

Mandatory Disease Testing Policy

In accordance with the *Mandatory Disease Testing Act 2021*, this policy sets out the procedure for mandatory blood testing of a person in circumstances where the person's bodily fluid comes into contact with an officer of the Commission as a result of the person's deliberate action and the worker may be at risk of contracting a blood-borne disease.

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Contents

1. Definitions	4
2. LECC Values	5
3. Purpose	5
4. Monitoring and review	5
5. Introduction	6
6. Mandatory Testing Orders	6
7. Applications for a Mandatory Testing Orders	6
7.1 Relevant Medical Practitioner Consultation	6
7.2 Legal Requirements Before a Mandatory Testing Order Application Can Be Made	7
7.3 Making an Application to the Chief Commissioner	7
8. Determination of an Application for a Mandatory Disease Testing Order	8
8.1 Vulnerable Third Parties	8
8.1.1 Applications to the Court for a Mandatory Testing Order for Vulnerable Third Parties.	8
8.2 Non-Vulnerable Third Parties	9
8.3 Factors to be considered in assessing a mandatory testing order application	9
8.3.1 The relevant medical practitioner’s report	9
8.3.2 Submissions	10
8.3.3 Level of BBD Transmission Risk	10
8.3.4 Reasons why the third party has not consented to give blood	10
8.3.5 Psychological impact to the worker	10
8.4 Refusing a Mandatory Testing Order Application	10
8.5 Notice of Determination of Mandatory Testing Order Application	11
8.6 Content of a Mandatory Testing Order	11
8.7 Service of a Mandatory Order made by the Chief Commissioner	11
9. Review by the Chief Health Officer	12
9.1 Application for Review by a Worker	12
9.2 Application for Review by a Third Party	12
9.3 Determination of Application for Review by the Chief Health Officer	13
9.4 Additional Information	14
10. Application for a Mandatory Testing Order by a Commissioner	14
11. Costs	14
Annexure A – Explanatory Letter to the Relevant Medical Practitioner	15
Annexure B – Mandatory Testing Order Application Form	17
Annexure C – Consent Form	21
Annexure D – Mandatory Testing Order	24
Annexure E – Notice of Determination of an Application for a Mandatory Testing Order	27

1. Definitions

Blood-borne disease	HIV infection, Hepatitis B, Hepatitis C, or other blood-borne disease prescribed by the regulations
Bodily fluid	Blood, faeces, saliva, semen, or other bodily fluid or substance prescribed by the regulations
Chief Health Officer	Chief Health Officer of the Ministry of Health
Court	Third party under 18 years of age – Children’s Court All other third parties – Local Court
Relevant Medical Practitioner	a. A medical practitioner with qualifications or experience on blood-borne diseases. 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.
Senior Officer	For a Commissioner- the Secretary of the Department of Communities and Justice. For members of staff- the Chief Commissioner
Vulnerable Third Party	A third party who is: a. 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 <i>Mental Health and Cognitive Impairment (Forensic Provisions) Act 2020</i> , that significantly affects the vulnerable third party’s capacity to consent to voluntarily provide blood to be tested for blood-borne diseases. ¹
Worker	All officers of the Commission, including the Commissioners

¹ *Mandatory Disease Testing Act 2021* Dictionary.

2. LECC Values

The LECC values of accountability, fairness, integrity and respect are the basis of a values-led workplace culture. The Commission requires your behaviour and conduct to comply with this Code of Ethics and Conduct.

3. Purpose

The purpose of this policy is to give guidance as to how a worker can apply for a Mandatory Disease Test in circumstances where, in the course of their duties, they are exposed to the bodily fluids of another person.

This document is to be read in conjunction with the:

- [Mandatory Disease Testing Act 2021 \(NSW\)](#)
- [Mandatory Disease Testing Regulation 2022 \(NSW\)](#)
- [Mental Health and Cognitive Impairment \(Forensic Provisions\) Act 2020 \(NSW\)](#)
- [Chief Health Officer's Guidelines for the Mandatory Disease Testing Act 2021](#)

4. Monitoring and review

The Policy will be reviewed in accordance with the policy review schedule specified in the document control metadata and at other times if new information or organisational change warrants an amendment. Scheduled and other revisions of the Policy will be completed in consultation with interested parties to ensure relevance and effectiveness.

5. Introduction

The *Mandatory Disease Testing Act 2021* ('the Act') was introduced to provide for mandatory blood testing of a person in circumstances where:

- a health, emergency or public sector worker comes into contact with a person's bodily fluid as a result of the person's deliberate action.
- the worker is at risk of contracting a blood-borne disease as a result of the person's deliberate action.²

The Commissioners and members of staff of the LECC are prescribed in the *Mandatory Disease Testing Regulation 2022* (NSW) ('the Regulation') as a class of workers for the Act.³

6. Mandatory Testing Orders

A mandatory testing order requires a third party to provide a sample of their blood to be tested for a blood-borne disease within 2 business days of the order being served.

A mandatory testing order can be made by:

- The Chief Commissioner⁴; or
- A Local Court Magistrate for people who appear to be a 'vulnerable third party' by reason of a mental health impairment or cognitive impairment; or
- A Children's Court Magistrate for children aged 14-17 (whether or not they appear to have a mental health impairment or cognitive impairment); or
- The NSW Chief Health Officer.⁵

7. Applications for a Mandatory Testing Orders

7.1 Relevant Medical Practitioner Consultation

A worker who proposes to apply for a mandatory testing order must, as soon as reasonably practicable and within 24 hours after the contact with bodily fluids, consult with a relevant medical practitioner. Notwithstanding, a worker may consult with a relevant medical practitioner up to 72 hours after the contact if reasonable in the circumstances.⁶ They should document the reasons for a delay beyond 24 hours in their application for a Mandatory Testing Order.

During the consultation, the relevant medical practitioner must inform the worker about:

- The risk to the worker of contracting a blood-borne disease from the third party as a result of the contact with the bodily fluid, and
- Appropriate action to be taken by the worker to mitigate the risks of –

² *Mandatory Disease Testing Act 2021* s 3(a).

³ *Mandatory Disease Testing Regulation 2022* cl 9(1)(a) & (b).

⁴ *Ibid* cl 9(3)

⁵ *Mandatory Disease Testing Act 2021* s 5.

⁶ *Mandatory Disease Testing Act 2021* s 9(1) and (2).

- Contracting a blood-borne disease from the third party as a result of the contact, and
- Transmitting a contracted blood-borne disease to another person, and
- The extent to which testing of the third party's blood for blood-borne diseases will assist in assessing the risk to the worker of contracting a blood-borne disease.⁷

Annexure A is an explanatory letter available for workers to take with them to a consultation with the relevant medical practitioner.

7.2 Legal Requirements Before a Mandatory Testing Order Application Can Be Made

The Act sets out 8 criteria that must be met before a worker may lawfully make an application for a mandatory testing order⁸:

1. The worker has come into contact with the bodily fluid of the third party, AND
2. The contact occurred in the execution of the worker's duty, AND
3. The contact was as the result of a deliberation action of the third party, AND
4. The contact occurred without the consent of the worker, AND
5. The third party is not under 14 years of age, AND
6. The worker has consulted with a relevant medical practitioner, or if a relevant medical practitioner is not available at the time of consultation, with another medical practitioner, as soon as is reasonably practicable or within 24 hours (or within 72 hours if reasonable in the circumstances), AND
7. The worker consents to the Senior Officer, to the extent necessary for determining an application, discussing with the relevant medical practitioner the consultation between the worker and the relevant medical practitioner and obtaining medical records that relate to the contact, AND
8. The application for a mandatory testing order is made to the Senior Officer within 5 business days after the contact with the bodily fluids of the third party.

7.3 Making an Application to the Chief Commissioner

After seeking medical advice from a relevant medical practitioner, the worker should complete an application form (see **Annexure B**) for the Chief Commissioner's consideration.

If a worker gives false or misleading information to the senior officer it is a punishable offence and they could face a fine of up to \$11,000, 12 months imprisonment, or both.⁹

⁷ *Mandatory Disease Testing Act 2021 s 9(3).*

⁸ *Mandatory Disease Testing Act 2021 s 8 and 10(2).*

⁹ *Mandatory Disease Testing Act 2021 s 29.*

8. Determination of an Application for a Mandatory Disease Testing Order

As the Senior Officer, the Chief Commissioner must determine an application within **3 business days** after receiving the application, unless a longer period is necessary in the circumstances.¹⁰

8.1 Vulnerable Third Parties

If it appears that the third-party is a ‘vulnerable third party’ on the information available, the Chief Commissioner may:

- Decide to apply to the Court for a mandatory testing order; or
- Refuse the application.

In accordance with the Act, a third party will be a ‘vulnerable third party’ if the individual:

(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*, which significantly affects the vulnerable third party’s capacity to consent to voluntarily provide blood to be tested for blood-borne diseases.¹¹

If the Chief Commissioner is unsure as to whether the third party is a ‘vulnerable third party’, an application to the Court should be made. A Court can still make a determination for a Mandatory Testing Order even if it does not appear to the Court that the third party is not a vulnerable third party.

Before determining an application for a ‘vulnerable third party’, the Chief Commissioner must:

- Provide the vulnerable third party and their parent or guardian (if any) with an opportunity to make submissions; and
- Consider any submissions received¹²; and
- Consider the Chief Health Officer’s Guidelines (‘the Guidelines’).

8.1.1 Applications to the Court for a Mandatory Testing Order for Vulnerable Third Parties.

The Court forms for an application of this nature are available on the respective courts’ websites:

- [Children’s Court of NSW](#) – for parties under 18 but over 14
- [Local Court of NSW](#) – for all other third parties

¹⁰ *Mandatory Disease Testing Act 2021* s 11(1).

¹¹ *Mandatory Disease Testing Act 2021* Dictionary.

¹² *Mandatory Disease Testing Act 2021* s 11(3)(b).

The following information must be attached to the application:

- (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 Chief Commissioner considers relevant.¹³

Once an application is lodged, the Chief Commissioner must notify:

- (a) the worker,
- (b) the third party and the third party's parent or guardian, if any,
- (c) the Chief Health Officer.¹⁴

8.2 Non-Vulnerable Third Parties

If it does not appear to the Chief Commissioner that the third party is a 'vulnerable third party', they may:

- a. Make a mandatory testing order; or
- b. Refuse the application.

Before determining an application for a non-vulnerable third party, the Chief Commissioner must:

1. Seek the third party's consent to voluntarily provide blood to be tested for blood-borne diseases, and
2. Provide the third party with an opportunity to make submissions; and
3. Consider any submissions received¹⁵; and
4. Consider the Guidelines.

A non-vulnerable third party can consent to provide blood to be tested for blood-borne diseases. **Annexure C** is the consent form and should be uploaded to the relevant matter.

If consent to voluntarily provide blood for the purposes of testing for a blood-borne disease is provided by the third party, there is no requirement for, or power to make, a mandatory testing order. The application should remain open until confirmation that the third party has provided their blood for testing and the results of that test have been provided to the worker's medical practitioner.

8.3 Factors to be considered in assessing a mandatory testing order application

8.3.1 The relevant medical practitioner's report

The Chief Commissioner must consider the report (or advice) of the relevant medical practitioner before deciding whether to apply to the court for a mandatory testing order for a vulnerable third party, to make a mandatory testing order, or refuse the application for a mandatory testing order.

¹³ *Mandatory Disease Testing Act 2021* s 14(2).

¹⁴ *Mandatory Disease Testing Act 2021* s 14(3).

¹⁵ *Mandatory Disease Testing Act 2021* s 11 (4)(b).

8.3.2 Submissions

According to the Regulation, submissions made under sections 11(3)(a) and 11(4)(b) of the Act may be:

- (a) Written or oral, and
- (b) Given by audio or audio-visual means.

8.3.3 Level of Blood-borne Disease Transmission Risk

The Chief Commissioner should consider the risk of blood-borne disease transmission to the worker. This may include consideration of:

- The type of exposure
- The type of bodily fluid involved
- An understanding of the effect on the post-exposure management of the worker

Much of this information will be included in the relevant medical practitioner's assessment, but information to assist the Chief Commissioner to contextualise the advice of the relevant medical practitioner is provided in the Guidelines at 3.3.2 and Part 6.

8.3.4 Reasons why the third party has not consented to give blood

The Chief Commissioner should consider why the third party has refused to provide blood. This may be for personal or religious or other reasons and granting an order may cause distress to the third party.

8.3.5 Psychological impact to the worker

It is noted in the Guidelines that a lack of knowledge about the third party's blood-borne disease status may create anxiety for the worker and may impact on the decisions they make in their day-to-day life. This may be the case even if there is no, very low or low blood-borne disease transmission risk but may be more likely in high-risk exposure situations.

However, a third party's test result indicating the presence of one or more blood-borne diseases may create stress and anxiety to the worker even when there is no, very low or low risk of transmission. Furthermore, a worker learning of a negative result from a third party for blood-borne disease may be given a false sense of security because the third party may be in the window period of the test(s) and may actually have a blood-borne disease unknown to them.

8.4 Refusing a Mandatory Testing Order Application

The Chief Commissioner may refuse an application for a mandatory testing order if, after making reasonable inquiries, they cannot locate the third party in relation to whom the application relates.

The Chief Commissioner may also refuse an application on other grounds the Chief Commissioner considers appropriate in the circumstances.¹⁶

8.5 Notice of Determination of Mandatory Testing Order Application

As soon as practicable after determining an application for a mandatory testing order, the Chief Commissioner must give written notice of the determination and the reasons for the determination to:

- The worker; and
- The third party; and
- Where the application relates to a vulnerable third party, the third party's parent or guardian; and
- The Ombudsman (Notices of Determination can be sent to the Ombudsman by email to MDT@ombo.nsw.gov.au).

The template provided at **Annexure E** should be used to notify the relevant parties.

8.6 Content of a Mandatory Testing Order

The Act requires that the mandatory testing order must be in writing and contain information listed in s 18, including:

- The name of the third party;
- The place the third party is required to attend to provide blood;
- That the blood is to be tested for all blood-borne diseases unless otherwise specified;
- The name and contact details of a medical practitioner who is authorised to receive the blood test results on both the worker and third party's behalf;
- That failure to comply with a mandatory testing order is an offence;
- That reasonable force may be used to ensure that a detained third party complies with the mandatory testing order;
- Other information prescribed by the Regulation.

The Regulation prescribes a form for a mandatory testing order that fulfill these requirements (see **Annexure D**). The order also includes the NSW Health Pathology Request Form that is pre-populated with the relevant blood-borne disease tests.

8.7 Service of a Mandatory Order made by the Chief Commissioner

The Mandatory Testing Order must be personally served on the third party as soon as reasonably practicable but no later than 5 days after an order is made.¹⁷ It must not be personally served by the worker involved or anyone who was present at the incident.¹⁸

If a mandatory testing order is made, the third party must comply with the order and present at the specified place to be tested. Failure to comply with the mandatory testing order is an

¹⁶ *Mandatory Disease Testing Act 2021* s 12.

¹⁷ *Mandatory Disease Testing Act 2021* s 19(1).

¹⁸ *Mandatory Disease Testing Act 2021* s 19(4).

offence and carries a maximum penalty of imprisonment for 12 months, a fine of \$11,000, or both.¹⁹

9. Review by the Chief Health Officer

Workers or third parties can request a review of the Chief Commissioner's decision on a mandatory testing order. The Chief Health Officer may affirm or set aside the decision.²⁰

Applications for review are to be sent to the Chief Health Officer at:

NSWH-MDT@health.nsw.gov.au

A worker or a third party may not apply to the Chief Health Officer for a review of a decision of the Chief Commissioner to make an application to the Court for a Mandatory Testing Order for a vulnerable third party.

9.1 Application for Review by a Worker

An application for review by a worker must:

- Be made within 1 business day of being notified of the Chief Commissioner's decision.
- Be in writing and include:²¹
 - A copy of the original application for the Mandatory Testing Order.
 - A copy of the Chief Commissioner's determination and reasons for the determination.
 - The blood borne diseases for which the blood is to be tested.

The worker should complete and sign the 'Application for review by Chief Health Officer – worker' form located on the NSW Health website as part of the application.

The application for review and any additional information should be sent to NSWH-MDT@health.nsw.gov.au.

9.2 Application for Review by a Third Party

An application for review by a third party must:

- Be made within 1 business day of being notified of the Chief Commissioner's decision.
- Be in writing and include:²²
 - A copy of the Mandatory Testing Order

¹⁹ *Mandatory Disease Testing Act 2021* s 27(1).

²⁰ *Mandatory Disease Testing Act 2021* s 25(1).

²¹ *Mandatory Disease Testing Regulation 2022* reg 7(1); *Chief Health Officer's Guidelines for the Mandatory Disease Testing Act 2021* p 11.

²² *Mandatory Disease Testing Regulation 2022* reg 7(2); *Chief Health Officer's Guidelines for the Mandatory Disease Testing Act 2021* pp 11-12.

- A copy of the third party's written submissions made to the senior officer, if any.
- A copy of the Chief Commissioner's decision to make a mandatory testing order and the reasons for the decision.
- The blood borne diseases for which the blood is to be tested.

The third party should complete and sign the 'Application for review by Chief Health Officer – third party' form located on the NSW Health website as part of the application.

The application for review and any additional information should be sent to NSWH-MDT@health.nsw.gov.au.

A Mandatory Testing Order continues to have effect and the third party must comply with the order whilst the Chief Health Officer determines the application for review.²³ The results of a blood test **cannot** be given to the medical practitioner authorised by the worker, the medical practitioner authorised by the third party, or the Chief Health Officer while under review.²⁴

If the Chief Health Officer sets aside a decision by the Chief Commissioner to make a Mandatory Testing Order, the third party's blood test results will not be provided to the worker's medical practitioner.²⁵

9.3 Determination of Application for Review by the Chief Health Officer

The Chief Health Officer must determine an application for review of a decision of the Chief Commissioner within 3 business days after receiving the application.²⁶ The Chief Health Officer can either affirm or set aside the decision.

If the Chief Health Officer sets aside the decision of the Chief Commissioner to refuse a Mandatory Testing Order, the Chief Health Officer may:

- a. Apply to the Court for a Mandatory Testing Order if the third party appears to the Chief Health Officer to be a vulnerable third party, or
- b. Make a Mandatory Testing Order for a third party who does not appear to be a vulnerable third party.²⁷

Before setting aside a decision of the Chief Commissioner to refuse a Mandatory Testing Order, the Chief Health Officer must provide the third party, or third party's parent/guardian (if any) an opportunity to make a submission; and consider any submission received.²⁸

²³ *Mandatory Disease Testing Act 2021* s 24(1).

²⁴ *Mandatory Disease Testing Act 2021* s 24(2).

²⁵ *Mandatory Disease Testing Act 2021* s 24(3).

²⁶ *Mandatory Disease Testing Act 2021* s 25.

²⁷ *Mandatory Disease Testing Act 2021* s 25(2).

²⁸ *Mandatory Disease Testing Act 2021* s 25(4).

9.4 Additional Information

In determining a review of the Chief Commissioner's decision, the Chief Health Officer may require the Chief Commissioner to provide relevant material, including the material they relied upon to make the decision.²⁹

The Chief Health Officer must give written notice of their determination and reasons to:

1. The worker,
2. The third party,
3. The third party's parent/guardian (if the third party is a vulnerable third party),
4. The Chief Commissioner, and
5. The Ombudsman.

10. Application for a Mandatory Testing Order by a Commissioner

If a Commissioner wishes to apply for a Mandatory Testing Order, they must make such application to the Secretary of the Department of Communities and Justice, being the Senior Officer in relation to a Commissioner.³⁰

11. Costs

The Secretary of the Department of Communities and Justice bears the cost for the carrying out of a mandatory testing order including:

- the cost to the worker of the consultation with a relevant medical practitioner under section 9,
- the reasonable travel costs and expenses incurred by the worker in attending the consultation,
- the cost to the third party of complying with the order,
- the reasonable travel costs and expenses incurred by the third party in complying with the order,
- 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,
- other costs prescribed by the regulations.

An application for reimbursement of costs incurred by either the worker or the third party must be provided to the Manager, Human Resources and must include receipts of the costs claimed.

²⁹ *Mandatory Disease Testing Act 2021* s 25(3).

³⁰ *Mandatory Disease Testing Regulation 2022* cl 9(2).

Annexure A – Explanatory Letter to the Relevant Medical Practitioner

[DATE]

The Relevant Medical Practitioner

Dear Dr

We are requesting our worker to consult with you because they have come in contact with the bodily fluid(s) of another person ('the third party') as a result of the deliberate action of that third party.

The Mandatory Disease Testing Act 2021 (NSW)

The *Mandatory Disease Testing Act 2021 (NSW)* ('the Act') allows that an order can be made for a third party to provide a blood sample to be tested for certain blood-borne viruses. This safeguards the physical and mental health of certain public sector workers.

As part of the Act, a worker is required to consult with a relevant medical practitioner. This is a medical practitioner that has qualifications or experience in blood-borne diseases.

Your advice

The Senior Officer making the Mandatory Disease Testing order will consider your advice to the worker when deciding whether an order should be made. Your advice must include:

- The risk of the worker contracting a blood-borne disease from the third party due to contact.
- Actions the worker should take to reduce these risks, both for themselves and others.
- How testing the third party's blood will help assess the worker's risk of contracting a blood-borne disease.

What you need to do

We ask that you provide the above advice in writing. If you cannot provide it in writing, we will need to ask the worker for consent for the release of their medical records relating to the bodily fluid contact.

More information

The NSW Chief Health Officer has published guidelines relevant to the Act. You can find this on <https://www.health.nsw.gov.au/Infectious/Pages/mdt-guidelines.aspx>.

Kind regards,

The Hon Peter Johnson SC
Chief Commissioner

Annexure B – Mandatory Testing Order Application Form

Mandatory Testing Order (MTO) Application	
<p>The MTO application made by the worker in relation to a third party will be assessed against the following criteria as per the <i>Mandatory Disease Testing Act 2021</i> s 8:</p> <p style="padding-left: 40px;">The Worker has come into contact with the bodily fluid of the third party, and</p> <p>1) The contact occurred:</p> <ul style="list-style-type: none"> (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. <p>Please note:</p> <ul style="list-style-type: none"> • An application may not be made if the third party is under the age of 14 years. • An application may be made only if the worker has consulted a relevant medical practitioner in accordance with section 9. • An application must be made to the worker’s senior officer within 5 business days after the contact. <p>Once submitted, your application will be assigned to a relevant senior officer for review. If your application is progressed, the allocated senior officer will proceed with the MTO if the third party is not deemed vulnerable and consent for a blood test is not provided by the third party. If the third party is deemed vulnerable, an application will be made to the Court to proceed with the MTO.</p>	
Applicant Details	
Name:	Phone number:
Worker number:	Email address:
Incident Details	
Date of incident:	Supervisor’s Name:
Time of incident:	
Please provide a detailed description of the incident:	
<p>Please acknowledge and confirm the following statements:</p> <ul style="list-style-type: none"> • The contact occurred during execution of duties. • The contact with the third party’s bodily fluid was a result of a deliberate action of the third party. 	

<ul style="list-style-type: none"> • The worker did not consent to the contact with the bodily fluid. • The third party is not under the age of 14. • A relevant medical practitioner has been consulted. • The date of contact is within 5 days of the application. • The worker’s name will likely be disclosed to the third party. <p><input type="checkbox"/> I acknowledge and confirm the above statements are true and correct.</p>	
Third Party Details	
Third party name:	Third party address:
Third party email address:	Third party phone number:
Is the third party 14 or over? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Contact Details – Detailed Description	
Date and time of contact (date of contact should be within the last 5 business days of application)	Location of contact
Please provide a detailed description of the bodily fluid contact and surrounding circumstances.	
Select contact fluid type(s): <input type="checkbox"/> Saliva <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Faeces	Select the type(s) of contact: <input type="checkbox"/> Needle stick injury and other penetrating injuries involving contamination of bodily fluids <input type="checkbox"/> Bodily fluid contact possibly containing blood with broken skin, mouth or eyes <input type="checkbox"/> Bites that break the skin <input type="checkbox"/> Bodily fluids contact that did not contain blood with broken skin, mouth, eyes <input type="checkbox"/> Bodily fluids to intact skin, clothing and skin-to-skin contact

Any other details you wish to add regarding the contact?	
Medical Practitioner Details	
Enter details of the relevant medical practitioners seen <i>as a result of the incident</i> .	
Medical practitioner name:	Medical practitioner phone number:
Medical practitioner email address:	
Medical practitioner address:	
Name of medical practice where medical practitioner works:	Medical practice phone number:
Medical practice email address:	
Medical practice address:	
Did the medical practitioner provide you with written advice?	
<input type="checkbox"/> Yes	
<input type="checkbox"/> No	
If yes, please attach a copy of the written medical advice to this application.	
Enter details of your medical practitioners you wish to <i>have results shared with</i> .	
Medical practitioner name:	Medical practitioner phone number:
Medical practitioner email address:	
Medical practitioner address:	
Name of medical practice where medical practitioner works:	Medical practice phone number:
Medical practice email address:	
Medical practice address:	
<input type="checkbox"/> I provide authorisation for the medical practitioner(s) listed above to receive the third party's blood test results on my behalf.	
Please review the following statements and provide consent to:	
<ul style="list-style-type: none"> • The Senior Officer discussing the consultation with the relevant medical practitioner concerned • Obtaining your medical records related to the contact, if the application does not include a 	

<p>copy of the written advice received from the relevant medical practitioner.</p> <p><input type="checkbox"/> I consent to the above statements.</p>	
<p>Third Party Vulnerability</p>	
<p>Does the third party appear to be a vulnerable third party?</p> <p><i>Vulnerability types:</i></p> <p>(a) <i>is at least 14 years of age but under 18 years of age, or</i> (b) <i>has a mental health impairment or a cognitive impairment, within the meaning of the Mental Health (Forensic Provisions) Act 1990, which significantly affects the vulnerable third party's capacity to consent to voluntarily provide blood to be tested for blood-borne diseases.</i></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>If yes, please indicate whether the party is at least 14 years of age but under 18 years of age:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>The third party appears to have a mental health impairment or a cognitive impairment, within the meaning of the <i>Mental Health (Forensic Provisions) Act 1990</i>, which significantly affects the vulnerable third party's capacity to consent to voluntarily provide blood to be tested for blood-borne diseases.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p>	
<p>Acknowledgement</p>	
<p>Information given by me in this application to any person exercising functions under this Act is true and correct. I understand that it is an offence punishable by imprisonment to give information that is false or misleading in a material particular.</p> <p><input type="checkbox"/> By checking this box, I agree to the above statement.</p>	
<p>Applicant name:</p>	<p>Date:</p>
<p>Applicant signature:</p>	

Annexure C – Consent Form

Consent form to voluntarily provide blood sample to be tested and results disclosed to the medical practitioner for the worker under the Mandatory Disease Testing Act 2021

1. INFORMATION ABOUT THIS FORM

This is a form asking for your consent to provide a sample of your blood to be tested for blood-borne diseases.

Your consent is needed because a staff member of the Law Enforcement Conduct Commission ('the worker') has applied for a Mandatory Testing Order under the *Mandatory Disease Testing Act 2021* (NSW) ('the Act').

The worker has told us that they came into contact with your bodily fluids (for example, your blood, saliva etc) when they were working because of something you did on purpose and without their consent.

The worker's application will be determined by the Chief Commissioner.

Before making a decision about the application, they need to:

- Ask for your consent to voluntarily give a blood sample to be tested for blood-borne diseases, and
- Give you the chance to give us your input and consider this input.

This form is designed to help you to give or refuse consent.

2. CONSENT

I,

(your name)

of

(your address)

CONSENT / DO NOT CONSENT (cross out what does NOT apply) **to attend**

(location)

by

(date)

to provide a sample of my blood to be tested for the

blood-borne diseases specified in the pathology form attached to this form. ('the Test')

(if you do consent, please continue to part 3, 4 & 5, if you do not consent please continue to part 6)

3. CONFIRMATION OF CONSENT

Note: only complete this section if you consent to the test

In **consenting to provide** the sample:

- I understand that there may be medical risks associated with the taking of the sample. I also understand I am able (and will be given a period of up to 48 hours) to discuss medical risks with a medical professional of my choosing prior to deciding whether or not to provide my consent.
- I understand that if I am concerned about any underlying medical conditions, or an adverse reaction because of the sampling procedure of taking blood, I am able to raise this with the Senior Officer requesting my consent and they will consider my concerns before deciding whether to request a blood sample.
- I understand that I will be given an opportunity by the Senior Officer to make submissions in relation to the Test and the Test results. I understand those submissions will be considered by the Senior Officer before the Senior Officer determines an application for a Mandatory Disease Testing Order.
 - I [wish / do not wish] to provide submissions to the Senior Officer in respect of the taking of the sample.
- I understand that I do not need to provide my consent to provide a blood sample and that my consent can be withdrawn at any time before the sample is taken.
- I understand that it is requested I attend the location specified on the front page of the form by the date prescribed on the form for the purposes of the Test.
- I understand pathology results will be produced following my Test (**the Results**).

4. CONSENT TO DISCLOSE RESULTS OF TEST FOR BLOOD-BORNE DISEASES

I also consent to the disclosure of the Results to the medical practitioner of the Worker and for that medical practitioner to disclose the results of the Test to the Worker.

I also consent for the result to be disclosed to my medical practitioner.

Name of Practitioner	
Name of Medical Practice	

Any disclosure outside of my consent is subject to section 56 of the *Public Health Act 2010* (NSW) which limits disclosure of certain information. Any disclosure is also limited by section 29 of the *Mandatory Disease Testing Act 2021* (NSW).

5. SIGNATURE

I agree that I have/have not provided the above two consents voluntarily (of my own free will).

I have been given the opportunity to obtain advice and raise any concerns I have with the Senior Officer.

I am satisfied that I understand the contents of this form and the requirements of the Test.

(*your signature*)

(*your name*)

(*date*)

6. REASON FOR NON-CONSENT (*optional*)

The reason I do not consent is:

Annexure D – Mandatory Testing Order

MANDATORY DISEASE TESTING ORDER

Mandatory testing order under section 18(1) of the *Mandatory Disease Testing Act 2021*

Name of third party

(name of third party)

Date of birth of third party

(date of birth of third party)

is required to attend

(name and address of place)

to provide blood as soon as practicable but no later than 2 business days after being served with this order

Details of blood-borne diseases

The blood of

(name of third party)

must be tested for –

- all blood-borne diseases
- HIV infection
- Hepatitis B
- Hepatitis C
- Specific blood-borne disease: _____

Note – *Blood-borne disease* is defined in the *Mandatory Disease Testing Act 2021* to mean HIV infection, Hepatitis B, Hepatitis C or other blood-borne disease prescribed by the regulations under that Act.

A pre-filled pathology form is attached to this order

Details of worker's medical practitioner

(name of worker)

has authorised the following medical practitioner to received the third-party's blood test results on the worker's behalf.

Name of medical practitioner:	
Telephone number:	
Address:	
Email address:	
Name of medical practice at which the medical practitioner works:	
Telephone number of medical practice:	
Address of medical practice:	
Email address of medical practice:	

Note 1 – More than one medical practitioner at a medical practice can be listed.

Note 2 – Under the *Mandatory Disease Testing Act 2021*, section 22(1)(a), the third party’s blood test results will be provided to the medical practitioner authorised by the worker to receive the blood test results on the worker’s behalf.

Details of third party’s medical practitioner

(name of third party)

has authorised the following medical practitioner to received the third-party’s blood test results on the third party’s behalf.

Name of medical practitioner:	
Telephone number:	
Address:	
Email address:	
Name of medical practice at which the medical practitioner works:	

Telephone number of medical practice:	
Address of medical practice:	
Email address of medical practice:	

Note — More than one medical practitioner at a medical practice can be listed.

Notice to third party

It is an offence under the *Mandatory Disease Testing Act 2021*, section 27 to fail to comply with this order.

The maximum penalty for the offence is imprisonment for 12 months or a fine of \$11,000, or both.

A third party may apply to the Chief Health Officer under the *Mandatory Disease Testing Act 2021*, section 23 for a review of the senior officer’s decision to make this order. The application must be made within 1 business day of the third party being notified of the senior officer’s decision.

Notice to detained third party

If the third party is a detained third party, reasonable force may be used to ensure that the third party complies with this order.

Note — **Detained third party** is defined in the *Mandatory Disease Testing Act 2021* to mean a third party who is in police custody or who is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*.

Details of Senior Officer

_____ has approved the Mandatory Testing Order.
(name of senior officer)

(position)

(location)

(email address)

(contact number)

Annexure E – Notice of Determination of an Application for a Mandatory Testing Order

[DATE]

[ADDRESSEE]

Dear ,

Notice of Determination of an Application for a Mandatory Disease Testing Order

On [INSERT DATE] the Commission received an application for a Mandatory Disease Testing Order pursuant to the *Mandatory Disease Testing Act 2021* ('The Act').

The Chief Commissioner or their delegate has decided to MAKE / NOT MAKE an order under the act.

The order is **attached** to this letter. *(Delete if not making an order)*

The reasons for this decision are outlined below:

Reasons for Decision

(Only include the below section if sending to a third party employee)

Your Right to a Review

You can apply to the Chief Health Officer for a review of the senior officer's decision to make this order. The application must be made within **1 business day** of the you being notified of the decision.

You can send your review application by email to NSWH-MDT@health.nsw.gov.au

You will still need to comply with the order while it is being reviewed. If the review overturns the order, then the applicant will not receive the results of the test.

More Information

You can find more information about Mandatory Disease Testing orders on <https://www.health.nsw.gov.au/Infectious/Pages/mdt-guidelines.aspx>.

Yours sincerely

The Hon Peter Johnson SC
Chief Commissioner