a prescribed worker to consult with a relevant medical practitioner within 24 hours in order to apply for a mandatory testing order.

Definition of "relevant medical practitioner"

We welcome that "relevant medical practitioner" is defined in the Dictionary as "a medical practitioner with qualifications or experience in blood-borne diseases". However, we are concerned that the Bill also states: "if a medical practitioner with qualifications or experience in blood-borne diseases is not available at the time the worker requires a consultation under section 8—another medical practitioner".

Expertise in blood-borne diseases is a highly specialised area, and a medical practitioner without this specific experience may not be able to accurately assess transmission risk associated with a specific exposure to bodily fluids. Further, specialised qualifications are required for the prescription of HIV and hepatitis B treatment. This is vital, particularly if the prescribed worker tests positive for a BBV or is properly assessed of having experienced a high-risk incident requiring PEP.

RECOMMENDATION 7: The definition of "relevant medical practitioner" within the Bill should be updated to: "a medical practitioner with experience in and prescribing rights for treatment of blood-borne diseases".

RECOMMENDATION 8: The definition of "relevant medical practitioner" within the Bill should be updated to remove clause (b): "if a medical practitioner with qualifications or experience in blood-borne diseases is not available at the time the worker requires a consultation under section 8—another medical practitioner".

Determining an application

It is ASHM's view that a "senior officer" is not an appropriate authority for determining an application for a mandatory testing order. A person without specialised knowledge about BBVs, including transmission risks, is not able to make a determination relating to the criteria outlined in 10(7)(b), that: "testing a sample of the third party's blood for relevant diseases is necessary in the circumstances". This determination must be made by the Chief Health Officer.

However, if this model for determining an application remains, the Bill should require the senior officers named to undergo training in the transmission of BBVs. This training should also be required for any person to which the senior officer may delegate functions, as per section 34 of the Bill.

RECOMMENDATION 9: The Bill should be amended to require applications for a mandatory testing order to be made to and determined by the Chief Health Officer, or else an independent regulator delegated by the Chief Health Officer.

RECOMMENDATION 10: The Bill should be amended to require any senior officer named in the Act, as well as any person to whom a senior officer may delegate their functions under the Act, to undergo training in the transmission of BBVs.

Role of the "relevant medication practitioner" in determining an application

Currently, although the Bill does require consultation with a relevant medical practitioner, it does not require the senior officer to follow the practitioner's advice in determining the application of a mandatory testing order. Given the highly specialised expertise required to determine the transmission risk associated with a specific exposure, and the likelihood that a senior officer will not possess sufficient knowledge of this area, the Bill must require that the senior officer take this advice into account.

Further, section 9(1)(h) states that the content of the application for a mandatory testing order must contain "a copy of written advice received from the relevant medical practitioner, if any". Given the need for applications to be determined based on the advice of the relevant medical practitioner, all applications should require the inclusion of written advice.

RECOMMENDATION 11: The Bill should be amended to require the senior officer to take into consideration the advice of the relevant medical practitioner in determining an application for a mandatory testing order.

RECOMMENDATION 12: Section 9(1)(h) of the Bill should be amended to remove "if any", therefore requiring the inclusion of written advice from a relevant medical practitioner in all applications for mandatory testing orders.

Inclusion in the legislation of guidelines for determining transmission risk

As we have indicated throughout this submission, genuine risks of transmission for blood-borne diseases vary depending on the type of bodily fluid contact and the specific disease. Further, risk assessments for a specific exposure require specialised knowledge from a relevant medical practitioner with expertise in blood-borne diseases.

Given the real risk that, in the Bill's current form, mandatory testing applications will be made in situations where no genuine risk of transmission occurred, we believe a framework for determining transmission risk should be included in the legislation itself, rather than in regulations. This framework should include clear guidelines for whether or not a mandatory testing order should be granted and for which diseases, based on specific types of exposures.

The development of these guidelines should be informed by organisations with specific clinical expertise in blood-borne diseases, to ensure they reflect the best available evidence pertaining to BBV transmission risk.

RECOMMENDATION 13: A framework for determining the application of mandatory testing orders based on real risk of transmission should be included in the Bill, and require evidence of a plausible route of transmission to be established before an order is made.

RECOMMENDATION 14: If such a framework is not included in the Bill, a mandatory testing order should not be able to be made until guidelines for a determination are published.

RECOMMENDATION 15: The following organisations should be included in the development of guidelines: The Anti-Discrimination Board of NSW, the Mental Health Commissioner of NSW, Aboriginal Affairs NSW, Multicultural NSW, The Corporate Sponsor for LGBTI Issues in NSW Police, the Corporate Sponsor Aboriginal Engagement in NSW Police, Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine, ACON, Positive Life NSW, Hepatitis NSW, Multicultural HIV and Hepatitis Service, and NSW Users and AIDS Association.

Role of a medical practitioner in conducting testing

Section 19 of the Bill indicates a medical practitioner would be authorised to carry out blood testing even when consent is not given. This is in direct contradiction to the National Testing Policies for all BBVs, despite the fact that section 19(2)(b) states: "A person taking blood from a third party under a mandatory testing order must… take blood in a manner consistent with relevant medical and other professional standards."

Although section 19(2)(a) of the Bill requires the medical practitioner to "be presented with a copy of the mandatory testing order relating to the third party before taking the third party's blood", the Bill does not state that no obligations under the Act are placed on the medical practitioner or pathologist. This should explicitly be stated in the Bill, and the medical practitioner and pathologist should be informed of this when presented with the mandatory testing order. Further, the Bill should require the medical practitioner carrying out testing to be informed whether the person has consented to be tested.

RECOMMENDATION 16: Section 19 of the Bill should be amended to explicitly state that no obligations under the Act are placed on the medical practitioner or pathologist.

RECOMMENDATION 17: Section 19(2) of the Bill should be amended to require that the person taking blood from a third party under a mandatory testing order be informed when provided with the testing order that no obligations under the Act are placed on them

RECOMMENDATION 18: Section 19 of the Bill should be amended to state that the medical practitioner must privately (without the presence of law enforcement) ask the person being tested whether they had given consent to be tested, and whether they had been threatened with a mandatory testing order or penalties if they did not consent.

Personal liability for medical practitioners

ASHM is deeply concerned that, alongside concerns about professional ethics, medical practitioners involved in taking blood for the purposes of carrying out a mandatory testing

order under the Act will be open to civil and/or criminal liability as a result of their actions. While the current draft of the Bill does provide broad exemptions, we would like medical practitioners to be specifically named, as is currently the case for police and correctional officers in section 31(3).

> RECOMMENDATION 19: Sections 31(1) and 31(3) of the Bill should be amended to specifically include and name medical practitioners, nurses and blood collectors (phlebotomists).

Use of force in conducting testing

We are extremely concerned that the current version of the Bill allows a law enforcement officer to "use reasonable force in relation to a third party" in order to assist a person to take blood as required by a mandatory testing order. Allowing the use of force in these settings, during a sensitive medical procedure such as taking blood, may place the person whose blood is being taken in danger, and may even create a situation where there is a higher likelihood of exposure to bodily fluids than the initial incident. The use of force in this setting also places the health worker carrying out the blood test at risk of injury.

Further, this power has the potential to be used as a form of extrajudicial punishment, particularly given that section 31(3) states: "A person, including a police officer or correctional officer, is not personally subject to criminal liability for anything properly and necessarily done—(a) in good faith, and (b) for the purpose of taking blood, or helping another person to take blood, from a third party under a mandatory testing order." This removal of criminal liability may incentivise the inappropriate use of force when assisting in carrying out a mandatory testing order.

> RECOMMENDATION 20: The Bill should be amended to remove section 20(2), therefore removing the ability for a law enforcement officer to use reasonable force to assist in carrying out a mandatory testing order.

Appealing a testing order

We are extremely concerned that, as outlined in section 22(4) of the Bill, a person subject to a mandatory testing order only has one business day to make an application for review. This is insufficient time, particularly given the appeal must be made in writing, which may disadvantage those with limited literacy skills, or without fluency in written English.

Even more concerning is the fact that, as outlined in section 23(1), the mandatory testing order continues to have effect even after an appeal has been made. While it is appropriate that the results of the blood test should not be available in the case that a decision to make a mandatory testing order is set aside by the Chief Health Officer, it is absolutely unacceptable that the person subject to the order is completely powerless to prevent the testing itself. This is an egregious breach of the bodily autonomy of the person being tested, and totally undermines the appeal process.

RECOMMENDATION 21: Section 22 of the Bill should be amended to increase the amount of time a person is able to make an application for review, and further detail provided about options for those with limited literacy skills, or without fluency in written English.

RECOMMENDATION 22: Section 23 of the Bill should be amended to ensure the mandatory testing order cannot be carried out until an application for review has been determined by the Chief Health Officer.

Results of a testing order

The Bill does not currently require the third party to authorise a medical practitioner to receive the results of the mandatory blood testing on their behalf. This is appropriate; however, given the complex and often psychologically confronting nature of a BBV diagnosis, provisions in the Bill should be made to require the third party to be provided with information about BBVs when they receive the mandatory testing order. At that time, the third party should also be provided with a referral to a medical practitioner with specific expertise in BBVs, and to counselling they may access in the event of a positive diagnosis. This is in line with Australia's National Testing Policies for BBVs[7].

RECOMMENDATION 23: Section 18 of the Bill should be amended to require the third party to be provided with information about BBVs, a referral to a medical practitioner with specific expertise in BBVs, and a referral to counselling. This should be done at the same time the third party is personally served the mandatory testing order.

4. Summary of recommendations

ASHM makes the following recommendations in relation to the *Mandatory Disease Testing Bill 2020*:

1. The Bill should be amended to ensure mandatory testing orders are only allowed following an actual risk of transmission, and that these risks are specifically named and confirmed in the application for an order.
2. The Bill should be amended to disambiguate the risks of transmission for specific diseases associated with specific kinds of exposures.
3. The Bill should be amended to only apply to people over the age of 18 years.

[7] ASHM 2020, HIV Testing Portal: Conveying HIV Test Results, [Online], Accessed: 17/12/2020

4. The Bill should be amended to require an application for a mandatory testing order to include evidence (such as eyewitness accounts) that the contact with a person's bodily fluids occurred and was the result of a deliberate action.
5. The Bill should be amended to require that in the determination of an application for a testing order, the senior officer (in section 10) or the Court (in section 14) must be satisfied that contact with bodily fluids was the result of a deliberate action.
6. The Bill should be amended to remove section 8(2), and therefore require a prescribed worker to consult with a relevant medical practitioner within 24 hours in order to apply for a mandatory testing order.
7. The definition of "relevant medical practitioner" within the Bill should be updated to: "a medical practitioner with experience in and prescribing rights for treatment of blood-borne diseases".
8. The definition of "relevant medical practitioner" within the Bill should be updated to remove clause (b): ""if a medical practitioner with qualifications or experience in blood-borne diseases is not available at the time the worker requires a consultation under section 8—another medical practitioner".
9. The Bill should be amended to require applications for a mandatory testing order to be made to and determined by the Chief Health Officer, or else an independent regulator delegated by the Chief Health Officer.
10. The Bill should be amended to require any senior officer named in the Act, as well as any person to whom a senior officer may delegate their functions under the Act, to undergo training in the transmission of BBVs.
11. The Bill should be amended to require the senior officer to take into consideration the advice of the relevant medical practitioner in determining an application for a mandatory testing order.
12. Section 9(1)(h) of the Bill should be amended to remove "if any", therefore requiring the inclusion of written advice from a relevant medical practitioner in all applications for mandatory testing orders.
13. A framework for determining the application of mandatory testing orders based on real risk of transmission should be included in the Bill, and require evidence of a plausible route of transmission to be established before an order is made.
14. If such a framework is not included in the Bill, a mandatory testing order should not be able to be made until guidelines for a determination are published.
15. The following organisations should be included in the development of guidelines: The Anti-Discrimination Board of NSW, the Mental Health Commissioner of NSW, Aboriginal Affairs NSW, Multicultural NSW, The Corporate Sponsor for LGBTI Issues in NSW Police, the Corporate Sponsor Aboriginal Engagement in NSW Police, Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine, ACON,

Positive Life NSW, Hepatitis NSW, Multicultural HIV and Hepatitis Service, and NSW Users and AIDS Association.

16. Section 19 of the Bill should be amended to explicitly state that no obligations under the Act are placed on the medical practitioner or pathologist.
17. Section 19(2) of the Bill should be amended to require that the person taking blood from a third party under a mandatory testing order be informed that no obligations under the Act are placed on them, and informed of whether or not the person has consented to be tested.
18. Section 19 of the Bill should be amended to state that the medical practitioner must privately (without the presence of law enforcement) ask the person being tested whether they had given consent to be tested, and whether they had been threatened with a mandatory testing order or penalties if they did not consent.
19. Sections 31(1) and 31(3) of the Bill should be amended to specifically include and name medical practitioners, nurses and blood collectors (phlebotomists).
20. The Bill should be amended to remove section 20(2), therefore removing the ability for a law enforcement officer to use reasonable force to assist in carrying out a mandatory testing order.
21. Section 22 of the Bill should be amended to increase the amount of time a person is able to make an application for review, and further detail provided about options for those with limited literacy skills, or without fluency in written English.
22. Section 23 of the Bill should be amended to ensure the mandatory testing order cannot be carried out until an application for review has been determined by the Chief Health Officer.
23. Section 18 of the Bill should be amended to require the third party to be provided with information about BBVs, a referral to a medical practitioner with specific expertise in BBVs, and a referral to counselling. This should be done at the same time the third party is personally served the mandatory testing order.

ENDS