

Spitting and Mandatory BBV Testing – dragging us back to the 1980s

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Overview

- In 2014 the SA and WA parliaments passed legislation providing for forced testing for BBVs of offenders who are considered to have potentially exposed officers to a BBV, including by spitting
- Legislation the result of concerted advocacy by police unions
- Rationale for the laws is misguided and legislation in both states is poorly framed, poorly targeted and ill-thought-out
- Broad-brush scope of legislation covers both highly contagious saliva-borne viruses as well as BBVs; and covers various types of exposure to bodily fluids, ranging from saliva to blood.
- What drove the introduction of these laws? What are the implementation issues? What are the policy solutions?

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South Australia

- In 2012 the SA Police Association passed a resolution calling for compulsory testing of offenders for “communicable diseases”, where officers have been assaulted, spat at or bitten
- In the lead-up to the 2014 SA election, the SA Police Association lobbied the Labor government
- Labor announced its intention to pass such a law if re-elected – thus this became an election promise

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BUILDING A STRONGER SOUTH AUSTRALIA

NEWS RELEASE

Premier Jay Weatherill
Treasurer
Deputy Premier John Rau
Attorney-General

Tuesday, October 15, 2013

New blood test law to protect those who protect us

Offenders will be required to have a blood test if their bodily fluid comes into contact with a police officer, under new laws to support South Australia's Police force.

Premier Jay Weatherill will outline the new community safety measure at a

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SA legislation introduced

- The re-elected Labor Government fulfilled its promise, with the *Criminal Law (Forensic Procedures) (Blood Testing for Diseases) Amendment Bill 2014*
- The SA Opposition supported the Bill and proposed to broaden its scope
- AFAO and Gay men's Health SA wrote to the SA Attorney General, urging that the Bill be withdrawn but it was passed

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The South Australian legislation: the detail

- The SA legislation provides for forced testing for “communicable” diseases, including BBVs where a person is “suspected of a prescribed serious offence” (e.g., assault, causing harm and serious harm), and “it is likely that a police officer came into contact with, or was otherwise exposed to, biological material of the person as a result of the suspected offence”.
- Note that the trigger for forced testing is “contact with” someone’s “biological material”, not exposure risk. Under the legislation, a senior police officer determines whether exposure occurred and can order forced testing for BBVs.

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Western Australia

- In October 2014, the WA Parliament passed the *Mandatory Testing (Infectious Diseases) Act 2014*
- WA's legislation is a little more sophisticated than SA's, the WA legislation providing for forced testing for certain infectious diseases of persons reasonably suspected of having transferred bodily fluids to police and other related public officers acting in the course of duty
- As in SA, there had been concerted police union advocacy: "We need to protect officers who are on the frontline protecting us", said their media release

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Scope creep

- As in SA, there has been a push in WA to extend its scope to other workforces, *Perth Now* reporting on March 14, 2015:

"A FEMALE prison officer faces an agonising six-month wait for blood test results after being bitten by an inmate at Bandyup women's jail. The woman, who required hospital treatment, will now undergo blood tests over the next few months to see if she has contracted any diseases as a result of the bite, such as HIV. The assault has sparked calls for the Barnett Government to introduce new laws that would prevent prison officers from going through the six-month wait for test results. WA Police are protected by legislation, ... , where people who bite or spit on officers are required to have an immediate, mandatory blood test. By doing so, it means results can be obtained in just a few days, preventing police officers from undergoing months of testing. The WA Prison Officers Union says the same laws should apply to its workers."

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Problems re both the SA and WA legislation

- Common misunderstandings re HIV transmission and exposure risk are reinforced – related media further fuelling HIV-related stigma
- Rationale for forcibly testing a third party for BBVs as a means of addressing police officers' anxiety is misconceived
- Legislation flouts threshold criteria for compulsory testing under the National HIV Testing Policy
- Legislation fails to specify how testing will be enforced where a person refuses to be tested
- The new laws are bound to be arbitrarily applied

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Policy priorities

- In AFAO's view, the SA and WA legislation should be repealed or at least substantially amended
- In the meantime procedural protocols are needed, to limit application of these laws; and ensure that overriding protections and rights of appeal in other legislation are observed
- Clear processes for supporting police who've been exposed to risk need to be developed, as laid out in ASHM's guiding document entitled *Police and Blood-Borne Viruses*
- All police officers who have been exposed to actual risk of HIV infection should be provided with immediate access to PEP, accurate information resources, and referral to professional and expert counselling

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Ongoing advocacy priorities

- The seventh national HIV Strategy identifies a clear role for the Commonwealth in identifying and responding to jurisdictional issues of national significance to the HIV response
- Commonwealth has to date taken a hands-off approach re the SA and WA legislation, despite the real potential for further policy replication across the jurisdictions
- The HIV Strategy notes the importance of entering into "a respectful dialogue with other sectors to discuss impacts of wider decisions on the health of priority groups". It's time for the Commonwealth to establish "a respectful dialogue" with WA, SA and the police unions to reform/repeal the laws now in place, and prevent their replication around the country

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Cops union calls for new spitting offence

This story was published: 9 MONTHS AGO | MARCH 11, 2015 1:10PM

THE NSW police union is pushing for anyone who deliberately hurls spit or splatters blood at an officer to face up to 14 years in jail.

THE Police Association of NSW is also calling for powers that force anyone who transmits a bodily fluid - including spit, blood or urine - to emergency workers, to be tested for diseases.

PANSW President Scott Weber says it is a disgusting and heinous crime that occurs regularly and officers who are attacked in such a way must wait months to discover whether they have been infected by disease.

"The waiting is a killer, Mr Weber said.

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The end – thanks for listening 😊

- **Further information:** visit the Community and Advocacy Hub in the Exhibition Hall for a copy of the briefing paper on which this presentation was based.
- www.afao.org.au