AMA NEW SOUTH WALES

3 November 2023

Ombudsman New South Wales
Level 24,
580 George Street
Sydney, NSW, 2000

Email: mdt@ombo.nsw.gov.au

Re: Submission on the Mandatory Disease Testing Act 2021 (the Act)

Thank you for the opportunity to make a submission regarding the review of the Mandatory Disease Testing Act 2021.

As previously stated in our original submission to NSW Department of Justice in 2018 and our submission to the Inquiry into Mandatory Disease Testing Bill to the Standing Committee on Law and Justice in 2020 (both reports attached). AMA (NSW) acknowledges the impact of potentially serious blood borne viruses (BBVs) as a continual public health issue. We also acknowledge the depth of concern that emergency service personnel hold about the risk to themselves because of the severity of such infections.

However, AMA (NSW) remains opposed Mandatory Disease Testing due to the policy failure to reflect good clinical practice and to meet the ethical standards of appropriate healthcare. Mandatory testing laws are opposed by global health bodies such as UNAIDS and the World Health Organisation. Furthermore, ACON - NSW's leading health organisation specialising in community health, inclusion, and HIV responses for people of diverse sexualities and genders - does not support the Act.

In light of this most recent Ombudsman review of the Act, AMA (NSW) consulted our Council, consisting of varying doctor specialities and workplaces. While no member of Council reported being called upon to undertake testing, Council reinforced the previously expressed AMA (NSW) position.

Testing of the source person (mandatory or voluntary) does not alter the initial management of a potential BBV exposure. For human immunodeficiency virus (HIV), testing of the source is only useful in reducing the length of treatment, Post Exposure Prophylaxis (PEP), which is standard protocol to commence immediately in high-risk situations regardless of test results (2). PEP is not required for Hepatitis B, if there is evidence of immunity, which is aided by the fact that vaccination against this disease is a requirement for frontline workers (2). If the exposed patient is unimmunized, guidelines state that Hepatitis B PEP should be initiated immediately if the source infective status is unknown (3). Guidelines explicitly state not to delay treatment pending the results of diagnostic tests (3).

Furthermore, testing for HIV and other BBVs has a window period during which an infection may not be detected in the acute stage of the disease. Given that testing and results do not dramatically change the initial protocol that should be followed in cases of significant exposure, and that testing of the source person should not be considered definitive, AMA (NSW) does not support mandatory testing as an effective, reliable, or necessary form of legislative reform.

AMA (NSW) acknowledges the stress on emergency services personnel who experience exposure to blood and bodily fluids, and the potential transmission of BBVs. It is vital that individuals are given prompt assessment, counselling, and management by a medical professional. The effort and expense

in enforcing mandatory testing would be better placed in ensuring those exposed workers are well informed and properly engaged with the health care system in incidents where they are exposed to hazardous bodily fluids.

Mandatory testing also removes the source person's autonomy over their health information, which is contrary to current NSW Health Guidelines stating that ''informed consent for trusting must be obtained from the source patient'' (2). Medical professionals are very protective and vigilant about the privacy of health information of patients, as autonomy is one of the four principles of modern bioethics (4). This is not to suggest that there is not a value to encouraging the voluntary testing and awareness of disease status, however, such voluntary engagement would be more effective without the mandatory sanction.

The Act allows for the testing of a third party who is at least 14 years of age. The prevalence of BBV within under 19-year-olds in NSW in 2023 stands at only 9 cases (6). Similarly, there is a very low prevalence of Hepatitis B and C within this age group. To forcibly engage a child in venepuncture, without any health benefit for the child, when the utility of such a result is negligible, is contrary to the basics of medical ethics, such as beneficence and non-maleficence (4).

There are other practical issues that AMA (NSW) has highlighted; if the third party is not in a medical setting that facilitates testing, detaining a person in a hospital or medical facility presents another set of challenges for health professionals. Additionally, we are concerned about the use of force by police and correctional officers in carrying out mandatory disease testing orders, along with the potential safety risks that this may present to attending medical officers.

Based on academic research and scientific evidence, the baseline level risk to emergency personnel remains low, along with the prevalence of BBVs in Australia. As outlined within this submission, mandatory disease testing does not necessarily reduce the stress for emergency personnel exposed to BBVs, as a negative result is not conclusive. AMA (NSW) would therefore recommend the Ombudsman focus its review on:

- The level and adequacy of access to appropriate medical advice and expertise for any officer who believes they have experienced exposure.

- If the provisions are being used, the length of time involved in having the mandatory tests undertaken.

- Again, if tests have been undertaken, if any concerns have been expressed directly or indirectly about the adequacy of the consent provided.

- Reviewing the minimum age under which The Act permits mandatory testing orders

Yours sincerely,

Ms Fiona Davies
AMA (NSW) CEO

References:

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