



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: CLC: RHrg2001177

8 December 2020

The Hon. Wes Fang MLC  
Chair  
Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
Sydney NSW 2000

By email: [law@parliament.nsw.gov.au](mailto:law@parliament.nsw.gov.au)

Dear Mr Fang,

### **Inquiry into the Mandatory Disease Testing Bill 2020**

We refer to the Mandatory Disease Testing Bill 2020 introduced into Parliament on 11 November 2020, and referred to the Standing Committee on Law and Justice for inquiry and report on 19 November 2020.

The Bill provides for mandatory blood testing of a person in circumstances where the person's bodily fluid, through the person's deliberate action, comes into contact with an emergency, health or other defined public sector worker and the worker is at risk of contracting a blood-borne disease.

The Law Society does not support the legislation. A mandatory testing scheme removes the autonomy of a person to consent to medical procedures and for their health information to remain private.

We query the policy justification for testing the third party rather than the worker. Such a test cannot provide a conclusive answer about whether the third party has contracted an illness since the contact, due to considerations such as lag time for test detection. The only way for the worker to have legitimate peace of mind is to be tested themselves as soon as possible, and then again at an appropriate period when certain diseases become detectable. The information sought is whether the worker has a blood-borne disease. The appropriate avenue to obtain this information is to test the worker.

Legislating to force a person to undergo testing, with a penalty of a fine and/or imprisonment if they do not acquiesce, when that avenue is a less reliable way of obtaining the information sought, is, in our view, unacceptable.

We note that the workers to whom the Bill would apply include workers who regularly deal with people with complex emotional and other needs, and other vulnerable people. We consider that improvements to current agency policy and practice, including improvements to early management of an incident, the medical information provided to the affected worker and

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170 Phillip Street, Sydney NSW 2000, DX 362 Sydney  
ACN 000 000 699 ABN 98 696 304 966

[lawsociety.com.au](http://lawsociety.com.au)

T +61 2 9926 0333 F +61 2 9231 5809  
E [lawsociety@lawsociety.com.au](mailto:lawsociety@lawsociety.com.au)

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provision of appropriate early counselling, may deliver significant benefits without the need to introduce mandatory disease testing.

If the Bill is to proceed, we submit that children should be excluded from the mandatory testing scheme.

The Law Society contact for this matter is Rachel Geare, Senior Policy Lawyer, who can be reached on (02) 9926 0310 or at [rachel.geare@lawsociety.com.au](mailto:rachel.geare@lawsociety.com.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R Harvey', with a stylized flourish at the end.

Richard Harvey  
**President**