

## **Submission of Family Planning NSW**

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

December 2020

Family Planning NSW welcomes the opportunity to make a submission to the NSW Standing Committee on Law and Justice regarding the 'Inquiry into the Mandatory Disease Testing Bill 2020' hereafter referred to as 'the Bill' introduced into the New South Wales Parliament on 11 of November 2020.

## **About us**

Family Planning NSW is the leading provider of reproductive and sexual health services in NSW and Australia. Our mission is to enhance the reproductive and sexual health and rights of our communities by supporting all people to have control over and decide freely on all matters related to their reproductive and sexual health. We have been operating for over 90 years, working with communities across NSW, including in regional, rural and remote areas.

Family Planning NSW has significant experience in the provision of reproductive and sexual health information and services. We provide more than 30,000 clinical occasions of service to clients annually, information and health promotion activities to communities, and best practice education and training in reproductive and sexual health for health professionals, educators, disability support workers and welfare professionals.

Our services are targeted to marginalised and disadvantaged members of the community, including people from culturally and linguistically diverse and Aboriginal and Torres Strait Islander backgrounds, refugees, people with disability, young people and people from rural and remote communities.

## **Implications for human rights and autonomy**

Family Planning NSW acknowledges that the intention of the Bill to protect frontline workers is well meaning. However, the Bill as it currently stands does not afford real protection for frontline workers. The current NSW policies and procedures already and adequately provide these protections, as evidenced by the fact that there has not been an incidence of occupational transmission of HIV among emergency service workers in more than 15 years.(1-2)

The introduction of mandatory disease testing poses significant concern in relation to informed consent for medical procedures, questions best practice approaches to HIV and other blood borne virus testing, and further embeds misinformation around HIV and other blood borne virus transmission and risk.

It is our view that failure to adequately consider the broader implications of this Bill, both in terms of human rights and autonomy, will have a significant impact on people living with HIV, people at risk of HIV as well as other vulnerable and marginalised groups.

## **Recommendations**

It is clear that further work is needed on this Bill. Family Planning NSW makes the following recommendations:

1. That the Bill not be passed in its current form.
2. Consultation with key stakeholders, including reproductive and sexual health organisations, is required to identify real protections for frontline health workers.
3. That the legislated definition of 'bodily fluids' only includes those which can transmit blood borne viruses.
4. Raise the minimum age of mandatory testing to 18 years, should the Bill pass.
5. Provide evidence-based and up-to-date education to frontline workers to counter the myths associated with HIV and other blood borne viruses.

## Key points

Australia continues to see significant reductions in new diagnoses of HIV with more than 95% of people living with HIV currently on medications that eliminate their risk of transmitting the virus.<sup>(1)</sup> We hold significant concerns that the Bill will contribute to experiences of stigma and discrimination towards people living with HIV and other blood borne viruses as well as pose significant risks to other vulnerable and marginalised groups.

The Bill is not in line with current evidence, nor consistent with existing international, national and state policies and guidelines, including Australia's *National HIV Strategy*. Exposure of bodily fluids to frontline workers is covered under existing infection control and bodily fluid exposure policies and procedures, including NSW Health's *HIV, Hepatitis B and Hepatitis C – Management of Health Care Workers Potentially Exposed Policy Directive*; *Work Health and Safety – Blood and Body Substances Occupational Exposure Prevention Guideline*; *Infection Prevention and Control Policy* and The Royal Australian College of General Practitioners' *Infection Prevention and Control Standards: For general practices and other office-based and community-based practices*.

Currently, if a case of occupational exposure occurs, frontline workers make an informed assessment of the risk of blood borne virus transmission in conjunction with an appropriately skilled officer and the relevant course of action is taken to ensure their safety. This does not include mandatory testing of people whose bodily fluids come into contact with frontline workers.

Family Planning NSW urges the Government to not pass the Bill, as it is widely unnecessary, not based on scientific evidence and provides no real protection to frontline workers. Further, we encourage the Government to consult with key stakeholders, including reproductive and sexual health organisations, to identify additional real protections for frontline workers.

Our major concerns in relation to the Bill are outlined below.

### 1. Definition of bodily fluids

In its current form, the Bill does not provide a clear definition in relation to the types of bodily fluids that can transmit blood borne viruses. Having such a general definition of 'bodily fluid' perpetuates misinformation around HIV and other blood borne virus transmission pathways. It is essential that the legislated definition of bodily fluids, in relation to mandatory disease testing, only includes those which can transmit blood borne viruses.

### 2. Medical opinion as a determining factor

The Bill does not require the medical advice of an infectious disease expert to be included in the application for a mandatory test order. Medical procedures, including blood tests, against the will of a person should not occur on the subjective opinion of a frontline worker and their senior officer who may be unequipped with the most recent knowledge on HIV and other blood borne virus transmission. It is vital that unbiased expert medical advice forms part of every application for a mandatory testing order, should the legislation pass.

Further, frontline workers should be provided with educational resources and information about HIV and other blood borne virus transmission pathways to minimise misinformation and counter the myths associated with HIV and other blood borne viruses.

### 3. Timeline process for medical consultation

Currently, the Bill does not require frontline workers who have been exposed to bodily fluids to urgently visit a medical professional to discuss treatment, prevention and transmission risks. The inclusion of a requirement for an urgent appointment is essential, should the Bill pass.

Individuals who wish to make a formal request for a mandatory test should visit a medical professional at their earliest convenience, preferably within 24 hours of exposure, to undertake an assessment of risk and, if needed, be referred to an emergency department or sexual health clinic in order to obtain post-exposure prophylaxis medication.

#### **4. Age of application**

Despite only three HIV infections reported among children in NSW between 14 to 18 years of age in 2019/20, the Bill allows for mandatory testing of minors between 14 and 18 years. Mandatory testing of minors will exacerbate pressures on the Children's Court and is unnecessary given the low risk of HIV infection within this age group. If the Bill is passed, the minimum age for a mandatory test should be raised to 18 years.

#### **5. Appeals do not intervene in mandatory testing**

It is particularly concerning that the Bill does not safeguard individuals who have appealed a mandatory test order decision. Section 23 of the Bill notes that if an application to review a mandatory testing order is made, the order continues to have effect, and the individual must comply with the order.

Despite appealing decisions made by senior officers, individuals must still undergo an invasive venepuncture under threat of fine or goal, an infringement on their rights. This also undermines the principles of informed consent for medical procedures.

#### **6. The Bill infringes on the human rights of NSW citizens**

The Bill presents risks and harms for a significant number of NSW citizens – many of whom pose no blood borne virus risk to our frontline workforce. We fear that the Bill will further exacerbate experiences of stigma and discrimination faced by people living with HIV and other blood borne viruses as well as have negative implications on rates of HIV and other blood borne virus testing across the state.

Currently, the Bill does not provide opportunities to access appropriate pre- and post- test counselling, an important element of HIV and blood borne virus healthcare. Further, the Bill undermines the notion of informed consent, which is required for HIV testing in all but rare circumstances, and individual autonomy in relation to medical procedures. We hold significant concern that mandatory testing, without consent, will undermine NSW's HIV and other blood borne virus testing coverage rates.(3)

### **Conclusion**

The best protection for frontline workers is the provision of appropriate personal protective equipment, the continued implementation of infection control procedures, and evidence-based education and training on HIV and other blood borne virus transmission pathways and risk. Further, mandating forced testing, without consent and assurances of confidentiality, threatens the significant improvements in community-based HIV and other blood borne virus testing coverage levels achieved in Australia to date and infringes on an individual's civil rights.

### **References**

1. ACON. Let's not weaken the NSW response to managing blood borne viruses: ACON, 2019.
2. National Association of People with HIV Australia. The system is broken. Audit of Australia's Mandatory Disease Testing Laws: NAPWHA, 2019.
3. Department of Health. National HIV Strategy: Commonwealth of Australia, 2018.