

Submission

Statutory Review of the Mandatory Testing (Infectious Diseases) Act 2014

To

WESTERN AUSTRALIA POLICE FORCE

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Statutory Review of the *Mandatory Testing (Infectious Diseases) Act 2014*

The Law Society comments on the consultation paper from the WA Police Force's Legislation and Policy Unit titled 'Consultation Paper: Call for Submissions to Inform the Statutory Review of the Mandatory Testing (Infectious Diseases) Act 2014'.

Introduction

The Law Society of Western Australia (the Law Society) is the peak professional association for lawyers in Western Australia. Established in 1927, the Law Society is a not-for-profit association dedicated to the representation of its members and the enhancement of the legal profession through being a respected leader and advocate on law reform, access to justice and the rule of law.

The Law WA Police Force has requested input regarding their consultation paper '*Call for Submissions to Inform the Statutory Review of the Mandatory Testing (Infectious Diseases) Act 2014*'.

This submission sets out comments for the questions referred to in each key issue and adopt the numbering of those questions for ease of reference. The Society's comment is mainly related to issues that have been brought to the attention of the Law Society by members.

Purpose of the Legislation

1. *Does this disease testing legislation help ensure that an affected officer receives appropriate treatment, whilst minimising stress and anxiety? Please expand.*

The current regime serves to increase stress and anxiety of officers due to the regime being out-of-step with current medical understandings of the risk of transmission of infectious diseases through different modes of contact (in particular the risk of the transmission of Human Immunodeficiency Virus (HIV) and Hepatitis B and C through saliva).

Key concepts and Thresholds for Disease Testing

2. *Should the Act take into consideration the risk of transmission of a particular infectious disease, as opposed to the suspected transfer of bodily fluid only? If so, how should the legislation be amended to most appropriately consider the risk of transmission? If not, why not?*

Yes, the Act should be re-designed to reflect the risk of transmission of a particular infectious disease, as opposed to the suspected transfer of bodily fluid only.

This could be done by legislation reflecting the current medical understanding of the risk of transmission of infectious diseases through different modes of contact. For example, as the current medical understanding is that HIV, Hepatitis A and Hepatitis B are not transferable through saliva, then the testing regime should not be applied to situations where there has been the transfer (i.e. through spitting) of saliva only.

3. *Should the grounds for disease testing be expanded to account for accidental exposure (e.g. during attendance at a motor accident)? If so, should specific circumstances of accidental exposure be defined?*

Yes, the grounds for disease testing be expanded to account for accidental exposure (e.g. during attendance at a motor accident). To do so is only ensure the purpose of the legislation which is to ensure that a police officer or other related public officer receives appropriate medical, physical and psychological treatment upon an exposure risk is ensured. The legislation should not be about punishing those who have exposed an officer through a deliberate act, but rather be directed to the possible treatment needs of an officer. As such, specific circumstances of accidental exposure need not be defined.

4. *Is it still appropriate that COVID-19 be a prescribed infectious disease? Should any disease(s) be removed or added to the definition of 'infectious disease'? Please expand.*

No, it is no longer still appropriate that COVID-19 be a prescribed infectious disease. The vaccination status of all officers together with the ease and ready availability and Rapid Antigen Tests provide reasons for COVID-19 to be removed from the legislation.

No other conditions need to be added to the list of conditions covered by the legislation.

All available information still supports both Hepatitis B and Hepatitis C, as Blood Borne Viruses to be retained under any future reforms to the 2014 Act.

Disease Test Approvals for Suspected Transferors who are not Protected Persons

5. *Are the provisions relating to the application for, and issuing of, a disease test approval adequate? What works well and what could be improved?*

The approval for testing to occur should be made by a medical practitioner. This is because a medical practitioner is better placed to make a medical assessment as to the transmission risk in a given factual situation (i.e. type of bodily fluid involved, amount of bodily fluid transferred and bodily site of transmission) than a senior police officer.

6. *Are the powers to detain a suspected transferor until an application for a disease test approval has been decided, and until the sample has been taken, appropriate? Please expand.*

No comment.

Disease Test Orders for Suspected Transferors who are Protected Persons

7. *Are the provisions relating to the application for, and issuing of, a disease test order adequate? What works well and what could be improved?*

In the cases where court approval is required, an order of the Court should only be sought and made after a medical practitioner has formed a view, and conveyed it on a prescribed form, that the facts of the case have given rise to a transmission risk.

8. *Are the requirements for explanation to a suspected transferor who is a protected person appropriate? Please expand.*

No comment.

9. *Are the powers to detain a protected person until a disease test order has been executed appropriate? Please expand.*

No comment.

10. *Should any further requirement(s) be placed upon a responsible person served with the disease test order (e.g. that they must be present while the sample is taken)?*

No comment.

Appeals

11. *Is the existing appeal process adequate? Please expand.*

No comment.

Taking and Testing a Sample

12. *Should the discretionary use of force powers for taking a sample be strengthened, removed, or otherwise amended? Why?*

No comment.

13. *Should the legislation contemplate any specific rights for the suspected transferor prior to the execution of a disease test authorisation? If so, what, and why? If not, why not?*

No comment.

14. *Should the Act consider a requirement to communicate the results of a test to a suspected transferor who has submitted to a test? Please expand.*

Yes. It seems to be a responsible public health measure that if a suspected transferor who has undergone a test returns a positive result, attempts should be made to notify that person of the test result so that they too can seek adequate medical treatment.

Notification should be in the form of a letter and/or text message to the person's last known address and/or phone number informing them of the need to contact a local police station with respect to the medical test that they underwent on the particular date. The mode of notification should not include any risk of a breach of confidentiality as the nature and result of the test.

Offences Under the Legislation

15. *Are the offences for non-compliance and associated penalties adequate to ensure that the Act achieves its purpose? Please expand.*

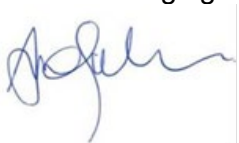
Yes, it remains appropriate. However, it would be useful as part of the review if statistics could be provided as to how many prosecutions have been required.

Other Matters

16. *Do you have any other comments in relation to the legislation, either in relation to perceived strengths or areas for improvement?*

Given the confined subject matter of the legislation, and the public health purposes sought to be achieved, the review should pay close attention to the policy positions held by peak HIV and Hepatitis agencies, including; National Association of People with HIV Australia ([2019 NAPWHA TheSystemIsBroken.pdf](#)), Australasian Society for HIV, Viral Health and Sexual Health Medicine ([Mandatory Testing for HIV – HIV and the Law \(ashm.org.au\)](#)) and ACON ([18201-Mandatory-Testing-Paper-V7_WT-V0-small.pdf \(acon.org.au\)](#)) with respect to such mandatory testing regimes.

Statutory review of the Act is critical; however it must take into consideration the progressions of both medical science and societal attitudes for any reform to be able to cater to the emerging diversity of communicable conditions in the post-COVID landscape.



Ante Golem
President