

**MANDATORY TESTING (INFECTIOUS DISEASES) BILL 2014**

*Second Reading*

Resumed from 23 September.

**HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition)** [7.41 pm]: On behalf of the opposition, I want to make a number of comments in support of the Mandatory Testing (Infectious Diseases) Bill 2014. This is a very significant piece of legislation that we are looking to see passed through this Parliament to assist our very fine police officers of Western Australia. Members will recall that prior to the 2013 state election, the WA Police Union put out a document and would have contacted each sitting member and, I am pretty sure, most, if not all, candidates from across the political spectrum to address a number of concerns it had on behalf of its members. This particular matter was quite significant. I suppose we have to talk about the reasons that this has come about and why this legislation is in front of us. Members would be fully aware that the nature of police work has significantly changed over an extended period of time. Twenty or 30 years ago when a police officer may have been assaulted or injured in some way, they may have brushed it off, said “toughen up” and moved on, and would have dealt with their injuries in an appropriate way. But there have been changes in society. We have all heard the discussions about increases in drug use and of particular types of drugs that appear to cause people to become more aggressive, violent, animated and threatening. Police today are in a highly exposed work situation. I know I have talked about this before, but with this form of work in our state, these types of workers go to work every day and do not necessarily know where they will be at the end of the day, in what state they will come home or, in some cases, sadly, whether they will come home at all. There have been a number of fatalities on the job, along with extremely serious injuries. The legislation we are dealing with tonight does not deal with those things, but it deals with an issue that police have to tackle on a day-to-day basis. They may have to resolve an issue and the individuals involved may deliberately attack them, bite them, scratch them, beat them, cut them and do a whole range of things that may cause an injury and may break skin. If police find there has been a transfer of bodily fluids from an individual, there is concern that they may pick up an infection of sorts. Currently, if those types of situations occur, it is extremely difficult to obtain a sample for testing to reassure the police officer that they have not contracted any health issues. This legislation is in front of us to try to resolve those issues and to reduce the stress factor faced by serving police officers caught up in those situations. It will enable arrangements to be put in place so that when those events occur and there is an exchange of bodily fluids in an incident, a sample can be obtained for testing to establish whether the police officer has been exposed to a range of specific infectious diseases listed in this Mandatory Testing (Infectious Diseases) Bill. Members will note that the three primary diseases listed are HIV, hepatitis B and hepatitis C. The bill gives an indication that at a future stage, other types of infectious diseases could be added to the list. As I understand it, those are three infectious diseases already listed for notification in occupational safety and health regulations. I think this is a significant piece of legislation. It has been eagerly anticipated by members of the WA Police Union. They have been very active in pushing this issue along. They have obtained bipartisan support in both chambers. When this bill was passed in the other place, it went through fairly quickly and with great support.

The bill sets out the processes quite well. It provides for a range of definitions of who can be caught in this legislation. It excludes children and a range of people who may not have capacity. It enables a third party to act on behalf of people who may be deemed to be incapable. I note that under the definition of “incapable”, a sample may have to be extracted from a deceased individual. The bill provides that any costs associated with the sampling are to be picked up by WA Police. I am sure that will provide relief for any officers caught up in that situation. As we know, medical costs can mount up and be quite expensive. That will help provide some relief. It also provides that samples cannot be used for any other purpose; a high degree of privacy surrounds what can be done with not just a sample, but also the information that arises from the sample. How matters will be dealt with has been quite well thought through.

The bill covers not just police officers, but also auxiliary officers and other public officers employed within WA Police. Although this is a matter that the police union has pursued, we can see this as a model for a range of other workers, particularly in the public sector, who may have exposure to these types of situations. At some point, we hope government will give consideration to extending this type of support to those other workers such as ambulance officers and prison officers. I am sure there are people who work in the mental health area who may have to deal with individuals who for whatever reason become agitated, aggressive or violent or, in some cases, deliberately set out to cause harm to the person they have to engage with. I am sure that is a worry, particularly for police officers. As they walk through the door of a building or home to deal with an inquiry, they do not know what is on the other side of the door. They do not know what will greet them. It is a bit like throwing in their hat and waiting for it to be gently thrown back or a fist to come behind it. It is an extremely dangerous job. Some media reports in *The Sunday Times* earlier this year referred to 60 cases of police officers throughout our state who had been injured or suffered violent attacks just doing their jobs. They had to go through a range of testing and wait extended periods to get the results back. HIV results or even hep B or hep C

results do not come back in a matter of days; these things take some time. For those individuals it is about modifying their lifestyle while they are waiting for their results, which in turn impacts upon their family life—their relationships with their partners, their engagement with their children and how they manage themselves in terms of their own individual habits. In a moment I will go through in detail some real stories about how people have dealt with this. The stress factor is enormous to the point at which people in that situation have to modify their behaviour, partially out of fear about what the results might be. Thankfully, most of the people about whom information has been provided to me did not contract an infectious disease, but for many months they did not know the results, so they were for that time in a bubble of trying to work out what was going to happen to them, their families and their working lives, because obviously they could not work, and they were also concerned about how they would interact with their workmates. There are enormous pressures on people in that situation, and when they are unable to extract a sample voluntarily, it just adds to the burden that they have to deal with.

The Mandatory Testing (Infectious Diseases) Bill 2014 will enable a decision to be made by an appropriate officer. In situations in which individuals have been exposed to blood, saliva or semen and there is broken skin and an exchange of fluids from one individual to another, an officer will be able to make an appropriate decision about whether a test is required to either allay the individual's fears and concerns and provide reassurance that he or she will not have to seek any treatment or apprise them of the fact that they will have a lifetime burden to deal with. This legislation is timely and at some point I hope that the government will look to expand this capacity into other areas of work. We are now seeing these types of incidents happening in a range of occupations. In due course we will get back to dealing with the custodial legislation. I know that a significant number of cases have been reported in that area in which prison officers have been attacked and have had to go through these types of situations. It is a very sad indictment on our society that people behave in this way and seek to create this type of damage to other people and cause them this degree of pain and life-changing issues. In that regard, I think this is an eminently timely piece of legislation.

I would like to now share some examples. These are all case studies provided to me by members of the WA Police Union, and, as I said, they are examples from all over our state. They go back over the last 10 years, so they are relatively current and, sadly, reasonably frequent. There was a situation in Karratha in which a police officer had bailed a fellow up and was patting him down when he was jabbed by a syringe hanging out of the fellow's sock. I do not know why people would have a syringe hanging out of their sock, but the police officer was jabbed with it. The officer had blood taken that night for testing and went through an extremely long process to have the testing done. In his statement, he refers to the degree of change that occurred for him in his personal life while waiting for his results. He states —

To say the process was difficult and impacted my family in a detrimental way that still to this day causes problems would be to understate things. Intimacy or lack of it for 7 months is a little difficult to take. I recall cutting my hand at a gun club meeting and panicking that I would pass on any disease to other who came to my assistance.

Over the next months I was prone to mood swings, almost violent outbursts and behavioural matters that drew attention from others including Senior Police.

He goes on to say that he went to see a psychologist, and he had to seek leave and take time off to do that. He says —

Basically people thought I was crazy, not an unjust assumption though.

He goes on to say that he was supposed to get the results of the blood tests within seven days of the sample being taken. However, the tyranny of distance—because he was in Karratha—meant that it was closer to 10 days before each result came in. He says —

The wait was difficult and the corresponding mood changes increased closer to each result day.

Ultimately I am not HIV or Hep c positive. However the impact on me and my family has been incredible and irreparable damage has been caused.

Support from WAPS would have eased the way but that was not an option for them.

That is just one example, of many.

Another example is an incident that took place in August 2013, when a police officer arrested an intoxicated female offender for breach of a violence restraining order and apparently got involved in a bit of a physical altercation—a barney—and ended up with his arm being gouged by the fingernails of this woman. This police officer had been in the police service for 27 years, and he had had other incidents happen over time, so he was used to getting tests done, and he had not at that point heard of anyone being infected by such an incident. He says —

I went back to work and lived my life normally, which included time with my wife and daughter ...

This happened in August of last year. In September of this year, he attended the local doctor's surgery over another work-related matter, and, while he was there, he happened to ask the doctor whether his test results had come back from that other incident. The doctor opened the results and checked them, and the police officer discovered that he had been diagnosed with hepatitis C as a result of that incident that had occurred, which was an absolute tragedy for him. He says that he was completely shocked but did not know anything about the disease. He says that the doctor went on to explain that it was a disease that attacked liver function, was highly contagious and was incurable. He says —

I was shocked and devastated. Not so much for myself, but the devastating reality that I may have infected my family unknowingly.

He then goes on to talk about how he dealt with that with his wife and child, because they then had to be tested as well. The good news for him is that the initial diagnosis turned out to be incorrect—so, a silver lining for him—and, as a result, he has been cleared to return to duty. Although this officer did have a good outcome, he went through an extended period of worry and concern, and of not knowing how to engage with people close to him and how to deal with this type of situation. I imagine that would be an outrageously difficult thing to manage.

I understand that there have been 140-plus such incidents in the last year. This legislation—which will hopefully be passed today—will enable, when these incidents occur, immediate action to be taken to take samples from the person who has assaulted the police officer and have those samples tested. It will also enable appropriate support mechanisms to be put in place to back up those police officers so that they will be better able to manage this process than has been the case for the other 60-odd people who have been put in this situation.

I do not know whether anyone has had the opportunity to see any of this information or to go through any of the stories. A number of examples were provided to the media of different scenarios that had happened in WA. Each one of them referred to the anxiety, the stress, the negative implications for their family lives and the health implications. I refer to the potential health implications not just for someone contracting a highly infectious disease, but also when someone gets really stressed out and all the other conditions that present and flow from being stressed. We all know what it is like when things get too much and people change the way they behave; it is a very difficult situation. We should do whatever we can to provide better support for people in these extremely difficult work environments. The environment in which police officers work is perhaps unlike any other work environment and provides no guarantee that those police officers will go home in the same way as they were when they started their day.

When I gave my maiden speech in this place back in 2001, this issue around police health and safety was a matter on which I spent a bit of time. It is therefore an issue about which I have an ongoing concern. One of the matters that I canvassed in that speech was about ensuring that police have appropriate access to a workers' compensation system. That is something that the Labor Party is still keen on pursuing—hopefully, when we get into government in 2017. The police service is a significant part of our Western Australian public sector. It comprises a group of workers who go out into the community to deliver for us and protect our communities. Police officers in both the metropolitan area and regional areas do everything they possibly can in their work, but regional-based police officers in particular go out of their way to be a very strong and committed part of the community. They are very active outside their work hours, building up their community, working with young people and trying to reduce the potential for these types of incidents when they are exposed to these types of dangers. Over the last six years, we have dealt with a range of legislation in the police portfolio and put in place a range of penalties to deal with different types of behaviours. We have talked about how we can reduce the incidence of these behaviours but, at the end of the day, the problems are still there. The degree of violence is escalating. We know that in a lot of cases, it comes down to the types of drugs that people have access to, which exacerbates the level of violence and the out-of-control behaviour. Sadly, the police officers at the forefront bear the brunt of that violence and aggression. The legislation in front of us will assist in that process by ensuring a degree of support and protection when these situations arise. It will not solve the situation, but police officers who are attacked, have skin broken and have bodily fluids transferred will have peace of mind knowing that they have the capacity to have a sample taken and tested, hopefully with a negative outcome, so that they can then get on with their lives. If they have to go through extended periods off work and have to modify their personal behaviour because there are growing negative implications for their family in how they engage and deal with them, that is a negative for the whole of our community and a cost to the state, as the employer, in its support of this group of workers.

I regard this legislation as part of the duty of care of the employer to provide this type of facility. I am therefore very pleased that the government has delivered on a commitment it made to officers in the police service leading up to the election. The legislation has taken a bit of time to get into this place, but this is a good start. I hope that in due course the government will do the right thing and consider extending the same sort of support to other

workers who are potentially exposed to these difficult situations and that it will provide this mechanism for them as well.

With those few words, we are very pleased to support this bill. We hope that it will pass through this chamber tonight. The WA Police Union is very keen, on behalf of its members, to see this bill passed. I am sure that every police officer in this state wants to know that this government is supporting them by putting in place a mechanism that will provide some sort of protection and assistance for them.

**HON COL HOLT (South West — Parliamentary Secretary)** [8.05 pm]: I rise on behalf of the National Party to indicate our support for the Mandatory Testing (Infectious Diseases) Bill 2014. The bill aims to protect our police officers or at least provide police officers with peace of mind about some potential risks to their lives and their health while performing their job. We ask our police officers all the time to be on the front line protecting our communities. We ask them to go into situations all the time that we, as ordinary citizens, would not go into to restore peace and order, to keep crime off the streets and to be on the front line protecting our community. We should be trying to look at all the ways we can support them in that position.

In a way this bill addresses a narrow concern for police. I do not mean narrow concern in terms of health outcomes; I mean the potential incidents that might occur over the course of a year. I thank Hon Kate Doust for her contribution because she summarised it quite well. There were about 150 incidents related to this bill over the past year. Those incidents involved the exchange of bodily fluid between a person who had been arrested or was in custody and a police officer. In the course of their duty, a police officer may be spat on. In the past, there was no ability to provide an officer with peace of mind. Obviously, testing regimes will be put in place around those officers. The best way to provide that peace of mind is to find out whether the person who spat in their face or exchanged blood into an open wound is carrying an infectious disease. We need to find that out on behalf of police officers who are caught in that situation. We need mandatory ways to test for that. We need the mandatory testing of samples to find out as quickly as possible to ensure that the police officer caught in that situation has the correct medical attention from that point on until they are given the all clear. After a positive test, police officers need to receive the right treatment. There could be times when there are incubation periods; maybe the testing on the perpetrator does not show up. The regime still goes back to the police officer. This is about trying to make the most of the opportunity to provide police officers with peace of mind when they are caught up in that situation.

From a regional member's perspective—I am sure it has ramifications in metropolitan Perth, too—it is really about the actual practice of taking mandatory samples. I ask the Attorney General for clarification about how he sees that being rolled out in remote parts of Western Australia where someone being asked to take a blood sample from a perpetrator—if I can use that language—may be a community nurse at an outlying nursing post: How will it work in a practical sense in regional Western Australia? What sorts of risks are associated with those people in the implementation of this bill and the mandatory testing and sampling? How do we deal with that?

Again, the situation may change the outcome for the police officer. If an incident occurs and a sample is needed so that the police officer can be given some peace of mind, how will it work in a practical sense in some of those isolated and remote areas? I know there are ways of transporting perpetrators to other areas and there could potentially be cooling-off periods, but it would be interesting to get some clarification of how it will work in a practical sense. Some of my colleagues may raise some concerns and questions in the committee stage, perhaps, but we certainly support the passage of the bill. We are interested in getting some clarification of how the practicalities will work. We do not want to put at risk other people in the community through the implementation of this bill.

**HON LYNN MacLAREN (South Metropolitan)** [8.10 pm]: I rise to speak in support of the Mandatory Testing (Infectious Diseases) Bill 2014. The purpose of this bill, as has been mentioned by previous speakers, is to establish an act to provide for the mandatory 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. In looking at this bill, I sought a briefing from the department and I thank the minister for providing that briefing and for following up on some of the questions that I asked in the briefing by email. I also sought a meeting with the WA Police Union and I was advised of some interesting stories about the challenges that they face in their duties and of their wholehearted support for this bill.

As Hon Kate Doust said, in the lead-up to the election, we were contacted about this bill and the drafting of specific legislation to enable mandatory testing for infectious diseases. The Greens were wholehearted in their support and offered to not only support the legislation, but also introduce it because we see this as very important legislation. One of the questions that have come up is: why has it taken a while to get here and why are we doing this only now? That is nothing to dwell on. We acknowledge that the government has taken this important step forward in the interests of public safety and health of the officers whom we depend on so much. Often they are in the firing line and we do not realise the occupational safety and health issues that come up for them.

One of the things that police officers and other public officers can face when they are dealing with violent situations or crises is exposure to bodily fluids that can bear disease. That can create a post-traumatic stress disorder if someone is constantly in a crisis and constantly worried about the danger posed by exposure to bodily fluids. We need to take this matter very seriously from an occupational safety and health standpoint. That is why I think it is very important to pass this bill today. However, I have questions about the implementation of it and the rights of people who might be caught up in it. As Hon Col Holt has acknowledged, it would be good to be given more detail about exactly how this will play out. I note that the explanatory memorandum advises that 147 officers were exposed to bodily fluids over a year. That is not an insignificant number of incidents and I am very concerned about that high degree of exposure. If we are to implement these tests, what is the implication to —

Several members interjected.

**The ACTING PRESIDENT (Hon Liz Behjat):** Order! Members, can we perhaps give courtesy to the member on her feet and minimise the amount of movement around the chamber, especially those members closest to the Chair.

**Hon LYNN MacLAREN:** Maybe I will start again and talk about some of the answers to the questions I raised with the officers, and I will mention only a couple. My concerns were around the reasonable grounds for disease testing, which the bill in fact deals with. The bill specifies that there are only certain grounds on which a sample can be taken from someone who may have exposed another person to bodily fluids. It is important to realise that up until now, some police officers had to wait to see whether they had caught something and had to be tested repeatedly because of the different incubation periods for different diseases. This bill will shift that onus, and a person will now be able, as soon as they have been exposed or very soon after the exposure, to hopefully capture or obtain a sample from the person who has infected them with bodily fluid, whether it be saliva or blood-borne or, as Hon Kate Doust said, caused by a scratch on the arm. If that cannot be obtained immediately from the person who carried out the assault, it can be followed up the next day by going to either their house or place of work and obtaining that sample. The amount of time a public officer is exposed to that worry will be dramatically reduced. One tremendous asset of the bill is that peace of mind an officer will have so that they can continue their duties immediately, and that is well worth any expenditure on the tests—and there will be some expenditure to get a sample analysed.

I am also concerned about the issue of storage and recording of samples, because we are talking of course about parts of our bodies. How will those samples be used? Will there be some protection for an individual who has given a sample? Indeed, there will be. Samples will be destroyed and will not be used for any other purpose. The bill is explicit in that regard.

I also asked the officers how they arrived at the \$12 000 penalty for failing to comply, and they kindly provided me with several examples of similar offences covered by other legislation that carry a similar penalty of \$12 000 or imprisonment of 12 months. One example is the Commissioner for Children and Young People Act, which includes penalties for a failure to comply with a section 33 notice—that is, failure to attend or produce a document—for which the fine is also \$12 000 or imprisonment for 12 months.

I also asked about clause 27, which provides for the analysis and destruction of blood samples. I asked about that clause because clause 27(2) states that an officer of the pathology laboratory may destroy a blood sample, or any part of the sample, and I asked why the bill states “may” and not “should” or “must” because it is relevant to a question I have about another piece of legislation I am considering, the Custodial Legislation (Officers Discipline) Amendment Bill 2013, in which there is a similar clause that states “should” or “may” or “must”. I appreciate the advice of the officers who said that it states that they “may” destroy a blood sample merely because if it said “must”, there would have to be an associated penalty attached to it if it was not complied with. In fact, the bill contains that double-check, and clause 30 requires that blood samples not to be used for any other purpose and provides for a penalty of \$9 000 and imprisonment for nine months.

Checking what we would be concerned about in regard to rights of privacy and protection of individuals’ own records of diseases, plus balancing out the public interest of keeping our police officers and public officers functioning and well supported by good occupational health and safety practices, I found this bill to be very well written and a very important bill that is worthy of cross-party support, as members have heard already. Finally, we were looking to see whether the legislation would be reviewed, and there is an automatic review after five years, which is important because we do not know whether something unintended might ensue. We will be able to look at it again in five years’ time to determine how this new regime will work. I also note that South Australia considered very similar legislation last year, so we will be watching with interest to see how that plays out. South Australia’s incidence of infection was much higher than Western Australia’s. With those final comments I commend the bill and thank the government for putting together such a good and useful piece of legislation. It is a pleasure to support it.

Debate adjourned on motion by **Hon Peter Collier (Leader of the House)**.