

From the President's Office
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NSW Department of Justice
Parramatta Justice Precinct
160 Marsden St
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Parramatta NSW 2124

Email: mdtsubmissions@justice.nsw.gov.au

Re: mandatory disease testing in NSW of people whose bodily fluids come into contact with police and emergency services personnel.

Thank you for the opportunity to make a submission regarding the potential for mandatory disease testing in NSW of people whose bodily fluids come into contact with emergency services personnel.

AMA (NSW) acknowledges that the impact of potentially serious blood borne viruses (BBVs) such as Hepatitis B, Hepatitis C and HIV continues to be an issue of public health significance. We also recognise that because such infections can be serious, emergency services personnel are deeply concerned about the risk to themselves. AMA (NSW) acknowledges the depth of this concern.

As noted by the Department of Justice's Options Paper ("Options Paper") "the efficacy of testing and the risks and benefits to emergency services personnel exposed to bodily fluids need to be carefully weighed against the impact on individuals who may be required to be mandatorily tested."

With this in mind, AMA (NSW) aims to provide a clinical perspective based on the current medical and scientific evidence on the transmission of BBVs.

AMA (NSW) notes that other jurisdictions, including Western Australia, South Australia, Queensland and Victoria have schemes permitting mandatory disease testing, which differ in application and operation. In SA and WA, mandatory testing legislation faced criticism from the health sector on the basis that the rationale for mandatory testing of people whose body fluids may come into contact with emergency services is not evidence-based.

What are the risks?

The risk of infection from an incident depends on many factors, including the amount and type of bodily fluid (eg. blood, saliva, vomit), the mechanism of exposure, if the exposure occurred on broken skin, if the person was known to be infectious, and the exposed person's immunity.

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Clinical evidence shows that the risk of Hepatitis B, Hepatitis C and HIV transmission from a known positive source through blood and saliva to unbroken skin and skin-to-skin contact is zero.¹ There have been no cases of saliva being a transmission route for HIV in Australia.

We also highlight that the standard workplace procedure is to treat all blood and bodily fluids as potentially infectious. So in circumstances where a risk assessment has determined there is a risk of transmission of BBVs, emergency services personnel would be advised to follow potential blood-borne virus exposure management protocols.

AMA (NSW) strongly supports emergency services workers have access to immediate assessment, counselling and management by a health care professional after exposure to potentially infectious bodily fluids.

Testing of the source person (whether that be mandatory or voluntary) should not change the management of a potential blood-borne virus exposure. This is especially important given that testing for HIV and other BBVs has a window period during which an infection cannot be detected. A negative result is not conclusive. If significant exposure such as a needle stick injury or blood splash to broken skin, mouth or eyes has occurred, it is critical that Post Exposure Prophylaxis (PEP) treatment is commenced no later than 72 hours following exposure.

Given that testing and results should not change the protocol that should be followed in cases where significant exposure has occurred, and that testing of the source person should not be considered conclusive, AMA (NSW) does not support mandatory testing as an effective, reliable and necessary legislative reform.

AMA (NSW) acknowledges the stress emergency services personnel experience following exposure to blood and bodily fluids and potential for transmission of BBVs. It is vital that emergency services personnel are given prompt assessment, counselling and management by a health care professional.

With this in mind, AMA (NSW) strongly supports Option 1 – **Improvements to current agency policy and practice**, which suggest agencies employing emergency services personnel review their current policies and procedures for exposure incidents and provide appropriate and early counselling for affected workers.

AMA (NSW) also accepts Option 2 – **Testing by consent**, which would gain the consent of the source person to voluntarily have a sample taken and tested following an exposure incident following an exposure incident. This would be aligned with the current policy for NSW Health employees.

AMA (NSW) does not support Option 3 – **Consent-based testing with option for court order** or Option 4 – **Senior police officer ordered testing following offence**.

Both options require a legislative change that presents significant practical and ethical challenges for medical professionals. Even with an order from a senior police officer, the source person could physically refuse to be tested. There are other practical issues; should the source person not be in a medical setting that facilitates testing, detaining a source person in a hospital or medical facility presents another set of challenges for attending health professionals. Mandatory testing also

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removes the source person's autonomy over their health information. Medical professionals are very protective and vigilant about the privacy of health information of patients.

Furthermore, mandatory testing contributes to the stigma and discrimination of people living with HIV, Hepatitis B and C. This has the downstream effect of limiting the ability of health services to engage people at risk or living with these blood borne viruses.

In conclusion

The proposed mandatory testing will not necessarily reduce stress for emergency services personnel who are exposed to a person's blood or other bodily fluids. As previously stated, a negative result from the source person is not conclusive and should be considered as a preliminary test only. As well, a positive result does not definitively mean transmission has occurred.

Emergency services personnel should treat all blood and bodily fluids as potentially dangerous. Should exposure occur, emergency services personnel should follow procedures for management of a potential blood-borne virus exposure. In cases where significant exposure has occurred and the need for PEP has been determined, this treatment should commence within 72 hours of exposure. PEP should be administered regardless of whether testing of the source person has occurred, as BBVs have a window period which an infection cannot be detected.

Based on this, AMA (NSW) does not conclude that the benefits of mandatory disease testing to emergency services personnel outweighs the extreme impact on the rights of the source person to consent to medical tests and disclosure of their health information.

Yours sincerely,



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AMA (NSW) President

ⁱ <https://www.ashm.org.au/products/product/1976963390>

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