POSITION PAPER:

Mandatory testing of people whose bodily fluids come into contact with police and/or emergency service personnel

October 2018

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ABOUT THIS POSITION PAPER

Mandatory testing of individuals whose bodily fluid comes into contact with emergency service personnel is an issue with significant ramifications for a number of people and communities, government processes and resources, civil liberty infringements and health outcomes.

This paper outlines the evidence, policy considerations and unintended effects of the introduction of such a policy.

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INTRODUCTION

The consideration of mandatory testing of people whose bodily fluids come into contact with police and/or emergency service personnel as a potential option marks a fundamental shift in the rights of individuals to privacy, to the integrity of their own bodies, and a fundamental change to Australian policy which generally requires consent for HIV testing.

Mandatory testing of people whose bodily fluids may come into contact with emergency services personnel is neither an effective, necessary nor viable option for reform.

We strongly believes in the importance of the wellbeing and safety of emergency service personnel, as this community is also part of our communities. However the premise of mandatory testing is based on outdated, 30-year old notions of HIV (human immunodeficiency virus) and other BBV (blood-borne virus) transmission risk. This is no longer the context within which we operate. The routes of transmission for BBVs is well established as outlined in table 1.0

International health organisation bodies such as UNAIDS and the World Health Organisation (WHO) oppose mandatory testing on the basis that it compromises public health initiatives and efforts to eliminate HIV and other BBV transmission.

Punitive laws based on outdated misconceptions and myths about how BBVs are transmitted, and which perpetuate stigma and discrimination need to be repealed, not introduced during a time where HIV in Australia is treatable, manageable, and on target to reaching national objectives.

Australia's national response to HIV has been world-leading, and is embedded in the principles of informed consent and voluntary testing; with a core focus on the active participation of affected communities, harm reduction and effective partnerships between governments, affected communities, researchers and health professionals.

Mandatory testing is not only a step backwards from the remarkable progress Australia has made in responding to BBVs, but is also unfounded in a medical evidence-base. Further, BBVs have a varied and at times extended window period for the detection of a transmission and as such, testing the source of exposure is not an effective method for gaining 'peace of mind' of one's own test results.

PROPOSALS TO INTRODUCE MANDATORY TESTING IN NSW

In August 2017, in response to the Legislative Assembly Committee on Law and Safety's Inquiry into violence against emergency services personnel, the Police Association of NSW (PANSW) invited the NSW Government to consider the introduction of legislation to allow mandatory disease testing of people whose bodily fluids come into contact with police and emergency services personnel. This is similar to that of existing legislation in South Australia, Western Australia and Queensland (Legislative Assembly Committee on Law and Safety, 2017: 81).

PANSW REQUESTED IN THEIR SUBMISSION TO THE COMMITTEE:

(a) The creation of an offence of deliberately/ negligently applying bodily fluid to a NSW Police Officer or any other emergency services personnel acting in the execution of their duty, through amendment of the NSW Crimes Act 1900, with a maximum penalty of 14 years imprisonment where said person is found guilty; and

(b) Legislated powers to order mandatory testing for prescribed infectious diseases of any person where it is reasonably suspected their bodily fluids have been transferred, intentionally or accidentally, on to or in to a police officer or emergency services personnel.

PANSW believe that mandatory testing for infectious diseases, including BBV such as Hepatitis B, Hepatitis C and HIV, will provide emergency service workers and police officers with 'peace of mind' throughout the waiting period for their own results (Legislative Assembly Committee on Law and Safety, 2017: 81). PANSW's submission further states that 'immediate testing of the individual to whom the bodily fluid belonged would provide officers with answers… and a positive result would see the officer able to take immediate action to access medical advice, optimal treatment and counselling' (PANSW, 2016: 9).

HOW HEPATITIS AND HIV ARE TRANSMITTED

TABLE 1.0

BBV	FLUID TRANSMISSION	ROUTE OF TRANSMISSION	TREATMENT
Human Immunodeficiency Virus (HIV) Information Source: NSW Ministry of Health	Transmitted through: blood, semen, vaginal fluid or breast milk. HIV is not transmitted by saliva.	During anal or vaginal sex without protection of a condom, sharing drug injecting equipment, unsafe injections (e.g. tattoos and other procedures that involve unsterile cutting or piercing), to a baby during pregnancy, childbirth or breast-feeding.	Treatment available with antiretroviral drugs. If exposed you can access PEP (post exposure prophylaxis) if taken within 72 hours.
Hepatitis B (HBV) Information Source: SafeWork NSW	Transmitted through blood and sexual fluids. HBV is not transmitted by saliva, tears or sweat.	Needlestick injuries, injecting drugs with a contaminated needle, sexual contact, transferring infected blood on razors, toothbrushes and other personal items, splashes of blood and/or sexual fluids to mucous membranes (mouth, nose, eyes) or broken skin, mother to child during pregnancy or childbirth, any other blood-to-blood contact.	HBV can be prevented with a vaccine. If exposed and have not been immunised prior, you can access a shot of immunoglobulin within 72 hours (this reduces your chance of contracting HBV).
Hepatitis C (HCV) Information Source: SafeWork NSW	Transmitted through blood-to-blood contact only. HCV is not transmitted by saliva, tears or sweat.	Needlestick injuries, injecting drugs with shared needles, tattooing and body-piercing with contaminated equipment, sharing razors, toothbrushes and other personal hygiene items, from mother to child during pregnancy or childbirth, any other blood-to-blood contact.	HCV treatment effects a complete cure for over 95% of people with few or no side effects (Hepatitis C Virus Infection Consensus Statement Working Group, 2018).

The Committee made the following recommendation (Legislative Assembly Committee on Law and Safety, 2017: 81):

(1) Recommendation 47: That the NSW Government consider introducing legislation to allow mandatory disease testing of people whose body fluids come into contact with police and emergency services personnel, in consultation with all affected stakeholders.

NSW Government response to Recommendation 47:

(2) The NSW Government will convene a cross-agency working group to draft an options paper, requesting submissions by mid-2018. The options paper will canvass the legal, ethical, operational and financial issues involved in the implementation of a mandatory disease testing regime. The Government will consider submissions from key stakeholders before proceeding to implement reform in this area.

While we agree emergency service personnel and police officers must be protected as much as is reasonably possible in a high-level occupational risk environment, the proposed policy is based in a number of unfounded assumptions.

The proposed mandatory testing regime assumes that a person who exposes bodily fluids to an emergency service personnel or police officer is likely to have a BBV, and that there is a clear route of transmission which will result in infection, that timely and effective treatment responses currently used for the exposed person will not be effective, and that all police and emergency service units across NSW will have a sound knowledge of how BBVs are transmitted and be able to competently complete a risk assessment (i.e. know when testing and treatment is required or not).

As aforementioned PANSW state 'a positive result would see the officer able to take immediate action to access medical advice, optimal treatment and counselling' (PANSW, 2016: 9). However SafeWork NSW (the State's work health and safety regulator) already advise that standard procedure for exposure to hepatitis or HIV includes seeking immediate first aid advice, medical advice, counselling, testing of the exposed person and commencing prophylaxis treatment (SafeWork NSW, 2018).

Testing of a source after exposure to bodily fluids is not best practice or evidence-based given the window periods for BBVs, and as such will not provide police with conclusive answers as to their own status while awaiting their own test results. The proposed mandatory testing laws further perpetuate the stigma, discrimination and myths associated with the transmission of HIV and other blood borne viruses (BBVs) by casting people living with HIV and other populations at increased risk of HIV as inherently dangerous and in need of control. In effect, mandatory HIV testing laws expose a tension between the use of public health objectives and the use of law and order to prevent HIV transmission.

INTERNATIONAL POLICY OPPOSES MANDATORY TESTING

Mandatory testing is opposed by international health, human rights and United Nations bodies as a risk to public health.

UNAIDS are the Joint United Nations Programme on HIV/AIDS leading the international effort to end AIDS by 2030. Sustainable Development Goal (SDG) 16 within the UNAIDS 2016-2021 Strategy details the need to remove 'punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV' (UNAIDS, 2016: 11). Discriminatory laws that criminalise vulnerable communities, such as people living with HIV or people at high risk of HIV transmission (e.g. gay and bisexual men, sex workers and people who inject drugs), compromises the public health investment in strategies to eliminate HIV transmission (UNAIDS, 2016: 37).

UNAIDS and the WHO joint policy statement on HIV testing state that 'the conditions under which people undergo HIV testing must be anchored in a human rights approach which protects their human rights and pays due respect to ethical principles', and testing of individuals must 'only be conducted with informed consent, meaning that it is both informed and voluntary' (UNAIDS & WHO, 2004: 1). In 2012, UNAIDS and WHO released a statement reaffirming their opposition to mandatory HIV testing, stating 'mandatory or compulsory (coerced) testing is never appropriate regardless of where that coercion comes from' (UNAIDS & WHO, 2012).

In a review of international criminalisation of HIV, it was found that there is no evidence to support the use of criminal law to achieve public health goals (Weait, 2011: 26). Weait further identified that there is no evidence to support criminal law resulting in lower infection rates, and that it 'perpetuates misinformation and prejudice…where a disproportionate number of people from minority ethnic communities are prosecuted' (2011: 28).

> TESTING OF INDIVIDUALS MUST 'ONLY BE CONDUCTED WITH INFORMED CONSENT, MEANING THAT IT IS BOTH INFORMED AND VOLUNTARY' (UNAIDS & WHO, 2004: 1).

The proposed policy further infringes upon the human right to self-determination (Article 1 of the International Covenant on Economic, Social and Cultural Rights), and informed consent to medical procedures (Article 15 of the Convention on the Rights of Persons with Disabilities).

NATIONAL POLICY OPPOSES MANDATORY TESTING

Australia is widely recognised globally for a successful response to HIV that is proactive, evidence-based and inextricably linked to a human rights framework. According to the Australian Government's Seventh National HIV Strategy 2014 – 2017, 'voluntary testing, informed consent and confidentiality underpin high rates of HIV testing in Australia, and these principles remain central to the management of HIV' (Department of Health, 2014: 21).

Testing is identified as a priority area for action (7.2) and the elimination of 'stigma, discrimination, and legal and human rights issues on people's health' is listed as a national objective (Department of Health, 2014: 5).

Mandatory testing would violate state and national guidelines that indicate testing should be voluntary except in exceptional circumstances. Given that saliva is not considered a risk for blood-borne viruses, this act would not cross the threshold for mandatory testing under current policy settings in Australia. Within the Australian Government's Medicare Benefits Schedule Book Category 6 (operating from 1 March 2018), pathology note PN.0.18 Human Immunodeficiency Virus (HIV) Diagnostic Tests states that 'prior to ordering an HIV diagnostics tests the ordering practitioner should ensure that the patient has given informed consent' (Department of Health, 2018).

In addition, the Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM)'s national testing policies for HIV, Hepatitis B and Hepatitis C stipulate informed consent must be obtained for testing of HIV, Hepatitis B and Hepatitis C (ASHM, 2017; 2015; 2017).

Mandatory testing fails to uphold the principles and objectives of Australia's national HIV response, and thus compromises public health initiatives that seek to maximise voluntary testing, eliminate discrimination and end HIV transmission.

EXISTING LEGAL AVENUES

Transmission is primarily a health issue and the need for justice responses are extremely rare. In the rare circumstance that people who intentionally or recklessly put others at risk by exposure to BBVs, there are already a number of existing remedies available in Australian law, both in the Crimes Act and the Public Health Act.

GRIEVOUS BODILY HARM

Under the Crimes Act 1900, 'grievous bodily harm' is defined to include 'any grievous bodily disease' that can cause a 'person to contract a grievous bodily disease'. Provisions for circumstances where a person intentionally or recklessly transmits HIV to another person would be covered under Section 33(1)(b) (maximum penalty: 25 years imprisonment) and Section 35(1)(a) (maximum penalty: 14 years imprisonment) of the Crimes Act 1900.

In Michael Aubrey v The Queen, May 2017, the High Court of Australia 'held that causing a complainant to contract HIV could constitute the infliction of grievous bodily harm contrary to Crimes Act 1900 (NSW) section 35(1)(b)' (High Court of Australia, 2017), as 'the offence of inflicting grievous bodily harm may be committed without any physical assault' (Weiss, 2013). The High Court further found that 'recklessness within the now repealed definition of 'maliciously' in the Crimes Act 1900 (NSW) section 5, was established by proving an accused's foresight of the possibility, rather than the probability, of the risk in question materialising' (High Court of Australia, 2017).

PUBLIC HEALTH ORDERS

HIV and AIDS are classified as Category 5 conditions under the Public Health Act 2010, and as such are covered under Division 4 Section 62 'authorised medical practitioner may make public health order in respect of a person if satisfied, on reasonable grounds, that the person: (a) has a Category 4 or 5 condition, and (b) because of the way the person behaves may, as a consequence of that condition, be a risk to public health' (Public Health Act, 2010).

(3) Category 5 scheduled medical conditions within the Public Health Act include HIV and AIDS.

This provision already allows a qualified medical practitioner to order the testing of a source for HIV in the case they are a serious risk to public health. While this is not ideal, it is better than the recent proposal put forward by PANSW. Given that police officers are not qualified medical practitioners, the expansion of police powers to permit mandatory disease testing is unnecessary and unsound.

> MANDATORY TESTING WOULD VIOLATE STATE AND NATIONAL GUIDELINES THAT INDICATE TESTING SHOULD BE VOLUNTARY EXCEPT IN EXCEPTIONAL CIRCUMSTANCES (PG5).

MANDATORY TESTING IS NOT BEST PRACTICE IN NSW

EXISTING NSW FRAMEWORK FOR THE MANAGEMENT OF PEOPLE WITH HIV WHO RISK INFECTING OTHERS

NSW already has a highly effective health framework for the *HIV, Hepatitis B and Hepatitis C – Management of Health Care Workers Potentially Exposed* (NSW Ministry of Health, 2017). This framework outlines the appropriate procedures for health care workers following exposure to potential disease transmission, including BBVs. The NSW Ministry of Health's procedures align with Australia's national response with respect to voluntary testing, stating 'informed consent for testing must be obtained from the source patient…if the patient does not provide consent, testing cannot occur' (NSW Ministry of Health, 2017: 5).

NSW Ministry of Health further identify that 'there have been no confirmed cases of HIV infection in a health care worker following an occupational exposure in NSW since 1994 and nationally since 2002' (NSW Ministry of Health, 2017: 7). New offences related to mandatory testing will create red-tape and congestion in the criminal justice system for matters that should be dealt with by the public health system.

NSW WORK HEALTH AND SAFETY REGULATIONS

SafeWork NSW are responsible for administering workplace health and safety (WHS) acts and regulation codes in NSW, and enforcing such related laws (including carrying out prosecutions) (SafeWork NSW, 2018).

According to SafeWork NSW, best practice for disease testing in the management of potential exposure to hepatitis and HIV in the workplace includes acquiring informed consent prior to any testing of either the source or the person exposed (SafeWork NSW, 2018). Testing is furthermore 'to be voluntary and (is) bound by privacy and antidiscrimination legislation' (SafeWork NSW, 2018).

KEY SERVICE PROVIDERS

The Albion Centre operate a 24/7 blood and body fluid exposure phoneline service in NSW for 'NSW based health care workers, paramedical workers and emergency services workers who sustain a needlestick injury and/or experience occupational exposure to blood and body fluids' (The Albion Centre, 2018). The Albion Centre are a recommended referral service on SafeWork NSW's website and funded by the NSW Ministry of Health.

Albion's Procedure for the management of occupational blood and body fluid exposure 2015 'represents the advice and information given by the Phoneline staff to callers'. The Phoneline advises that the decision to start treatment should not be delayed due to waiting on test results from the source of exposure (Albion, 2015: 7). Albion operates under the principles of informed consent, and in the case where consent from the source of exposure is denied, the person exposed should assume the source is positive and begin treatment based on risk assessment (The Albion Centre, 2015: 13).

The Albion Centre further advise that it is preferable to not test the source of exposure 'unless the health worker demonstrates signs of infection (unlikely for low risk exposures). This reduces costs to the health facility and anxiety for both the source and the exposed person' (The Albion Centre, 2015: 13).

EXISTING PROCEDURES - CORRECTIVE SERVICES NSW

Corrective Services NSW's response to exposure of bodily fluids in custodial settings does not mandate the testing of the source of exposure. Officers who experience an incident are provided support to decontaminate and encouraged to see their General Practitioner (GP) for medical advice. A similar process applies to inmates 'in the event of an inmate sustaining a needle-stick injury, or a blood-spill exposure, the affected inmate will be referred to Justice Health & Forensic Mental Health Network for counselling and testing' (Corrective Services NSW, 2015: 5).

MANDATORY TESTING IS NOT EFFECTIVE, NECESSARY OR EVIDENCE-BASED

The Australia New Zealand Policing Advisory Agency (ANZPPA) and Australasian Society for HIV Medicine (ASHM) produced a resource for Police Officers across Australia on BBVs and best practice response. ANZPPA & ASHM reaffirm an evidence-base informed best practice model, which states that "officers should not delay having a risk assessment from

[1]Australia New Zealand Policing Advisory Agency & Australasian Society for HIV Medicine. 2015. Police and Blood-Borne Viruses, Darlinghurst, NSW, available online at: https://www.anzpaa.org.au/about/general-publications/blood-borne-viruses

a qualified health professional for any possible exposure, waiting for the source's test results is not necessary and may delay treatments which need to begin as soon as possible" (ANZPAA & ASHM; 2015: 3).

WINDOW PERIODS MEAN MANDATORY TESTING IS NOT CONCLUSIVE

CDNA (Communicable Diseases Network Australia) National Guidelines for Public Health Units describe window periods as 'the period from infection to its detection, during which time the individual has the virus (and is therefore capable of transmitting HIV) but tests for HIV are negative because antigen and antibody are present at low undetectable levels or are yet to be produced' (CDNA, 2014: 15).

Testing for blood borne viruses has a window period (see table below). If there was a potential exposure risk, forcibly testing a community member could only be considered preliminary.

A negative result would not be conclusive if a person had seroconverted but was still within the window period. Further, this test would not affect the treatment and testing requirements for the emergency service personnel. Even if a positive BBV result is returned for a source, it would not establish whether the emergency personnel had contracted a BBV unless they were tested themselves.

TABLE 2.0

BLOOD BORNE VIRUS	WINDOW PERIOD
HIV	3 to 6 months
Hepatitis B	1 to 3 months
Hepatitis C	3 to 6 months

*The above window periods are as listed in the Australia New Zealand Policing Advisory Agency (ANZPAA) & Australasian Society for HIV Medicine's (ASHM) information resource on police and blood-borne viruses (2015).

The mechanisms proposed will do little to address stress for Police or their families who believe they've been put at risk of BBV infection, much of which is based on misunderstanding of the ways in which BBVs are transmitted.

CIRCUMSTANCES WHERE TRANSMISSION OCCURS ARE NARROW

Australia has had a strong and effective response to HIV over the last 30 years. The use of prevention methodologies such as condoms and treatment as prevention, as well as comparatively high rates of sexual health testing has meant that the Australian epidemic remains relatively contained.

Evidence of HIV, HBV and HCV transmission following occupational exposure in Australia within 2000-2003 saw approx. '4.1 potential blood-borne pathogen exposure incidents per week' (including percutaneous and mucous membrane exposures) by health care workers (McAllister & National PEP Guidelines Expert Reference Group, 2016: 30). Zero of these exposures resulted in seroconversion to HIV, HBV or HCV (McAllister & National PEP Guidelines Expert Reference Group, 2016: 30).

Treatment can lead to someone achieving an undetectable viral load (UVL) which is one of the most effective safe sex strategies. 'Viral load' is what is referred to as the amount of HIV in a person's body, and being 'undetectable' means the virus is no longer replicating and cannot be transmitted. In 2016, the PARTNER study from Europe found that the chance of HIV transmission where one partner had a UVL is negligible. In fact, there were zero transmissions recorded in the study despite approximately 58,000 acts of condomless sex (Collins, 2016).

"OFFICERS SHOULD NOT DELAY HAVING A RISK ASSESSMENT FROM A QUALIFIED HEALTH PROFESSIONAL FOR ANY POSSIBLE EXPOSURE, WAITING FOR THE SOURCE'S TEST RESULTS IS NOT NECESSARY AND MAY DELAY TREATMENTS WHICH NEED TO BEGIN AS SOON AS POSSIBLE" (ANZPAA & ASHM; 2015: 3).

In New South Wales, the Opposites Attract study, which focused solely on gay and other men who have sex with men, confirmed that HIV positive men who are on treatment and have an UVL do not transmit the virus to their partners (Kirby Institute, 2017).

Due to advancements in antiretroviral treatment, 'life expectancy after HIV diagnosis has dramatically increased, to the point that the life expectancy of a recently diagnosed adult on antiretroviral treatment approaches that of an adult in the general population' (Boyd, Cooper, Crock, Crooks, Giles, Grulich, Lewin, Nolan & Yarwood, 2016: 411).

Recent NSW Ministry of Health data set for the period January to March 2018 reports the proportion of patients who were reported to be virally supressed at 6-month follow-up is 86% (NSW Ministry of Health, 2018: 5). The report further identifies an increasing trend in the uptake of HIV treatment. 'Of the 299 people newly diagnosed in January to September 2017 now followed up at six months after diagnosis, 75% initiated ART within six weeks, and 96% within six months of diagnosis' (NSW Ministry of Health, 2018: 3).

The recent NSW data conveys a clear message: most people living with HIV in NSW have undetectable viral loads meaning they cannot pass on HIV, and most people newly diagnosed with HIV are commencing treatment. These positive trends are the results of years of strategic public health initiatives and campaigning which have made NSW world leaders in HIV response. The introduction of mandatory testing laws will wind back the State's efforts to eliminate HIV transmission.

HIV IS NOT TRANSMISSIBLE THROUGH SALIVA

HIV is transmitted through 'blood, semen, vaginal fluid or breast milk of an infected person', it is not possible to transmit HIV through saliva (NSW Ministry of Health, 2017).

PANSW's submission to the Inquiry requests 'the creation of an offence of deliberately/negligently applying bodily fluid to a NSW Police Officer or emergency services personnel', and further describe bodily fluid as 'blood from the victim of a violent crime or accident they are treating, the saliva of an offender police are seeking to arrest, or the unknown contents of a needle puncture' (PANSW, 2016: 8-12).

There have been no cases of saliva being a transmission route for HIV in Australia (ASHM, 2015). While infectious HIV is detected in the saliva, it is present in substantially reduced quantities and

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> THERE HAVE BEEN NO CASES OF SALIVA BEING A TRANSMISSION ROUTE FOR HIV IN AUSTRALIA (ASHM, 2015).

contains HIV-specific antibodies (ASHM, 2015). 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 (NSW Ministry of Health, 2017: 3). The proposal therefore perpetuates misunderstanding about how HIV and other BBVs can be transmitted.

Regardless of the conduct of people in police custody, the media coverage which reported on the PANSW's submission to the Inquiry was not evidence-based and sensationalised fear of BBVs. One article from the Daily Telegraph reported that police officers who are exposed to bodily fluids such as saliva from being spat on, have to put their lives on hold while waiting on test results for "serious diseases that can become a life sentence" (Hennessy, 2016).

This issue is receiving international attention. In January 2017 the Toronto Police apologised following an incident where an officer incorrectly asserted to bystanders during an altercation that the man could spread HIV through spitting. Following publicity around this incident, the Toronto Police publicly acknowledged that HIV is not transmissible via saliva (even Tweeting "You cannot get HIV/AIDS from spit. We're #sorry") and promised to bring in outside education to support their officers in understanding HIV transmission risk (Pelley & Fraser, 2017).

WHY IT'S UNWORKABLE

As part of a deeply concerning trend away from evidence-based policy, legislation mandating testing for BBVs has been recently introduced in the Northern Territory in 2016, South Australia in 2015, and Western Australia in 2014. Queensland also has existing laws that allow for mandatory testing of BBVs. Each jurisdiction varies in what constitutes grounds for testing, who can approve a mandatory test order and whether an appeal process is available.

GROUNDS FOR TESTING

The variation in what constitutes reasonable grounds for ordering a disease test across jurisdictions leaves the legislation open to misinterpretation and subsequent misuse. For example in South Australia, 'disease testing may be carried out if the person is suspected of a prescribed serious offence, and it is likely that a person in prescribed employment came into contact with bodily fluid' (Legislative Assembly Committee on Law and Safety, 2017: 85).

*See table 3.0 for current grounds for testing:

POWER TO ORDER A TEST

In South Australia, Western Australia and the Northern Territory, the legislation and guidelines allow for a senior police officer to determine whether it is 'likely' that exposure occurred or for police to override a doctor's recommendation as to the need for testing. The risk would be assessed by a person without medical qualifications and undermine Australia's best-practice police framework for addressing BBV risks in a way that responds to actual risk.

DETAINMENT AND FORCE TO OBTAIN MANDATORY DISEASE TEST

Several existing laws currently provide provisions which allow for the detainment of an individual as long as reasonably necessary to test, and the provision to use force as reasonably necessary for taking the test. The use of force is applicable in all jurisdictions where mandatory disease testing laws exist in Australia, and detainment as long as reasonably necessary exists in Western Australia, South Australia and Northern Territory.

It is further unclear how mandatory testing would be enforced if a person resists because taking blood from someone without consent would constitute assault. According to NSW Ministry of Health's Consent to Medical Treatment – Patient Information Policy Directive 2005, 'treating a competent patient who has validly refused treatment could constitute an assault or battery' (NSW Ministry of Health, 2005).

The expansion of police powers exposes vulnerable communities to unnecessary detainment, violence, and discrimination. Aboriginal and Torres Strait Islander people are already significantly over represented in Australian prison populations, accounting for 24% of the prison population in NSW and 27% nationally (ABS, 2017). With the refusal to submit to a disease test a criminal offence, we are concerned that these powers may be used to further discriminate against vulnerable populations, increase detainments in custody and increase incarcerations.

In 2017 a Utah nurse Alex Wubbels defended the right of a person to give informed consent to a medical procedure and was arrested by police for refusing to allow a police officer to draw blood from an unconscious patient (ABC News, 2017). This case is one example of how these laws can go awry.

> ACCORDING TO NSW MINISTRY OF HEALTH'S CONSENT TO MEDICAL TREATMENT – PATIENT INFORMATION POLICY DIRECTIVE 2005, 'TREATING A COMPETENT PATIENT WHO HAS VALIDLY REFUSED TREATMENT COULD CONSTITUTE AN ASSAULT OR BATTERY' (NSW MINISTRY OF HEALTH, 2005).

ABC.NET.AU/NEWS/2017-09-02/NURSE-ASSAULTED-REFUSES-BLOOD-BE-DRAWN-FROM-UNCONSCIOUS-PATIENT/8865988

In Central Queensland in November 2017 a man spat on a police officer during an arrest altercation. Defence lawyer Lauren Townsend reported 'the police haven't even felt the need to seek a disease test order' given that the man spat on a Sergeant's neck and the skin was unbroken (Steger, 2017).

PENALTIES FOR REFUSING MANDATORY TESTING

Alarmingly, three jurisdictions legislate that the refusal of consent to a disease test order is a criminal offence, and maximum penalties vary from significant fines to imprisonment (in some cases both).

In Western Australia's Mandatory Testing (Infectious Diseases) Act 2014 the penalty for failure to comply with a testing order is both a fine of up to $12,000 and imprisonment for 12 months; and in Northern Territory's Police Administration Amendment Act 2016 the maximum penalty is up to 100 penalty units, which currently amounts to $15,400 for the financial year 2017-2018 (Northern Territory Government, 2018). In South Australia under Criminal Law (Forensic Procedures) Act 2007 intentionally obstructing or resisting a disease test order can be penalised with up to 2 years imprisonment.

At present, 'the majority of [Australian] prisoners are from severely disadvantaged backgrounds, with serious health, mental health and disability concerns' (Baldry & Russell, 2017: 2). On average the Australian prison population are 'of lower socioeconomic status, of poorer health and of lower

STATE	GROUNDS FOR TESTING	TABLE 3.0
South Australia	Grounds for testing include (Legislative Assembly Committee on Law and Safety, 2017: 85): (a) Assault, assault causing serious harm and assault causing harm (b) Acts endangering life or creating risk of serious harm (c) Offences relating to public order, assaulting and hindering police, and violent disorder	
Northern Territory	Grounds for testing include: (a) An assault by the transferor against the member; or (b) The lawful apprehension or detention of the transferor by the member; or (c) Another circumstance prescribed by regulation and involving the transfer or and the member	
Western Australia	Reasonable grounds for disease testing means reasonable grounds for suspecting that there has been a transfer of bodily fluid from a suspected transferor to a public officer as a result of – (a) An assault by the suspected transferor against the public officers; or (b) The lawful apprehension or detention of the suspected transferor by the public officer; or Any other prescribed circumstance involving the suspected transferor and the public officer	
Queensland	Grounds for testing include 'rape, sexual assault and serious assault', on the condition that semen, blood, saliva or another bodily fluid may have been transmitted into the victim's anus, vagina, a mucous membrane, or broken skin' (Legislative Assembly Committee on Law and Safety, 2017: 85).	

> 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 (NSW MINISTRY OF HEALTH, 2017: 3).

levels of education than the rest of the population' (Baldry & Russell, 2017: 4).

Penalising the refusal of a disease testing order with imprisonment will only serve to increase incarcerations unnecessarily, particularly of our most vulnerable community members who require community-based support. We are further concerned that in the case a person does test positive from a mandatory test, that they will be further charged with a grievous bodily harm offence under the Crimes Act (Australian Federation of Aids Organisations, 2015: 2).

The criminalisation of people living with HIV and mandatory testing legislation further stigmatises and discriminates against people living with HIV and other vulnerable marginalised communities who are at risk of committing criminal offences.

The proposed policy fails to identify any parameters for duty of care in circumstances where a source is found to be unknowingly positive, which is a critical oversight given research informs us that people living with HIV are at risk for developing mental health issues, and are 'twice as likely to have depression compared to those who are not infected with HIV' (National Institute of Mental Health, 2016). Detainment or incarceration is not an appropriate response to a positive test result.

EXISTING LAWS ARE POORLY MODELLED AND WOULD INCREASE COSTS FOR NSW CRIMINAL JUSTICE SYSTEM

The existing laws that criminalise the refusal of a testing order and punish such offences with imprisonment, result in an increase in unnecessary detainments and incarcerations.

Australia currently spends a significant amount on incarceration, and has 'the seventh fastest prison spending growth rate in the Organisation for Economic Cooperation and Development… and a large and rapidly growing prison population' (Brushnell, 2017: 3). In 2017, NSW 'had the largest prisoner population nationally, accounting for 32% of the total Australian adult population' (ABS, 2017).

Within the PANSW's submission to the Inquiry, they request a 'maximum penalty of 14 years imprisonment' for 'deliberately/negligently applying bodily fluid to a NSW police officer or any other emergency services personnel' (PANSW, 2016: 9).

In the year ended 30 June 2017, the annual cost per adult prisoner in NSW was $63,115, which is a 3.5% increase in 2016-17 (Audit Office of NSW, 2017: 38). Juvenile detainees cost significantly more to detain with an annual average of $335,840 in 2017 (Audit Office of NSW, 2017: 39).

Mandatory testing laws are not based in scientific evidence and as such are not best practice, nor economically logical. NSW needs to invest in preventive programs that capture at-risk people in community based settings prior to committing criminal offences to reduce the likelihood of offending occurring in the first place.

The varied approach among jurisdictions in mandatory testing legislation fails to align with the Commonwealth's approach to responding to, preventing and treating BBVs, and exposes people living with BBVs to further stigma and discrimination. NSW should not follow the trend of other states and territories because the legislation will cause more red tape, hinder privacy and human rights, is unworkable, ineffective and unnecessary.

UNINTENDED EFFECTS

STIGMA AND DISCRIMINATION IS EXACERBATED

Mandatory testing laws create significant stigma and discrimination for people living with HIV, hepatitis B and hepatitis C in the community, which in and of itself, constrains the ability of health services to target and engage people at risk of these blood borne viruses. The proposed policy would endeavour to shift good proactive behaviour (i.e. regular and voluntary testing) into a punitive, forced trauma framework which dismantles the current policy and procedure of NSW Ministry of Health's response to blood borne viruses.

Stigma and discrimination is exacerbated because many of these priority populations (including gay men, people who inject drugs, sex workers, people from culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander people) already experience stigma and discrimination on the basis of these other attributes.

The implementation of mandatory testing would have a detrimental impact on the ability of NSW specifically, and Australia more broadly, to address the viral hepatitis epidemics. This includes weakening our ability to eliminate hepatitis C, because increased discrimination may dissuade people from engaging in healthcare. It also has the potential to undermine increased testing for hepatitis B, which is vital given almost 2-in-5 (38%) people living with chronic hepatitis B remain undiagnosed.

The Legislative Assembly Committee on Law and Safety (Committee) note in the Inquiry Report Finding 13, 'under any legislative scheme, the power to conduct mandatory testing should only be able to be enlivened in circumstances where there is a risk of transmission of listed diseases' (Legislative Assembly Committee on Law and Safety, 2017: 81).

Influenza is one of many infectious diseases (99 in total) listed on NSW Ministry of Health's website (NSW Ministry of Health, 2017). Influenza is also a notifiable disease under Schedule 1 Scheduled Medical Conditions of the Public Health Act 2010 (there are 76 in total) (NSW Ministry of Health, 2016). It would be highly unlikely that mandatory testing legislation be enlivened on the basis of exposure to common diseases such as influenza.

Some of the existing laws for mandatory testing in other states and territories explicitly define infectious diseases to HIV, Hep B and Hep C, such as in Northern Territory and Western Australia. The introduction of mandatory testing legislation is likely to be disproportionately used against people living with HIV, contributing to increased stigma.

Research indicates the criminalisation of HIV is effective in perpetuating HIV stigma, and that 'the fear of criminal prosecution hampers people's ability to live openly with HIV infection which manifests in sexual activities such as disclosing less frequently or seeking out anonymous sexual encounters, but that also reduces their quality of life more broadly' (Dodds & Keogh, 2006: 317; Mykhalovskiy, 2015: 378).

Stigma is further exacerbated by media coverage of HIV prosecutions. In a study by O'Byrne, Bryan & Woodyatt (2013), 'men who have sex with men (MSM) living with HIV reported losing trust in public health authorities and becoming disinclined to approach public health with information about their sexual conduct or to seek guidance on how to reduce onward sexual transmission of HIV' (Mykhalovskiy, 2015: 378).

By perpetrating stigma against HIV and other BBVs, public health initiatives that work to educate and encourage regular sexual health testing are compromised.

2Seventh National HIV Strategy 2014-2017, Fourth National Hepatitis C Virus (HCV) Strategy 2014-2017, Second National Hepatitis B Strategy 2014-2017, Fourth National Aboriginal and Torres Strait Islander Blood Borne Viruses and Sexually Transmissible Infections Strategy 2014-2017 and Third National Sexually Transmissible Infections Strategy 2014-2017

TARGETING MARGINALISED POPULATIONS

Mandatory testing legislation will further target marginalised and vulnerable populations such as people who live with a mental illness, people who inject drugs, sex workers, and people who are homeless; populations of which are already over represented in Australian prisons.

In 2015 the Australian Institute of Health and Welfare (AIHW) released a report on the health of Australia's prisoners and identified that 'almost one-half (49%) of entrants and 44% of dischargees reported ever having been told they have a mental health disorder, including alcohol and drug misuse' (AIHW, 2015: 37). It was further identified that '1 in 4 prison entrants were homeless in the 4 weeks before entering prison' and were 'more likely to be unemployed' (AIWH, 2015: 27).

An Australian study conducted in 2013 found that 'one-third (32%) of those with a psychiatric illness had been arrested during a 10-year period, and the first arrest often occurred before first contact with mental health services' (Morgan, Morgan, Valuri, Ferrante, Castle & Jablensky, 2013).

People who intentionally expose bodily fluids to police or emergency services personnel and are experiencing a substance use issue, or a mental health issue (or a combination of both) at the time of exposure, may experience impaired cognitive capacity to make sound and reasonable decisions.

There is no public benefit to prosecuting people who are vulnerable and who have not been able to engage with community services to receive the care and support they need. Nor is there to prosecuting people who have been failed by an under resourced and under staffed health system that routinely fails to capture at-risk vulnerable community members.

Correctional facilities are ill-equipped to adequately meet the treatment and care needs of people with comorbidity issues, and when these issues are left untreated people are more likely to reoffend. Auditor General Margaret Crawford reports 'data from the Department and the Justice Health and Forensic Mental Health Network shows inmate access to some resources and services has not kept pace with increases in prison populations' and 'reoffending rates have consistently increased over the last five years' (Audit Office of NSW, 2017).

The current gaps in the mental health sector around timely access to treatment and support, services not being adequately resourced to meet community needs, and engaging at-risk communities prior to committing offences is what needs to be systematically addressed in NSW if we are wanting to truly reduce offending and protect emergency service personnel from potential assaults. Prosecuting vulnerable people is not the answer.

Already NSW's police force have a role in public health as they are frequently first responders to circumstances where a person is experiencing an episode of mental ill-health, and often provide escort to those people to hospital admission. The Law Enforcement and HIV Network (LEAHN) believe "a major difficulty is the failure to legitimize the role of law enforcement agencies in protection or promotion of public health. Most law enforcement agencies do not construct their identity in this way, despite having an active and integral role' (Law Enforcement and HIV Network, 2013).

Police officers need to work to support and protect vulnerable community members to reduce offences occurring in the first place, not further increase the risk of reoffending by rendering them unable to access community-based supports.

AUSTRALIAN MEDICAL PROFESSIONALS OPPOSE CRIMINALISATION

The Medical Journal of Australia (MJA) published an Australian medical consensus statement on sexual transmission of HIV and the law where they affirm that 'there is no possibility of HIV transmission from contact with the saliva of a HIV-positive person through spitting or biting… and no transmission of this kind has ever been documented in Australia' (Boyd et al., 2016: 411). Boyd et al. (2016: 411) further recommends exercising caution against the prosecution of people with HIV where possible given: it is scientifically proven that there is limited likelihood of transmission, media fear mongering of criminal trials increases stigma and discrimination against people living with HIV, and public health management processes (e.g. counselling and education) have proved highly effective.

The Australian Medical Association's (AMA) position on BBVs further highlights the consequences of prosecuting people living with BBVs due to the increase of stigma and discrimination, and the consequent barriers this poses for people living with BBVs to access appropriate health care (AMA, 2017). AMA further state that 'there is no evidence that laws which criminalise BBV transmission function to prevent or deter BBV transmission', going

so far as to identify the risk criminalisation poses to public health initiatives aimed at eliminating BBV transmission (AMA, 2017).

MANDATORY TESTING THREATENS TO JEOPARDISE NSW HIV RESPONSE

NSW HIV STRATEGY

It is internationally recognised that the Australian response to HIV has been world leading. Australia is best placed to be the first country to achieve the international goal of virtual elimination of HIV infections by 2020.

In 2017 NSW saw a 43% reduction than the previous six year average in the number of new diagnoses among Australian-born men who have sex with men (NSW Ministry of Health, 2018).

Under the NSW HIV Strategy 2012-2015 and the current NSW HIV Strategy 2016-2020, NSW has achieved 'very high levels of HIV testing, newly diagnosed HIV infection rates have stabilised with signs of a downward trend emerging, reduction of undiagnosed infections, the virtual elimination of HIV transmission between mother and child, and among people who inject drugs and within the sex industry has been sustained' (NSW Ministry of Health, 2016: 3).

In line with Commonwealth strategies on responding to BBVs all jurisdictions must lead a coordinated and systematic response to BBVs (Australian Medical Association, 2017). Collaboration between government, affected community, clinicians and researchers continues to be the foundation of our effective response to HIV in NSW.

NSW has an opportunity to lead the way in the elimination of BBV transmission and demonstrate leadership in this area by implementing an evidence-based response. Over the last four years the NSW Government has lead the Australian HIV response with progressive and adaptive policy settings. It is our belief that pursuing these proposals for mandatory testing would be a retrograde step and jeopardise much of the excellent work that has occurred under the current and former NSW HIV Strategies.

RECOMMENDATIONS

(a) NSW not legislate mandatory testing of people whose bodily fluids come into contact with police and/or emergency service personnel to stay aligned with Australia's leading national response to HIV and BBVs, which are underpinned by the principles of voluntary and informed consent.

(b) Adopt evidence-based prevention policies and practices to manage emergency service personnel risk of duty-related infections.

(c) Increased investment in educating emergency service personnel and police officers on routes of transmission of BBVs, and best practice in responding to exposure to bodily fluids.

(d) NSW to invest in preventive programs that capture at-risk people in community based-settings prior to committing criminal offences to reduce the likelihood of offending.

IN 2015 THE AUSTRALIAN INSTITUTE OF HEALTH AND WELFARE (AIHW) RELEASED A REPORT ON THE HEALTH OF AUSTRALIA'S PRISONERS

49% ENTRANTS **44%** DISCHARGEES **REPORTED** EVER BEING TOLD

49% ENTRANTS
44% DISCHARGEES REPORTED EVER HAVING BEEN TOLD THEY HAVE A MENTAL HEALTH DISORDER, INCLUDING ALCOHOL AND DRUG MISUSE' (AIHW, 2015: 37)

1 IN FOUR PRISON ENTRANTS WERE HOMELESS AND UNEMPLOYED

1 IN 4 PRISON ENTRANTS WERE HOMELESS IN THE 4 WEEKS BEFORE ENTERING PRISON' AND WERE 'MORE LIKELY TO BE UNEMPLOYED (AIWH, 2015: 27).

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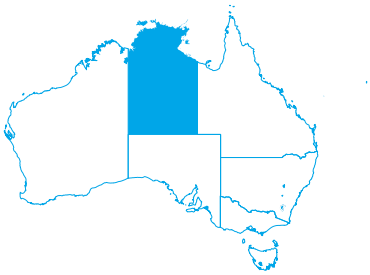
APPENDIX A:

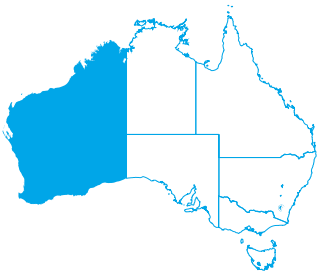
TABLE OF EXISTING LEGISLATION

STATE	LEGISLATION	PROVISIONS	COMMENT
NT	Police Administration Amendment Act 2016, Division 7AA Blood testing for infectious diseases	Subdivision 2 (147FB) (5) Grounds for disease testing: (a) An assault by the transferor against the member; or (b) The lawful apprehension or detention of the transferor by the member; or (c) Another circumstance prescribed by regulation and involving the transferor and the member	The grounds for testing are broad, leaving them open to various interpretation and potential misuse.
NT		Subdivision 2 (147FE) (2) (e) that force may be used to enforce the approval	This is an unnecessary expansion of police powers that violates human rights. According to NSW Ministry of Health Consent to Medical Treatment – Patient Information Policy Directive 2005, 'treating a competent patient who has validly refused treatment could constitute an assault or battery' .
NT		Subdivision 2 (147FE) (2) (e) That failure to comply with a requirement mentioned in section 147FF(e) is an offence.	Section 147FF(e) authorises a member to require the transferor to submit to the taking of a blood sample. It is a criminal offence to refuse a disease test order which results in an unnecessary increase in detainments (which are already at high capacity).
NT		Subdivision 2 (147FF) (b) Authorises a member to apprehend the transferor and detain the transferor for as long as is reasonably necessary to enable the taking of a sample of the transferor's blood	Detaining people 'as long as is reasonably necessary' to receive consent is inhumane and violates human rights. We are concerned that these powers may be used to further discriminate against marginalised populations that are already over represented in the Australian criminal justice system.



NORTHERN TERRITORY

STATE	LEGISLATION	PROVISIONS	COMMENT
NT		Subdivision 2 (147FG) (b) fails to comply with the requirement Maximum Penalty: 100 penalty units	According to the Northern Territory Government 2017-2018, 100 penalty units totals $15,400 . This punishment is excessive given many people who commit offences typically belong to a low socio-economic bracket e.g. people who inject drugs, people with mental illness, Aboriginal and Torres Strait Islander, people who are homeless
NT		Subdivision 1 (147FA) (1) Infectious disease means any of the following: (a) HIV (b) HBV (c) HCV (d) Another disease prescribed by regulation capable of being transmitted by the transfer of a substance. Transfer of a substance means the transfer of a substance from a person into broken skin, or a mucous membrane, of a member.	Defining infectious diseases to only BBVs is prejudicial and stigmatising to people living with BBVs, given there are 99 infectious diseases listed on NSW Ministry of Health website, and 76 scheduled medical conditions under the Public Health Act 2010.
NT		Subdivision 2 (147FD) (4) A senior member may grant a disease test approval Subdivision 1 (147FA) (1) Senior member means a member of or above the rank of superintendent.	Police officers, no matter of what rank, are not qualified medical professionals.



WESTERN AUSTRALIA

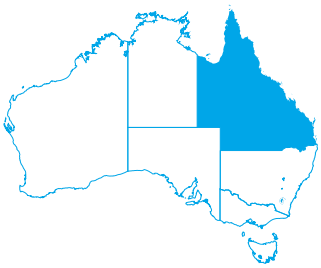
STATE	LEGISLATION	PROVISIONS	COMMENT
WA	Mandatory Testing (Infectious Diseases) Act 2014	Part 1 – Preliminary (4) terms used Reasonable grounds for disease testing means reasonable grounds for suspecting that there has been a transfer of bodily fluid from a suspected transferor to a public officer as a result of – (c) An assault by the suspected transferor against the public officers; or (d) The lawful apprehension or detention of the suspected transferor by the public officer; or (e) Any other prescribed circumstance involving the suspected transferor and the public officer	The grounds for testing are broad, leaving them open to various interpretation and potential misuse.
WA		Part 2 – Division 2 (9) A police officer may apprehend and detain the suspected transferor for as long as is reasonably necessary to enable the determination of the application. Division 4 (13) A suspected transferor commits an offence if the suspected transferor, without reasonable excuse, fails to comply with a requirement made under section 12(2)(b). Penalty: a fine of $12,000 and imprisonment for 12 months.	Detaining people 'as long as is reasonably necessary' to receive consent is inhumane and violates human rights. Refusing a disease test order is a criminal offence which does not align with Australia's national response to BBVs which maintains the principles of informed consent. Excessive penalties results in unnecessary detainments and incarcerations which is a cost to the Australian economy.

STATE	LEGISLATION	PROVISIONS	COMMENT
WA		Reference: Section 12(2)(b): (5) A disease test approval relating to a suspected transferor – (b) authorises a police officer to require the suspected transferor to submit to the taking of the blood sample in accordance with the approval	
WA		Division 3 (10) (1) On an application, a senior police officer may give a disease test approval	Police officers are not qualified medical professionals.
WA		Part 4 (26) (5) The doctor, nurse or qualified person, and a person helping the doctor, nurse or qualified person, may use any reasonably necessary force for taking the blood sample.	This is an unnecessary expansion of police powers that violates human rights. According to NSW Ministry of Health Consent to Medical Treatment – Patient Information Policy Directive 2005, 'treating a competent patient who has validly refused treatment could constitute an assault or battery'.
WA		Part 1 (4) Infectious disease means any of the following – (a) HIV (b) HBV (c) HCV (d) Any other prescribed disease capable of being transmitted by the transfer of bodily fluid.	

SOUTH AUSTRALIA

STATE	LEGISLATION	PROVISIONS	COMMENT
SA	Criminal Law (Forensic Procedures) Act 2007 See in addition: Criminal Law (Forensic Procedures) (Blood Testing for Diseases) Amendment Bill 2015	Division 2 (14) (2) A forensic procedure may be carried out on a person under this Division if – (c) The person is suspected of a serious offence (3) For the avoidance of doubt, a forensic procedure may be carried out on a person under this Division whether or not the person is in lawful custody. 3 – Interpretation (1) Forensic procedure means a procedure carried out by or on behalf of South Australia Police or a law enforcement authority and consisting of – (c) The taking of a sample of biological or other material from a person's body **Note** – This would include…a blood sample, a sample by buccal swab or a sample of saliva.	Mandatory testing may be carried out if the person is suspected of a prescribed serious offence and it is likely that personnel came into contact with body fluid. This is a very low threshold, with wide discretion for the person making the order. In effect, a person could undergo mandatory testing even if they haven't in face committed an offence or released any body fluids.
SA		3 – Interpretation (1) Serious offence means – (a) An indictable offence; or (b) A summary offence that is punishable by imprisonment	The Legislative Assembly Committee on Law and Safety identify within the Inquiry report that the prescribed offences for South Australia are as follows: (a) Assault, assault causing serious harm and assault causing harm (b) Acts endangering life or creating risk of serious harm (c) Offences relating to public order, assaulting and hindering police, and violent disorder These offences are broad in nature leaving them open to misinterpretation and misuse.

STATE	LEGISLATION	PROVISIONS	COMMENT
SA		Division 2 (15) (1) An order authorising a forensic procedure under this Division may be made by a senior police officer.	Police officers are not qualified medical professionals.
SA		Division 2 (31) (1) A person authorised under this Act to carry out a forensic procedure, or a person assisting such a person, may use reasonable force – (a) To carry out the authorised forensic procedure; and (b) To protect evidence obtained from the forensic procedure (2) Where this section authorises the use of force to detain a person, that action does not, by itself, constitute an arrest of the person.	This is an unnecessary expansion of police powers that violates human rights. According to NSW Ministry of Health Consent to Medical Treatment – Patient Information Policy Directive 2005, 'treating a competent patient who has validly refused treatment could constitute an assault or battery' .
SA		Division 2 (32) A person must not intentionally obstruct or resist the carrying out of a forensic procedure to which this Division applies. Maximum Penalty: Imprisonment for 2 years.	It is a criminal offence to deny a forensic procedure (which includes blood tests) penalised by 2 years imprisonment, resulting in unnecessary incarcerations and associated costs.



QUEENSLAND

STATE	LEGISLATION	PROVISIONS	COMMENT
QLD	Police Powers and Responsibilities Act 2000 Chapter 18 Blood and urine testing of persons suspected of committing sexual or other serious assault offences	Part 1 (538) (1) Applies in relation to the following offences, but only if semen, blood, saliva or another bodily fluid may have been transmitted into the anus, vagina, a mucous membrane, or broken skin of a victim of the offence – (a) Rape (b) A sexual assault involving penetration of a penis into the victim's mouth; (c) Incest committed against a child under 12; (d) Carnal knowledge of a child under 12; (e) Abuse of a person with an impairment of the mind involving penetration of a penis into the victim's mouth; (f) A serious assault if – (i) Blood, saliva or another bodily fluid has penetrated, or may have penetrated, the victim's skin; or (ii) Blood, saliva or another bodily fluid has entered, or may have entered, a mucous membrane of the victim	The mandatory testing laws in QLD are significantly narrower than other states and territories, however mandatory testing laws stigmatise those living with BBVs and violate the right to give consent to medical procedures. QLD legislation acknowledges the evidence-base which exists on how BBVs are truly transmitted e.g. spitting on police officers would not constitute grounds for a disease test order.

STATE	LEGISLATION	PROVISIONS	COMMENT
QLD		Part 1 (538) continued (3) This chapter does not apply to an assault that involves – (b) The transfer of blood or another bodily fluid in a way that does not penetrate the anus, vagina, mucous membrane or the skin of a victim; or (c) Spitting saliva onto intact skin.	
QLD		Part 2 (540) (2) A police officer may apply to a magistrate or, if the relevant person is a child, the Childrens Court for a disease test order authorising the taking of a sample of blood and urine from the relevant person.	Decisions should only be made by medical professionals.
QLD		Part 2 (545) (5) It is lawful for the doctor or nurse and a person helping the doctor or nurse to use reasonably necessary force for taking the sample.	This is an unnecessary expansion of police powers that violates human rights. According to NSW Ministry of Health Consent to Medical Treatment – Patient Information Policy Directive 2005, 'treating a competent patient who has validly refused treatment could constitute an assault or battery' .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