

# SUBMISSION



## REVIEW OF THE MANDATORY DISEASE TESTING ACT 2021



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## Review of the Mandatory Disease Testing Act 2021.

Thank you for the opportunity to submit to this Review. The PSA of NSW, representing approximately 6,000 Corrective Services Officers, almost 2,000 additional Corrective Service staff including Community Corrections officers who supervise inmates in the community, 800 Youth Justice Officers, 100 Special Constables and 300 Sheriff's Officers (collectively referred to as Officers) strongly supports the MDT Scheme and contends that it should be **retained largely in its current form**, with targeted improvements to enhance its operation and ensure timely, safe, and supportive outcomes for affected officers.

Our Officer members across New South Wales perform demanding and often dangerous duties that bring them into contact with offenders who may engage in violent, aggressive, and degrading behaviour. A recurring and serious occupational hazard for these officers is **exposure to bodily fluids**—including blood and saliva—often in the context of deliberate assaults designed to cause physical injury and psychological harm.

Over 500 assaults by inmates on Corrective Service Officers occurred in the last financial year, a large proportion of the more than 3000 claims made across all areas of the Justice portfolio during that period. In addition to the above figures, our Youth Justice Officers experience similar levels of assault when dealing with offenders in their care.

Such incidents frequently involve offenders attempting to intimidate or traumatise Officers by deliberately spitting, biting, flicking blood, or using contaminated objects such as syringes. The intent is not only to inflict harm but also to cause profound fear of contracting a **blood-borne virus (BBV)** such as HIV, Hepatitis B, or Hepatitis C.

For decades, Officers have expressed serious concerns about the **physical, psychological, and emotional impacts** of these exposure incidents. They have consistently called for measures that provide them with protection, reassurance, and rapid medical intervention following such assaults. The **Mandatory Disease Testing Scheme (MDT Scheme)** is one of the key frameworks established to respond to these needs. It allows, under defined conditions, for offenders who deliberately expose Officers to bodily fluids to be **compelled to provide a blood sample** for disease testing.

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### Context: Nature and Impact of Exposure Incidents

Exposure to bodily fluids is a **traumatic occupational experience** for Officers. These events are usually violent and involve clear intent by the offender to cause both **physical and psychological injury**. Officers describe such attacks as “disturbing,” “degrading,” and “traumatic.” The aftermath is characterised by significant **anxiety and fear**—especially surrounding the possibility of infection by a blood-borne disease.

In many cases, the fear of disease transmission is the very mechanism through which the offender seeks to punish or torment the officer. Even when the actual medical risk is later found to be low, the **psychological impact** is immediate, profound, and enduring.

The consequences include:

- Acute stress and trauma following the incident.
- Persistent anxiety during medical testing periods, which can extend for months.
- Potential side effects from post-exposure medications.
- Long-term mental health effects due to repeated exposure incidents.

Furthermore, Officers avoid intimate contact with loved ones during the six-month testing cycle out of fear of transmitting anything that they may have contracted.

It is therefore vital that officers receive **immediate medical attention, accurate information, and emotional and workplace support**. The MDT Scheme contributes to these objectives by providing access to the offender's disease test results—information which can be crucial for assessing risk and alleviating psychological distress.

### **Geoffrey Pearce**

Correctional Officers know all too well the danger of infected body fluids being transmitted to them. In 1990, an inmate intentionally stabbed Correctional Officer Geoffrey Pearce with a syringe containing HIV contaminated blood. Seven years later, Geoffrey Pearce tragically passed away from the resulting infection.

In 2020, Commissioner Peter Severin renamed the gaol where the assault occurred to Geoffrey Pearce Correctional Centre to honour the brave officer's sacrifice and every day other brave officers work at that centre.

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## **Key Needs of Exposed Officers**

### **1. Consultation with Suitably Qualified Medical Practitioners**

Officers exposed to bodily fluids require urgent and expert medical advice. The medical practitioner must have specialist knowledge of **blood-borne viruses**, their transmission pathways, and post-exposure treatment protocols. The consultation should:

- Provide clear, evidence-based risk assessments.
- Outline testing and treatment plans.
- Offer guidance on precautionary measures pending the completion of testing.
- Be delivered with sensitivity to the trauma and fear the officer is experiencing.

The PSA notes that **many officers currently lack sufficient access** to such qualified medical practitioners. The Ombudsman's recent review identified gaps in timely access to appropriate expertise. Officers should not bear the burden of locating suitable practitioners; there must be a **direct and guaranteed access pathway**.

### **PSA Recommendation 1:**

The NSW Government should fund and maintain a **panel of specialist blood-borne disease clinicians** to provide immediate consultation services to emergency service workers (and their GPs) following exposure incidents, independent of the continuation or repeal of the MDT Scheme.

### **PSA Recommendation 2:**

Relevant agencies and the Chief Health Officer (CHO) must ensure that all emergency service workers, and their treating practitioners, are aware of and have ready access to this specialist panel.

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### **Retaining the Mandatory Disease Testing (MDT) Scheme**

The PSA asserts that the **MDT Scheme remains essential** to safeguarding the health and wellbeing of Corrective Service Officers (CSO) and Youth Justice Officers (YJ). The test results of the third party (offender) are valuable for several reasons:

- They provide **relevant information** for assessing the officer's risk of infection.
- They support **informed medical advice** and post-exposure management.
- They **alleviate psychological distress** by reducing uncertainty and fear.

Although the results may not always be conclusive—owing to testing window periods or limited background information—they are nonetheless **important supplementary data** for medical practitioners and mental health professionals.

In the health sector, it is standard practice for medical institutions to test third parties (with consent) following occupational exposures, precisely because such results are useful for assessing risk. In Corrective Services and Youth Justice, however, exposures frequently occur through **intentional acts of violence**, and consent is rarely given. This justifies the **mandatory** nature of the testing scheme in policing and correctional contexts.

The PSA strongly **opposes the Ombudsman's Recommendation 1**, which seeks to repeal the MDT Act. The PSA maintains that the **policy objectives of the Act remain valid** and that the current legislative framework strikes a fair balance between the rights of third parties and the health and safety needs of officers.

### **PSA Recommendation 3:**

Maintain the MDT Act largely in its current form, incorporating targeted improvements consistent with the PSA submission.

### **PSA Recommendation 4:**

Review the potential inclusion of **viral load testing** for third parties (where medically relevant) under MDT Orders, with results made available to the relevant medical practitioners.

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## Timeliness and Efficiency of MDT Applications

Timely processing and compliance with MDT Orders are critical for:

1. **Safety** – reducing the risk of further violent confrontations.
2. **Compliance** – increasing the likelihood that offenders will provide samples.
3. **Wellbeing** – minimising the anxiety caused by long waiting periods for results.

Delays in the MDT process undermine all three objectives. The PSA notes that the **Ombudsman’s recommendations**—specifically Recommendations 2, 7, 13, 15, 21, 34, 35, and 41(b)—would impose procedural delays incompatible with the operational realities of a custodial setting.

### Safety Considerations

Offenders subject to MDT Orders are often violent individuals who have already assaulted officers. Delays increase the likelihood that the person will leave custody before an order is executed, requiring officers to re-engage with the offender—thus **creating avoidable safety risks** for both officers and the offender.

### Compliance and Practicality

Once released, locating and compelling compliance from offenders becomes difficult, leading to higher rates of **non-compliance** and **fewer completed tests**. This deprives officers of vital information and increases administrative and operational burdens.

### Psychological Impact

Prolonged delays intensify officer anxiety. Officers consistently report that waiting for test results is one of the most distressing aspects of post-exposure recovery.

The PSA is told by CSNSW that since the inception of Mandatory Disease testing, 60 applications have been made and 45 of those applications have resulted in samples being taken. That is 45 officers who have been exposed to bodily fluids and have had a measure of assurance that they have not contracted a disease.

### PSA Recommendation 5:

Reject all Ombudsman recommendations that delay the determination of MDT applications or compliance with MDT Orders beyond the period in which the third party remains in custody.

### PSA Recommendation 6:

Clarify that once an MDT Order is made—or the third party consents to testing - the Agency may immediately transport the third party to a health facility to provide a sample.

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## **Support for Officers During and After Exposure**

The PSA emphasises that **exposure incidents are not solely medical matters**; they are traumatic events that demand holistic support systems addressing medical, psychological, and workplace needs.

Following an exposure, officers must process complex medical information while in a state of distress. They may need to undertake lengthy treatment regimens, cope with the side effects of prophylactic medications, and endure long periods of uncertainty while awaiting test results. Many officers experience multiple exposures during their careers, compounding trauma and mental health challenges.

The PSA calls for the establishment of a **comprehensive support program** for emergency service workers exposed to bodily fluids.

### **PSA Recommendation 7:**

Develop and implement a support program for exposed emergency service workers that includes:

1. **Medical support** – assistance in understanding all medical advice and treatment plans, particularly those facilitated by the specialist clinician panel.
  2. **Psychological support** – access to trauma-informed counselling addressing the emotional impact of violence and the fear of disease transmission.
  3. **Workplace support** – provisions for modified duties, leave, or other workplace accommodations during recovery from both physical and psychological harm.
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## **Additional Practical Improvements**

### **1. MDT Applications on Behalf of Hospitalised Officers**

Exposure incidents frequently result in serious injury requiring hospitalisation. In such cases, the affected officer may be unable to complete the procedural steps necessary to apply for an MDT Order. This can delay the process and undermine the utility of test results.

### **PSA Recommendation 8:**

Permit MDT applications to be made **on behalf of an officer** who cannot submit one personally due to injury or hospitalisation.

### **2. Voluntary Testing by Young Offenders and Guardians**

In some cases, young people who have exposed an officer to bodily fluids—and their guardians—later express remorse and a desire to provide a blood sample voluntarily. Current legislative requirements may unnecessarily compel court proceedings even when all parties consent.

**PSA Recommendation 9:**

Enable young people and their guardians to **voluntarily consent** to testing without necessitating court involvement.

**3. Clarification of “Deliberate” Conduct**

Offenders often engage in conduct—such as hiding uncapped syringes or engaging in violent conduct—that foreseeably exposes officers to bodily fluids. While the intent may not always be explicitly proven, the **reckless disregard** for the officer’s safety should suffice for an MDT application.

**PSA Recommendation 10:**

Apply a **broad interpretation of “deliberate”** exposure to capture conduct involving reckless disregard for the likelihood of transmission.

**PSA Recommendation 11:**

Amend the Act to explicitly include **reckless behaviour** that could expose a worker to bodily fluids as qualifying conduct for an MDT Order.

**4. Enforcement of MDT Orders**

The PSA understands that there is confusion amongst Police and Corrective Services Officers about their legal authority to use force to ensure compliance with an order made under the Mandatory Disease Testing Act. This confusion has resulted in blood samples failing to be obtained, despite the existence of an MDT Order, which frustrates the purpose of the Act.

**PSA Recommendation 12:**

Amend the Act to reinforce that Officers may use reasonable force to obtain a blood sample. This may take the form of an explanatory note attached to section 21(2) of the Act.

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## Overarching Themes

Across all recommendations, several core principles underpin the PSA's position:

### 1. Protecting Health and Safety

The primary objective of the MDT Scheme and related reforms is to **safeguard the physical and psychological wellbeing** of officers. The potential for infection is only one dimension of harm; the fear and trauma associated with deliberate exposure are equally damaging.

### 2. Balancing Rights and Responsibilities

The PSA acknowledges the importance of fairness and due process for third parties but argues that **offenders who intentionally or recklessly expose officers to disease risk have already violated those boundaries**. The existing MDT process provides sufficient safeguards, including review rights and medical oversight, while appropriately prioritising worker safety.

### 3. Timeliness and Practicality

The effectiveness of the MDT Scheme depends on **swift action**. Any reforms that introduce delay—whether through extended procedural requirements or judicial processes—undermine the Scheme's core purpose and jeopardise officer safety.

### 4. Holistic Support and System Integration

Beyond the MDT framework, the PSA calls for a **coordinated response** involving medical experts, psychological support services, and workplace systems to ensure comprehensive care for exposed officers.

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## Conclusion

Exposure to bodily fluids in the line of duty remains one of the most serious occupational hazards faced by Officers in New South Wales. These incidents combine **physical assault**, **psychological trauma**, and **fear of infection** in ways that profoundly impact officers' health and wellbeing. The **Mandatory Disease Testing Scheme** provides a vital mechanism for addressing these harms by enabling timely access to the offender's test results, supporting accurate medical advice, and alleviating mental distress.

The PSA of NSW asserts that:

- The **MDT Scheme remains an essential component** of the occupational health and safety framework for Corrective Services, Youth Justice and other emergency service workers.
- The **Ombudsman's recommendations to repeal or delay the scheme** would endanger officers, increase trauma, and reduce compliance.
- Targeted improvements, not repeal, are necessary to strengthen the system.
- A **panel of specialist clinicians, enhanced support programs, and procedural flexibility** (including applications on behalf of incapacitated officers) will significantly improve outcomes.

The PSA's submission reflects the lived experiences of thousands of officers who have endured these traumatic events. Their message is clear: **retain and strengthen the Mandatory Disease Testing Act**, ensure **timely and expert medical access**, and provide **comprehensive support** for all officers exposed to harm in the service of community safety.

We would welcome the opportunity to engage in amending the Review of the Act to ensure it is able to be implemented more effectively and equitably and is fit for purpose. Please do not hesitate to contact us should you require any further information.