

MANDATORY TESTING (INFECTIOUS DISEASES) BILL 2014

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [3.17 pm]: I move —

That the bill be now read a second time.

In the lead-up to the 2013 Western Australian state election, the Liberal–National government pledged to introduce legislation that would allow for the taking of a blood sample from an individual who has exposed a police officer to the risk of contracting an infectious disease. Today we deliver on that promise.

Currently, in circumstances in which a police officer is exposed to bodily fluids capable of transmitting bloodborne viruses, such as the spitting of blood or phlegm, there is no means to compel the source individual to provide a bodily sample. The inability to test the source individual to determine whether they have a virus means that the exposed police officer must undergo testing.

The purpose for taking this bodily sample from the source individual is to assist with the diagnosis, clinical management and treatment of the exposed police officer. Because bloodborne viruses, such as HIV and HBV, can have lengthy window or incubation periods, sometimes up to a year, whereby the disease is present in the body but the antibodies to the disease cannot be detected with confidence, the police officer may be left to wait between three and six months to confirm whether he or she has contracted the disease.

In cases in which there has been a significant exposure, the police officer will also be advised to undergo post-exposure prophylaxis treatment, which usually requires the taking of two or more antiretroviral drugs. While PEP is effective in preventing the transmission of the virus, it can be accompanied by debilitating side effects and other risks for the police officer. These side effects, combined with the fears of secondary transmission, can place enormous physical and emotional stress on the officer concerned and may significantly diminish his or her ability to carry out the functions and roles expected of a police officer. Examples of such experiences are unfortunately not uncommon. In 2012 an officer was spat on by an offender who claimed to be HIV positive. The officer later suffered anxiety attacks and is still on medication for depression. In 2013 another officer had to wait three months for the all-clear after being spat at by an offender who had hepatitis C and claimed to have AIDS. In 2010 yet another officer was bitten on the wrist and again waited for months to get the all-clear, which meant he had to restrict physical contact with his four-month-old baby and wife.

This legislation will mean that when a person who is not a protected person assaults a public officer, or in the course of an arrest otherwise exposes a public officer to the risk of infectious disease, police will be able to, upon authorisation from a senior police officer who is of the rank of inspector or above, arrange for a suitably qualified medical practitioner, nurse or phlebotomist to take a sample from the source individual who has bitten, spat on, or otherwise attacked the officer acting in the course of their duty. The term “public officer” as it is used in the legislation refers to a police officer, a police-related officer and a police service employee. When the suspected transferor is a juvenile or an incapable person, a disease test order can be granted only by a court.

It is worth noting that the government proposes to progress this legislation in two stages. This bill is limited in its application to police officers, police-related officers and police service employees and allows for disease testing only in particular circumstances. It is proposed that the second phase of the legislation will consider other circumstances that may not be covered in this bill, such as the accidental transfer of bodily fluids to a police officer in, for example, the case of a traffic crash. The second phase will also include consideration of its application to other categories of public officer.

In 2013 there were 147 instances in which officers were exposed to bodily fluids during the course of policing. However, it is anticipated that only a small number of such cases will result in the requirement to take a blood sample under a disease test authorisation because the legislation will require a senior police officer or a court to be satisfied that there has been a transfer of bodily fluid through penetration of a mucous membrane or through the broken skin of another person. These figures highlight the problem that police officers confront when they carry out their duties. I wish to assure the house that it will not simply be the case that testing will be authorised because a person spits on the unbroken skin of an officer. Whilst that is a deplorable act, the legislation does not address such situations; rather, it provides for certain defined circumstances in which an application for testing can occur based on the likely risk.

The identified benefits of the legislation are to provide an efficient means for testing a source individual; reduce the stress and anxiety for exposed officers; and contribute to decisions about treatment. As a government we will

not see these benefits unless the legislation contains provisions to ensure compliance by suspected transferors. The last thing we want is for this legislation to be sidestepped by people refusing to comply with a disease test authorisation. To ensure that this does not occur, members will note that there are significant penalties that are intended to act as a deterrent to noncompliance.

Another important part of the legislation deals with the use of “reasonable force” when it may be necessary. Western Australia Police will be available to help medical staff if they are asked to assist with taking a blood sample. As a matter of policy, the Commissioner of Police has advised that police officers will use force only if they are asked to assist the medical staff with the taking of blood. In cases in which the offender is behaving in a way that may cause harm to medical staff, the suspected transferor, police or bystanders, it is likely that the testing will stop. At this point, the option will be available for police to charge the suspected transferor with failing to submit to the taking of a blood sample. Police officers receive extensive training in the use of force, and I am confident that this provision will only be used in situations in which it is needed to assist medical staff and there is minimal risk. Medical practitioners cannot be compelled to take a sample if they feel it is unsafe or they are uncomfortable in doing so. It is also worth noting that the Commissioner of Police has in place comprehensive internal oversight arrangements, and the actions of police officers are also subject to external scrutiny by the Corruption and Crime Commission and the Ombudsman.

There are some other aspects of the legislation that members may wish to note. The cost of testing will be met by WA Police under clause 28. The cost of testing is low and the Commissioner of Police is responsible for the health and welfare of officers. The results of a test can be disclosed to the Commissioner of Police under clause 29. This is a health and welfare issue and will enable warnings to be provided to other officers to reduce any possible risks. There is a prohibition on the use of blood samples for other purposes under clause 30. Blood samples are not being taken for evidentiary purposes, and therefore the use of the results is confined to the purposes for which they are taken. The legislation provides protections from liability under clause 32. It is important that a person acting in good faith is protected from liability for any function being performed in accordance with the legislation. Provision has been made for the act to be reviewed after five years, pursuant to clause 34. Finally and most importantly, mandatory testing for diseases will provide peace of mind for police, who have a challenging job.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. This bill does not, by reason of its subject matter, introduce a uniform scheme or uniform laws through the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 1943.]

Debate adjourned, pursuant to standing orders.