

**Submission
No 28**

INQUIRY INTO MANDATORY DISEASE TESTING BILL 2020

Organisation: New South Wales Nurses and Midwives' Association

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IN REPLY PLEASE QUOTE: JAK:AKE

11 February 2021

The Hon. Wes Fang, MLC
Parliament House
Macquarie Street
SYDNEY NSW 2000
By email: wes.fang@parliament.nsw.gov.au

Dear Mr Fang

Inquiry into the Mandatory Disease Testing Bill 2020

Thank you for inviting the New South Wales Nurses and Midwives' Association to make a submission to the Inquiry into the Mandatory Disease Testing Bill 2020.

We would like to offer our sincere apologies to the committee for our late submission – we hope that the committee is able to consider the concerns we have around this Bill and the impact on our members.

Of paramount importance to our Association, is the safety of our members. The inclusion of a provision that allows for 'reasonable force' to be used, places the health worker carrying out blood collection at risk of injury.

Furthermore, the lack of provision for conscientious objection is of concern to our Association. It is the position of the Association that our members must be afforded their right to conscientiously object to the mandatory testing of individuals.

Yours sincerely

Judith Kiejda
Acting General Secretary
NSW Nurses and Midwives' Association



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FEBRUARY 2021



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Recommendations

1. Remove the provision that allows law enforcement to use reasonable force to a detained third party for the purpose of collection of a blood sample.
2. Include a provision for health practitioners to exercise a right to conscientious objection to mandatory disease testing.
3. Include a requirement for the provision of information that BBVs can be transmissible in a “window period” and inform workers that a negative result of a third party may be unreliable for decisions regarding treatment options.

Foreword

The New South Wales Nurses and Midwives' Association (the Association) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes: registered nurses; enrolled nurses and midwives at all levels including management and education, and assistants in nursing and midwifery.

The NSWNMA has over 70,000 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNMA are also deemed to be members of the New South Wales Branch of the Australian Nursing and Midwifery Federation.

NSWNMA strives to be innovative in our advocacy to promote a world class, well-funded, integrated health system by being a professional advocate for the health system and our members. We are committed to improving standards of patient care and the quality of services of all health and aged care services whilst protecting and advancing the interests of nurses and midwives and their professions.

We welcome the opportunity to provide a submission to this Inquiry.

This response is authorised by the elected officers of the New South Wales Nurses and Midwives' Association.

CONTACT DETAILS

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Issues identified

It is understood that the intention of the Mandatory Disease Testing Bill 2020 (the Bill) is to minimise the psychological harm resulting from possible transmission of a blood-borne virus (BBV). Members of this Association who work in the public sector would be considered “prescribed workers” under the Bill.

It is important to note that our members also have an interest in this Bill from the perspective of people who provide care to those who have been exposed, as well as to those people whose deliberate acts result in an exposure to bodily fluids.

Many of our members have experienced a deliberate or accidental exposure to bodily fluids in the course of their work, and have endured the accompanying psychological distress whilst awaiting test results. The safety of nurses and midwives – as well as other emergency and frontline workers – is of paramount concern to us. The level of violence against our members is completely unacceptable; there are a range of measures that can, and should, be used to mitigate this.

The Association was afforded the early opportunity to provide feedback on the draft Mandatory Disease Testing Bill 2020 to NSW Health in May 2020. Since this feedback was provided, subsequent additions have been made to the Bill and are of concern. Our concerns and recommendations are outlined below.

SAFETY OF OUR MEMBERS

The addition of section 20(2) being “*A law enforcement officer may use reasonable force in relation to a detained third party...*” is of concern to the Association. The collection of blood is a delicate procedure that requires specific skills and knowledge due to inherent risks. The use of force in such a procedure has the potential to cause a greater risk of exposure to frontline workers than the initial incident – this provision specifically places the health worker carrying out blood collection at risk of injury.

Section 19(2)(b) of the Bill states that “*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*”. Forcibly drawing blood from a detained person does not align with the professional standards of nursing or midwifery, and therefore both provisions of the Bill cannot concurrently apply.

Our members are already experiencing violence in the workplace at unacceptable levels. The practical outcome of the application of a section such as 20(2) is that a nurse or midwife, could potentially be directed by their employer to undertake a procedure which would put them at an unacceptable risk of harm. NSW Health, as with any other employer, has a legislative obligation under the *Work Health and Safety Act 2011* (NSW) to ensure the safety of our members at work. This includes to identify all reasonably foreseeable risks. Section 20(2), if passed, creates a reasonably foreseeable risk of needlestick injury and/or assault by a detained person who is resisting the collection of blood. Employers have an obligation to eliminate all reasonably foreseeable risks so far as reasonably practicable.

RECOMMENDATION: Remove the provision that allows law enforcement to use force to a detained third party for the purpose of collection of a blood sample.

RIGHT TO CONSCIENTIOUS OBJECTION

The lack of provision for conscientious objection is of concern to the Association. The Code(s) of conduct for nurses and for midwives outlines that nurses and midwives must “...responsibly use their right to not provide, or participate directly in, treatments to which they have a conscientious objection”¹. It is the position of the Association that our members must be afforded their right to conscientiously object to the mandatory testing of individuals. Nurses and midwives have the right to refuse to participate in procedures which they judge, on moral and ethical beliefs, to be unacceptable². The Bill must include a provision for nurses and midwives – and other registered health practitioners – who have a conscientious objection to mandatory disease testing.

RECOMMENDATION: Include a provision for registered health practitioners to exercise the right of conscientious objection to mandatory disease testing.

PROVISION OF INFORMATION ON TRANSMISSION RISK

It is imperative that our members are educated, and informed about the risk of transmission associated with various types of exposure to bodily fluids. The Bill refers to various bodily fluids – blood, faeces, saliva – without considering the varying degree of risk of BBV transmission of these fluids; the risk of BBV transmission from blood is low, and the risk is non-existent with faeces and saliva.

In previous feedback provided on the draft bill, we recommended the inclusion of an additional item for the provision of information that a BBV can be transmissible in a “window period” and that a negative result may be unreliable. The existing NSW Health Policy *HIV, Hepatitis B and Hepatitis C – Management of Health Care Workers Potentially Exposed*³ discusses this in more detail.

A lack of understanding about the risk of transmission could actually lead to increased psychological distress of our members. We are concerned our members could rely on the negative test results of a ‘third party’ and this could lead our members (or other workers) to believe that further monitoring and/or treatment is not required.

¹ *Code of Conduct for nurses*, Nursing and Midwifery Board of Australia, Melbourne, 2018 (Principle 4.4b) and

Code of Conduct for midwives, Nursing and Midwifery Board of Australia, Melbourne, 2018 (Principle 4.4b)

² ANMF Policy: Conscientious objection:

https://anmf.org.au/documents/policies/P_Conscientious_Objection.pdf

³ https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2017_010.pdf

RECOMMENDATION: Include the provision of information that BBVs can be transmissible in a “window period” and inform workers that a negative result of a third party may be unreliable for decisions regarding treatment options.

PROFESSIONAL STANDARDS FOR NURSES AND MIDWIVES

Nurses and midwives must adhere to the professional standards, guidelines and frameworks developed by the Nursing and Midwifery Board of Australia (NMBA). The *Code of conduct for nurses* and the *Code of conduct for midwives*⁴ (the Codes) set out the legal requirements, professional behaviour and conduct expectations for nurses and midwives in all practice settings, in Australia.

The Codes articulate what is expected of nurses and midwives in relation to informed consent. Within the Codes, informed consent is defined as “... *voluntary agreement to healthcare, which is made with knowledge and understanding of the potential benefits and risks involved...*”.

Furthermore, the Codes outline that nurses and midwives must: give a person time to ask questions, and to refuse care/interventions; and obtain informed consent or valid authority before carrying out an examination or investigation. If our members hold concerns around mandatory disease testing – and lack of informed and freely given consent to a procedure – they must be afforded the right to conscientious objection.

Thank you for the opportunity to provide further submissions in relation to this Bill.

⁴ *Code of Conduct for nurses*, Nursing and Midwifery Board of Australia, Melbourne, 2018 (Principle 2.3) and *Code of Conduct for midwives*, Nursing and Midwifery Board of Australia, Melbourne, 2018 (Principle 2.3)



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