

# Mandatory Disease Testing Act 2021 No 13

[2021-13]



New South Wales

## Status Information

### Currency of version

Current version for 29 July 2022 to date (accessed 28 November 2024 at 2:57)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Note**

Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 29 July 2022

# Mandatory Disease Testing Act 2021 No 13



New South Wales

## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Objects of Act .....	5
4 Definitions .....	5
5 Meaning of “mandatory testing order” .....	6
6 Concurrence of Health Minister .....	6
7 Use of blood samples by NSW Police Force .....	6
<b>Part 2 Applications for mandatory testing orders</b> .....	6
8 Application for mandatory testing order .....	6
9 Consultation with medical practitioner .....	7
10 Content of application for mandatory testing order .....	7
<b>Part 3 Determination of applications for mandatory testing orders</b> .....	8
11 Determination of application for mandatory testing order .....	8
12 Refusal of application for mandatory testing order .....	9
13 Notice of determination of application for mandatory testing order .....	10
<b>Part 4 Mandatory testing orders for vulnerable third parties</b> .....	10
14 Application to Court for mandatory testing order for vulnerable third party .....	10
15 Court may make mandatory testing order for vulnerable third party .....	10
16 Jurisdiction of Local Court and Children’s Court .....	11

17 Court to continue to deal with application for mandatory testing order even if third party not vulnerable	11
<b>Part 5 Content and service of mandatory testing orders</b>	<b>11</b>
18 Content of mandatory testing order	11
19 Service of mandatory testing order	12
<b>Part 6 Carrying out of mandatory testing</b>	<b>13</b>
20 Carrying out of blood test	13
21 Functions of police officers and correctional officers for detained third parties	13
22 Results of blood test	14
<b>Part 7 Review by Chief Health Officer</b>	<b>14</b>
23 Application for review by Chief Health Officer	14
24 Effect of application for review by third party	15
25 Determination of application for review by Chief Health Officer	15
26 Notice of determination of review by Chief Health Officer	16
<b>Part 8 Offences and proceedings</b>	<b>16</b>
27 Failure to comply with mandatory testing order	16
28 False or misleading information	16
29 Disclosure of information	17
30 Proceedings for offences	17
31 Evidence not admissible in proceedings against third party	18
32 Personal liability and professional standards	18
<b>Part 9 Administration</b>	<b>19</b>
33 Guidelines	19
34 Costs	20
35 Delegation	20
<b>Part 10 Miscellaneous</b>	<b>20</b>
36 Oversight of Act by Ombudsman	20
37 Review of Act	21
38 Regulations	21

<b>Schedule 1 Savings, transitional and other provisions .....</b>	<b>21</b>
<b>Schedule 2 Amendment of other legislation.....</b>	<b>22</b>
<b>Dictionary .....</b>	<b>23</b>

# Mandatory Disease Testing Act 2021 No 13



New South Wales

An Act to provide for mandatory blood testing of a person in circumstances where the person's bodily fluid comes into contact with a health, emergency or public sector worker as a result of the person's deliberate action and the worker may be at risk of contracting a blood-borne disease.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Mandatory Disease Testing Act 2021*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are—

- (a) to provide for mandatory blood testing of a person in circumstances where—
  - (i) a health, emergency or public sector worker to whom this Act applies comes into contact with the person's bodily fluid as a result of the person's deliberate action, and
  - (ii) the worker is at risk of contracting a blood-borne disease as a result of the person's deliberate action, and
- (b) to encourage health, emergency and public sector workers to whom this Act applies to seek medical advice and information about the risks of contracting a blood-borne disease while at work, and
- (c) to protect and promote the health and wellbeing of health, emergency and public sector workers to whom this Act applies.

### 4 Definitions

The Dictionary defines words used in this Act.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

**5 Meaning of “mandatory testing order”**

- (1) In this Act, a **mandatory testing order** means an order that—
- (a) requires the third party in relation to whom the order is made to—
    - (i) attend the place specified in the order as soon as practicable but no later than 2 business days after being served with the order, and
    - (ii) provide the third party’s blood to be tested for blood-borne diseases, and
  - (b) authorises the third party’s blood to be tested for the blood-borne diseases specified in the order.
- (2) A mandatory testing order may be made by—
- (a) a senior officer for the worker concerned under Part 3, or
  - (b) the Court under Part 4, or
  - (c) the Chief Health Officer under Part 7.

**6 Concurrence of Health Minister**

The Minister is not to recommend the making of a regulation for the purposes of the following provisions without the concurrence of the Minister administering the *Public Health Act 2010*—

- (a) section 29(1)(e),
- (b) section 38(2)(b),
- (c) the definitions of **blood-borne disease** and **bodily fluid** in the Dictionary.

**7 Use of blood samples by NSW Police Force**

To avoid doubt, blood taken from a third party under a mandatory testing order must not be used by a member of the NSW Police Force for a purpose that is not authorised under this Act.

**Part 2 Applications for mandatory testing orders**

**8 Application for mandatory testing order**

- (1) A worker may apply for a mandatory testing order in relation to a person (the **third party**) if—

- (a) the worker has come into contact with the bodily fluid of the third party, and
- (b) the contact occurred—
  - (i) in the execution of the worker’s duty, and
  - (ii) as a result of a deliberate action of the third party, and
  - (iii) without the consent of the worker.
- (2) An application may not be made if the third party is under the age of 14 years.
- (3) An application may be made only if the worker has consulted a relevant medical practitioner in accordance with section 9.
- (4) An application must be made to the worker’s senior officer within 5 business days after the contact.

#### **9 Consultation with medical practitioner**

- (1) A worker who proposes to apply for a mandatory testing order must, as soon as reasonably practicable but no later than 24 hours after the contact occurred, consult a relevant medical practitioner in relation to the contact.
- (2) Despite subsection (1), a worker may consult with a relevant medical practitioner up to 72 hours after the contact occurred if reasonable in the circumstances.
- (3) During the consultation, the relevant medical practitioner must inform the worker about—
  - (a) the risk to the worker of contracting a blood-borne disease from the third party as a result of the contact, and
  - (b) the appropriate action to be taken by the worker to mitigate the risks of—
    - (i) contracting a blood-borne disease from the third party as a result of the contact, and
    - (ii) transmitting a contracted blood-borne disease to another person, and
  - (c) the extent to which testing the third party’s blood for blood-borne diseases will assist in assessing the risk to the worker of contracting a blood-borne disease.

#### **10 Content of application for mandatory testing order**

- (1) An application for a mandatory testing order must be made in writing and contain the following—
  - (a) a detailed description of the contact, including the date, time, place and surrounding circumstances,

- (b) the nature of the worker's contact with the third party's bodily fluid,
  - (c) the name and address of the third party, if known,
  - (d) a statement that the worker did not consent to the contact,
  - (e) a statement that, in the opinion of the worker, the contact with the third party's bodily fluid was as a result of a deliberate action of the third party,
  - (f) a statement that the worker consulted a relevant medical practitioner as required under section 9,
  - (g) the name and contact details of the relevant medical practitioner,
  - (h) a copy of written advice received from the relevant medical practitioner, if any,
  - (i) the name and contact details of a medical practitioner authorised by the worker to receive, on the worker's behalf, the results of the testing of the third party's blood.
- (2) An application must contain a statement that the worker consents to the senior officer, to the extent necessary for determining the application—
- (a) discussing the consultation under section 9 with the relevant medical practitioner concerned, and
  - (b) obtaining the worker's medical records that relate to the contact, if the application does not include a copy of written advice received from the relevant medical practitioner as referred to in subsection (1)(h).
- (3) An application may also contain information about whether or not it appears to the worker that the third party is a vulnerable third party.

## **Part 3 Determination of applications for mandatory testing orders**

### **11 Determination of application for mandatory testing order**

- (1) A senior officer is to determine an application for a mandatory testing order by—
- (a) if it appears to the senior officer, on the information available, that the third party is a vulnerable third party—
    - (i) deciding to apply to the Court for a mandatory testing order, or
    - (ii) refusing the application, or
  - (b) if it does not appear to the senior officer, on the information available, that the third party is a vulnerable third party—
    - (i) making a mandatory testing order, or



- (ii) refusing the application.
- (2) The senior officer must determine an application within 3 business days after receiving the application, unless a longer period is necessary in the circumstances.
- (3) Before determining an application under subsection (1)(a), the senior officer must—
  - (a) provide the third party and the third party's parent or guardian, if any, with an opportunity to make submissions, and
  - (b) consider the submissions received.
- (4) Before determining an application under subsection (1)(b), the senior officer must—
  - (a) seek the third party's consent to voluntarily provide blood to be tested for blood-borne diseases, and
  - (b) provide the third party with an opportunity to make submissions and consider the submissions received.
- (5) In determining an application, the senior officer is to consider—
  - (a) the guidelines issued by the Chief Health Officer under section 33, and
  - (b) other matters the senior officer considers relevant, including a report made in relation to the incident during which the contact occurred.
- (6) The senior officer may decide to apply to the Court for a mandatory testing order for a vulnerable third party only if satisfied that testing the third party's blood for blood-borne diseases is justified in all the circumstances.
- (7) The senior officer may make a mandatory testing order for a third party only if satisfied that—
  - (a) the third party will not voluntarily provide blood to be tested for blood-borne diseases, and
  - (b) testing the third party's blood for blood-borne diseases is justified in all the circumstances.

## **12 Refusal of application for mandatory testing order**

- (1) A senior officer may refuse an application for a mandatory testing order if, after making reasonable inquiries, the senior officer cannot locate the third party in relation to whom the application relates.
- (2) A senior officer may refuse an application on other grounds the senior officer considers appropriate in the circumstances.

### **13 Notice of determination of application for mandatory testing order**

- (1) As soon as practicable after determining an application for a mandatory testing order, the senior officer must give written notice of the determination and the reasons for the determination to the following—
  - (a) the worker,
  - (b) the third party,
  - (c) if the application relates to a third party who appears to the senior officer to be a vulnerable third party—the third party's parent or guardian, if any,
  - (d) the Ombudsman.
- (2) The senior officer is not required to give written notice under subsection (1)(b) or (c) if the senior officer cannot locate the person.

## **Part 4 Mandatory testing orders for vulnerable third parties**

### **14 Application to Court for mandatory testing order for vulnerable third party**

- (1) An application to the Court for a mandatory testing order for a third party who appears to the senior officer to be a vulnerable third party must be made in writing.
- (2) The application must include the following—
  - (a) a copy of the application for a mandatory testing order made by the worker,
  - (b) the blood-borne diseases for which the vulnerable third party's blood is to be tested,
  - (c) other information the senior officer considers relevant.
- (3) As soon as practicable after making the application, the senior officer must notify the following—
  - (a) the worker,
  - (b) the third party and the third party's parent or guardian, if any,
  - (c) the Chief Health Officer.
- (4) The Chief Health Officer may make submissions to the Court in relation to an application for a mandatory testing order made by a senior officer.

### **15 Court may make mandatory testing order for vulnerable third party**

- (1) The Court may, on application by a senior officer or the Chief Health Officer, make a mandatory testing order for a third party who appears to the Court to be a vulnerable

third party.

- (2) The Court may make a mandatory testing order only if satisfied that, on the balance of probabilities, testing the third party's blood for blood-borne diseases is justified in all the circumstances.
- (3) In determining whether or not to make a mandatory testing order, the Court must take into account the following—
  - (a) the best interests of the third party,
  - (b) the wishes of the third party and the third party's parent or guardian, if any,
  - (c) submissions made by the Chief Health Officer,
  - (d) other matters the Court considers relevant.

## **16 Jurisdiction of Local Court and Children's Court**

- (1) **Local Court** Part 4 of the *Local Court Act 2007* applies to proceedings in relation to an application to the Local Court for a mandatory testing order under this Part.
- (2) Section 70 of the *Local Court Act 2007* does not apply in relation to a mandatory testing order made by the Local Court.
- (3) **Children's Court** To avoid doubt, an application for a mandatory testing order for a third party who is under 18 years of age is to be made to, and dealt with by, the Children's Court.
- (4) Section 10 and Part 2, Division 3A of the *Children (Criminal Proceedings) Act 1987* apply to proceedings in relation to an application for a mandatory testing order in the Children's Court in the same way as they apply to criminal proceedings in the Children's Court.
- (5) The regulations may make provision about proceedings in the Children's Court relating to applications for and the making of mandatory testing orders.

## **17 Court to continue to deal with application for mandatory testing order even if third party not vulnerable**

If, during proceedings relating to an application to the Court for a mandatory testing order, it appears to the Court that the third party is not a vulnerable third party, the Court may continue to deal with the application as if the third party was a vulnerable third party.

## **Part 5 Content and service of mandatory testing orders**

### **18 Content of mandatory testing order**

- (1) A mandatory testing order must be in writing and contain the following information—

- (a) the name of the third party,
  - (b) the place the third party is required to attend to provide blood,
  - (c) that the blood is to be tested for all blood-borne diseases unless otherwise specified,
  - (d) the name and contact details of a medical practitioner—
    - (i) authorised by the worker to receive the blood test results on the worker’s behalf, and
    - (ii) authorised by the third party to receive the blood test results on the third party’s behalf, if any,
  - (e) that failure to comply with a mandatory testing order is an offence with a maximum penalty of 100 penalty units or imprisonment for 12 months, or both,
  - (f) for a detained third party—that reasonable force may be used to ensure that a detained third party complies with the mandatory testing order,
  - (g) other information prescribed by the regulations.
- (2) The regulations may prescribe a form for a mandatory testing order made by a senior officer or the Chief Health Officer.

### **19 Service of mandatory testing order**

- (1) As soon as reasonably practicable but no later than 5 business days after a mandatory testing order is made by a senior officer, the senior officer must cause a copy of the order to be personally served on the third party in relation to whom it is made.
- (2) A registrar of the Court is to personally serve a copy of a mandatory testing order made by the Court on the third party in relation to whom the order is made if the third party is present in the Court when the order is made.
- (3) If the third party is not present in the Court when the order is made or was present but a registrar of the Court was unable to serve a copy of the order personally on the third party—
  - (a) a registrar of the Court is to arrange for a copy of the order to be given to the senior officer, and
  - (b) the senior officer must, as soon as reasonably practicable but no later than 5 business days after a mandatory testing order is made, cause a copy of the order to be personally served on the third party, and
  - (c) the registrar of the Court is to arrange for a copy of the order to be sent by post to the third party or to another person if the registrar thinks fit.

- (4) A mandatory testing order must not be personally served on a third party by the worker concerned or a person who was present at the incident during which the relevant contact occurred.

## **Part 6 Carrying out of mandatory testing**

### **20 Carrying out of blood test**

- (1) A mandatory testing order authorises a person of a class approved by the Health Secretary for the purposes of this Act to take blood from the third party in relation to whom the order is made even if the third party does not consent to provide blood.
- (2) A person taking blood from a third party under a mandatory testing order must—
  - (a) be presented with a copy of the mandatory testing order relating to the third party before taking the third party's blood, and
  - (b) take blood in a manner consistent with relevant medical and other professional standards, and
  - (c) not use force against the third party to take the blood, other than force ordinarily required to take blood from a person.
- (3) Blood taken from a third party under a mandatory testing order is to be tested for the blood-borne diseases specified in the order in a pathology laboratory accredited by the National Association of Testing Authorities for that purpose.
- (4) The period during which blood is being taken from a third party under a mandatory testing order is not to be included in the investigation period under section 115 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) for the third party.

### **21 Functions of police officers and correctional officers for detained third parties**

- (1) A law enforcement officer may—
  - (a) transport a detained third party to and from a place at which the detained third party's blood will be taken under a mandatory testing order, and
  - (b) assist a person to take blood from a detained third party under a mandatory testing order.
- (2) A law enforcement officer may use reasonable force in relation to a detained third party—
  - (a) to exercise the functions referred to in subsection (1), and
  - (b) to prevent loss, destruction or contamination of a blood sample taken from the detained third party.

(3) In this section—

**law enforcement officer** means—

- (a) for a detained third party who is in police custody—a police officer, and
- (b) for a detained third party who is an inmate—a correctional officer.

## **22 Results of blood test**

- (1) The pathology laboratory at which the testing of a third party's blood under a mandatory testing order was carried out must, as soon as reasonably practicable, provide the blood test results to the following—
  - (a) the medical practitioner authorised by the worker to receive the blood test results on the worker's behalf,
  - (b) the medical practitioner authorised by the third party to receive the blood test results on the third party's behalf, if any,
  - (c) the Chief Health Officer, if the third party does not authorise a medical practitioner.
- (2) The pathology laboratory at which the testing of a third party's blood under a mandatory testing order was carried out may destroy the sample as soon as the sample is no longer required for the purposes of this Act.

## **Part 7 Review by Chief Health Officer**

### **23 Application for review by Chief Health Officer**

- (1) A worker may apply to the Chief Health Officer for review of a senior officer's decision to refuse an application for a mandatory testing order.
- (2) The worker must make the application within 1 business day of being notified of the senior officer's decision.
- (3) A third party in relation to whom a senior officer makes a mandatory testing order may apply to the Chief Health Officer for review of the senior officer's decision.
- (4) The third party must make the application within 1 business day of being notified of the senior's officer decision.
- (5) An application for review must be made in writing and in the form prescribed by the regulations, if any.
- (6) An application for review made by a worker must include a copy of the original application for the mandatory testing order.
- (7) An application may not be made for review of a senior officer's decision to make an

application to the Court for a mandatory testing order for a vulnerable third party.

#### **24 Effect of application for review by third party**

- (1) If an application for review is made by a third party after a senior officer has made a mandatory testing order, the mandatory testing order continues to have effect and the third party must comply with the order.
- (2) However, section 22 does not apply until the Chief Health Officer determines the application for review.
- (3) If the Chief Health Officer sets aside a decision by a senior officer to make a mandatory testing order, the third party's blood test results are not to be provided to the medical practitioner authorised by the worker as otherwise required under section 22(1)(a).

#### **25 Determination of application for review by Chief Health Officer**

- (1) The Chief Health Officer must determine an application for review within 3 business days after receiving the application by—
  - (a) affirming the decision, or
  - (b) setting aside the decision.
- (2) If the Chief Health Officer sets aside a decision by a senior officer to refuse an application for a mandatory testing order, the Chief Health Officer may—
  - (a) for a third party who appears to the Chief Health Officer to be a vulnerable third party—decide to apply to the Court for a mandatory testing order for the vulnerable third party, or
  - (b) for a third party who does not appear to the Chief Health Officer to be a vulnerable third party—make a mandatory testing order.
- (3) In determining a review of a senior officer's decision, the Chief Health Officer may require the senior officer to provide relevant material, including the material the senior officer relied on to make the decision.
- (4) Before taking action under subsection (2)(a) or (b), the Chief Health Officer must—
  - (a) provide the third party, and, in the case of a third party who appears to the Chief Health Officer to be a vulnerable third party, the third party's parent or guardian, if any, an opportunity to make submissions, and
  - (b) consider the submissions received.
- (5) An application to the Court for a mandatory testing order by the Chief Health Officer must be made in writing.

- (6) An application must include the following—
- (a) a copy of the application for a mandatory testing order made by the worker,
  - (b) the blood-borne diseases for which the blood is to be tested,
  - (c) other information the Chief Health Officer considers relevant.
- (7) An application is to be dealt with by the Court under Part 4.

## **26 Notice of determination of review by Chief Health Officer**

As soon as practicable after determining a review, the Chief Health Officer must give written notice of the determination and the reasons for the determination to the following—

- (a) the worker,
- (b) the third party,
- (c) if the third party is a vulnerable third party—the vulnerable third party’s parent or guardian, if any,
- (d) the senior officer,
- (e) the Ombudsman.

## **Part 8 Offences and proceedings**

### **27 Failure to comply with mandatory testing order**

- (1) A third party in relation to whom a mandatory testing order is made must comply with the order.
- Maximum penalty—100 penalty units or imprisonment for 12 months, or both.
- (2) It is a defence to a prosecution for an offence under this section if the third party proves that the third party had a reasonable excuse.
- (3) If, at the time of being sentenced to imprisonment for an offence under this section, a third party is serving another sentence of imprisonment, the sentence for imprisonment for the offence under this section is to be served consecutively instead of concurrently with the other sentence of imprisonment, unless the court imposing the sentence otherwise directs.

### **28 False or misleading information**

A worker or third party who gives information to a senior officer or other person exercising functions under this Act, knowing that the information is false or misleading in a material particular, is guilty of an offence.



Maximum penalty—100 penalty units or imprisonment for 12 months, or both.

## 29 Disclosure of information

- (1) A person must not disclose information obtained in connection with the administration or execution of this Act unless that disclosure is made—
- (a) for health information—with the consent of the third party to whom the information relates, or
  - (b) for information that is not health information—with the consent of the person from whom the information was obtained, or
  - (c) in connection with the administration or execution of this Act or the *Public Health Act 2010*, or
  - (d) for the purposes of legal proceedings arising out of this Act or of a report of the proceedings, or
  - (e) in other circumstances prescribed by the regulations, or
  - (f) with other lawful excuse.

Maximum penalty—100 penalty units or imprisonment for 12 months, or both.

- (2) Subsection (1)(e) and (f) do not authorise the disclosure of information that a third party—
- (a) has been, is to be or is required to be tested for a relevant Category 5 condition, or
  - (b) has, or has had, a relevant Category 5 condition.

- (3) In this section—

**health information** means information that a third party—

- (a) has been, is to be or is required to be tested for a blood-borne disease, or
- (b) has, or has had, a blood-borne disease.

**relevant Category 5 condition** means a Category 5 condition, within the meaning of Part 4 of the *Public Health Act 2010*, that is also a blood-borne disease.

**Note—**

On the commencement of this Act, HIV infection is the only Category 5 condition.

## 30 Proceedings for offences

Proceedings for an offence under this Act are to be dealt with summarily before the Local Court.

### **31 Evidence not admissible in proceedings against third party**

- (1) Evidence of the following is not admissible in proceedings against a third party—
  - (a) information given or documents produced for the purposes of an application for a mandatory testing order or the determination of the application,
  - (b) a third party's blood test results under a mandatory testing order,
  - (c) a blood sample obtained from a third party under a mandatory testing order,
  - (d) information derived from a blood sample obtained from a third party under a mandatory testing order.
- (2) This section does not apply to criminal proceedings against a third party for an offence under section 27 or 28.
- (3) Evidence referred to in subsection (1) may not be used as a ground on which a search warrant may be issued under an Act or law.
- (4) In this section—

**third party** includes a third party in relation to whom an application for a mandatory testing order was made and refused.

### **32 Personal liability and professional standards**

- (1) A person is not personally subject to civil liability for anything done—
  - (a) in good faith, and
  - (b) for the purpose of exercising functions under this Act.
- (2) The civil liability instead attaches to the Crown.
- (3) A person, including a police officer or correctional officer, is not personally subject to criminal liability for anything properly and necessarily done—
  - (a) in good faith, and
  - (b) for the purpose of taking blood, or helping another person to take blood, from a third party under a mandatory testing order.
- (4) Subsection (3) applies only if the person believed on reasonable grounds that the taking of blood from the third party was authorised by a mandatory testing order.
- (5) A person is not taken to have breached professional etiquette or ethics or departed from accepted standards of professional conduct for anything done—
  - (a) in good faith, and

(b) for the purpose of exercising functions under this Act.

(6) In this section—

***civil liability*** includes action, claim or demand.

***done*** includes omitted to be done.

**Note—**

This section does not provide protection for anything done maliciously or recklessly.

## **Part 9 Administration**

### **33 Guidelines**

(1) The Chief Health Officer is to issue guidelines to assist the following—

(a) senior officers exercising functions under this Act,

(b) relevant medical practitioners who may consult with workers for the purposes of section 9,

(c) persons taking blood from third parties under a mandatory testing order.

(2) Without limiting subsection (1), the guidelines may contain the following—

(a) information about how blood-borne diseases are transmitted and the minimisation of risks of infection and onward transmission,

(b) information about the prevention, diagnosis and treatment of blood-borne diseases,

(c) advice and information to be given to a third party providing blood under a mandatory testing order.

(3) Before issuing guidelines, the Chief Health Officer is to consult with the following—

(a) the Secretary,

(b) the Commissioner of Police,

(c) the Commissioner of Corrective Services,

(d) the Commissioner of Fire and Rescue NSW,

(e) the Commissioner of the State Emergency Service,

(f) the Commissioner of the NSW Rural Fire Service.

(4) The guidelines are to be made publicly available.

- (5) Despite section 2, this Act does not have effect until guidelines are issued by the Chief Health Officer and made publicly available.

### **34 Costs**

- (1) Costs incurred under this Act in relation to an application for a mandatory testing order or the carrying out of a mandatory testing order are payable by the funding provider for the worker concerned, including the following—
- (a) the cost to the worker of the consultation with a relevant medical practitioner under section 9,
  - (b) the reasonable travel costs and expenses incurred by the worker in attending the consultation,
  - (c) the cost to the third party of complying with the order,
  - (d) the reasonable travel costs and expenses incurred by the third party in complying with the order,
  - (e) the cost of testing a third party's blood for blood-borne diseases in a pathology laboratory accredited by the National Association of Testing Authorities,
  - (f) other costs prescribed by the regulations.
- (2) The regulations may make provision for and with respect to the payment of costs incurred under this Act in relation to applications for mandatory testing orders and the carrying out of mandatory testing orders.

### **35 Delegation**

- (1) A senior officer may, in accordance with the regulations, delegate a function of the senior officer under this Act, other than this power of delegation, to a person of a class prescribed by the regulations.
- (2) The Chief Health Officer may delegate a function of the Chief Health Officer under this Act, other than this power of delegation, to a person of a class prescribed by the regulations.

## **Part 10 Miscellaneous**

### **36 Oversight of Act by Ombudsman**

- (1) The Ombudsman is to monitor the operation and administration of this Act, including the exercise of functions conferred on persons or bodies under this Act.
- (2) The Ombudsman is to prepare a report about the monitoring—
- (a) as soon as practicable after 12 months after the commencement of this section,

and

(b) every 3 years after the first report.

(3) The Ombudsman may require the following persons to provide information to the Ombudsman for the purposes of preparing the report—

(a) for information relating to an application for a mandatory testing order made by a worker who is a police officer or special constable—the Commissioner of Police,

(b) for information relating to an application for a mandatory testing order made by any other worker—the senior officer for the worker.

(4) Also, the Ombudsman may require a senior officer to provide demographic information about third parties subject to orders and applications for orders.

(5) A report is to be tabled in each House of Parliament as soon as practicable after the report is prepared.

### **37 Review of Act**

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing the objectives.

(2) The review is to be undertaken as soon as possible after the first report by the Ombudsman, as required under section 36(2)(a), is tabled in each House of Parliament.

(3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as practicable after the review is undertaken.

### **38 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may—

(a) exclude a class of person from the definition of **worker** in the Dictionary, and

(b) make provision for or with respect to the practice and procedure for applications for, and the conduct of, reviews by the Chief Health Officer under Part 7.

## **Schedule 1 Savings, transitional and other provisions**

### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of this Act or an Act that amends this Act (the **relevant enactment**).

- (2) A regulation made under this clause may, if the regulation so provides, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which a regulation made under this clause takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the regulation does not operate so as—
  - (a) to affect, in a manner prejudicial to a person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on a person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A regulation made under this clause is repealed 2 years after the relevant enactment.

## **Schedule 2 Amendment of other legislation**

### **2.1 Crimes (Sentencing Procedure) Act 1999 No 92**

#### **Section 58 Limitation on consecutive sentences imposed by Local Court**

Insert after section 58(3A)—

- (3B) This section does not apply if the new sentence relates to an offence against the *Mandatory Disease Testing Act 2021*.

### **2.2 Mandatory Disease Testing Act 2021**

#### **Dictionary**

Omit “is suffering from a mental illness or mental condition, or is cognitively impaired, within the meaning of the *Mental Health (Forensic Provisions) Act 1990*, which” from paragraph (b) of the definition of **vulnerable third party**.

Insert instead “has a mental health impairment or cognitive impairment, within the meaning of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, that”.

### **2.3 Public Health Act 2010 No 127**

#### **Section 56 Protection of patient’s identity**

Insert after section 56(4)(f)—

(f1) in accordance with the *Mandatory Disease Testing Act 2021*, or

## Dictionary

section 4

**blood-borne disease** means HIV infection, Hepatitis B, Hepatitis C or other blood-borne disease prescribed by the regulations.

**bodily fluid** means blood, faeces, saliva, semen or other bodily fluid or substance prescribed by the regulations.

**business day** means a day that is not a Saturday, Sunday or public holiday.

**Chief Health Officer** means the Chief Health Officer of the Ministry of Health.

**correctional officer** has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

**Court** means the following—

- (a) for an application for a mandatory testing order that relates to a third party who is under 18 years of age—the Children’s Court,
- (b) for other applications—the Local Court.

**detained third party** means a third party who is—

- (a) in police custody, or
- (b) an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**funding provider** for a worker means the funding provider specified for the worker in the Table at the end of this Dictionary.

**guardian** has the same meaning as in the *Guardianship Act 1987*.

**Health Secretary** means the Secretary of the Ministry of Health.

**mandatory testing order**—see section 5.

**parent** of a child means a person who has parental responsibility for the child.

**parental responsibility**, in relation to a child, means all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

**quarter** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

**relevant medical practitioner** means—

- (a) a medical practitioner with qualifications or experience in blood-borne diseases, or
- (b) if a medical practitioner with qualifications or experience in blood-borne diseases is not available

at the time the worker requires a consultation under section 9—another medical practitioner.

**Secretary** means the Secretary of the Department of Communities and Justice.

**senior officer** for a worker means the senior officer specified for the worker in the Table at the end of this Dictionary.

**third party**—see section 8.

**vulnerable third party** means a third party who—

- (a) is at least 14 years of age but under 18 years of age, or
- (b) has a mental health impairment or cognitive impairment, within the meaning of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, that significantly affects the vulnerable third party's capacity to consent to voluntarily provide blood to be tested for blood-borne diseases.

**worker** means a worker specified in the Table at the end of this Dictionary.

**Note—**

Section 38(2)(a) enables the regulations to exclude a class of persons from the definition of **worker**.

**Table—Workers, senior officers and funding providers**

<b>Worker</b>	<b>Senior officer</b>	<b>Funding provider</b>
Member of NSW Police Force	Police officer of the rank of inspector or above	Commissioner of Police
Special constable employed under Part 6A of the <i>Police Act 1990</i>	Police officer of the rank of inspector or above	Commissioner of Police
Commissioner of Corrective Services	Secretary	Secretary
Correctional officer	Commissioner of Corrective Services	Secretary
Community corrections officer within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i>	Commissioner of Corrective Services	Secretary
Person employed in the Public Service or otherwise engaged to provide services directly to offenders within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i>	Commissioner of Corrective Services	Secretary



Person employed at a managed correctional centre, within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i> , or otherwise engaged to provide services directly to offenders at a managed correctional centre	Governor of the managed correctional centre	Management company within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i> for the managed correctional centre
Juvenile justice officer within the meaning of the <i>Children (Detention Centres) Act 1987</i>	Secretary	Secretary
Inspector of Custodial Services	Secretary	Secretary
Member of staff of the Inspector of Custodial Services	Inspector of Custodial Services	Secretary
Official Visitor under the <i>Crimes (Administration of Sentences) Act 1999</i> or the <i>Children (Detention Centres) Act 1987</i>	Inspector of Custodial Services	Secretary
Person employed in the Public Service as Sheriff or a sheriff's officer	Secretary	Secretary
Member of a fire brigade or community fire unit within the meaning of the <i>Fire and Rescue NSW Act 1989</i>	Commissioner of Fire and Rescue NSW	Commissioner of Fire and Rescue NSW
Member of staff of Fire and Rescue NSW	Commissioner of Fire and Rescue NSW	Commissioner of Fire and Rescue NSW
Member of the NSW State Emergency Service	Commissioner of the State Emergency Service	Commissioner of the State Emergency Service
Member of the NSW Rural Fire Service	Commissioner of the NSW Rural Fire Service	Commissioner of the NSW Rural Fire Service
Person employed in the NSW Health Service	Health Secretary	Health Secretary
Person engaged by a statutory health organisation, within the meaning of the <i>Health Services Act 1997</i> , to enable the organisation to exercise its functions	Health Secretary	Health Secretary
Person engaged by a public hospital controlled by the Crown to enable the hospital to exercise its functions	Health Secretary	Health Secretary

Person providing first aid or ambulance services on behalf of St John Ambulance Australia (NSW)	Commissioner of St John Ambulance Australia (NSW)	Commissioner of St John Ambulance Australia (NSW)
Member of staff of the Ombudsman's office	Ombudsman	Ombudsman
Person belonging to a class prescribed by the regulations	Person prescribed by the regulations	Person or body prescribed by the regulations