

Download the resource at:  
<http://bit.ly/TestingLawsAudit>



**napwha** national association of  
people with HIV australia



---

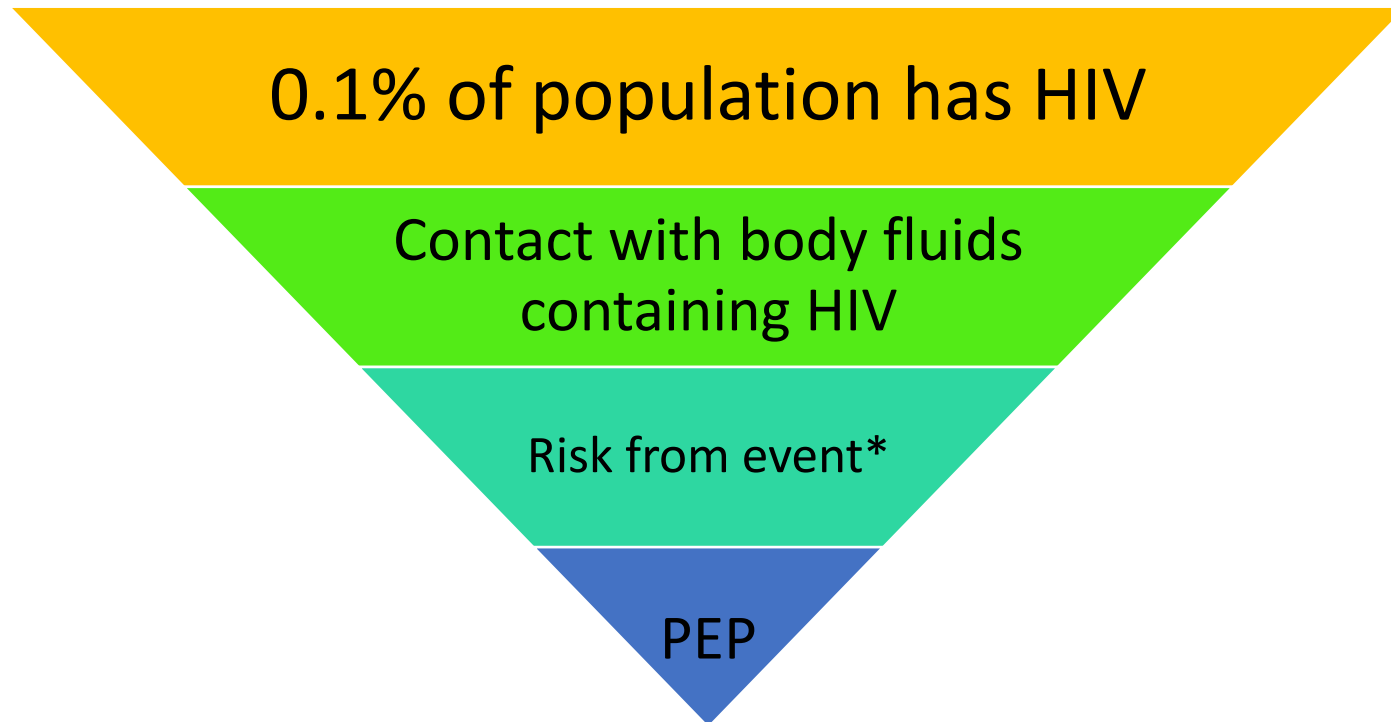
# The System is Broken

---

Audit of Australia's  
**Mandatory Disease  
Testing Laws**

---

# What are the risks from occupational exposure?



\* Negligible to no possibility of transmission & decreasing as more people have low or uvl

**Emergency services personnel are not acquiring HIV through occupational exposure**





There have been no cases  
of HIV transmission  
to emergency services personnel  
as a result of occupational  
exposure  
since 2002



# Mandatory Disease Testing Laws in 5 States

State	Type of law	Related to	Introduction
Vic	Public health	Emergency services personnel	2010
Qld	Police administration	Victims of assault - general	2000
SA	Police administration	Emergency services personnel	2015
WA	Police administration	Police	2015
NT	Police administration	Police	2016



## Laws:

- Low threshold for testing, e.g. suspects transfer, likely came in contact
- Bodily fluids include saliva (NT, Qld, WA)
- Decision making by non-experts

	For all people (unless otherwise stated)	A protected person (child or lacking capacity to consent)	If use of force required
Northern Territory	Police	Magistrate	
Queensland	Magistrate		
South Australia	Police		Magistrate
Victoria	Chief Health Officer	Magistrate	Magistrate
Western Australia	Police	Magistrate	

➤ In WA, affected police officer can overrule the specialist physician

# NT, SA & WA

Most people -tests approved by senior police

- Lack procedural fairness
  - Detention isn't time restricted
  - Use of force is allowed
  - Hefty criminal penalties
- Threats of use may be leveraged to coerce compliance



# How many times have the laws been used?

Number of mandatory HIV tests			
Jurisdiction	Number of times laws used	Time period	Source of data
Northern Territory	Not known	2016 - 2018	Police computer system unable to extract data
Queensland	Not known	2016 - 2018	Police computer system unable to extract data
South Australia	7	Feb 2017 – May 2018	Ombudsmans' audit
Victoria	0	July 2014 – June 2018	Department of Health and Welfare Annual Report
Western Australia	387 requests (377 approvals)	Jan 2015 – mid Dec 2018	WA Police Commissioner / WA Police Force Health, Welfare and Safety Unit



# Systematic issues

Laws, guidelines and procedures don't always align

Poor systems preclude monitoring and analysis

Lack of interface between police and health



# How does it work in the clinic?

Clinicians - Would not agree to test a person who refuses to consent, particularly where use of force is involved:

- may not be possible or safe for patient
- may not be possible or safe for healthcare practitioner
- may not be for the benefit of the patient
- goes against ethical codes of medical practice

Concern:

- that by time of testing, coercion may not be transparent
- about how doctors reach patients to given results



## Audit Results

Who ordered that tests be undertaken? Don't know

What means of exposure is alleged to have occurred? Don't know

What proportion of those tested are Aboriginal or Torres Strait Islander? Don't know

How many times has mandatory testing of an accused revealed a positive result? Don't know

Has there been a case of HIV transmission from an occupational exposure? Don't know, except ....



# NAPWHA & HJN recommend:

1. Repeal the laws
2. Review current systems
3. All orders go before judge, with recommendation by medical specialist
4. Consent (or absence) & means of gaining consent recorded & communicated to staff
5. Robust monitoring with results published annually
6. Restriction to real risk of transmission of specific infection
7. Review of clinical and other support procedures to ensure effective treatment
8. Scaling up education targeting emergency services workers' orgs and media regarding current science on HIV risk and treatments



# Questions

- Who do you think is being tested?
- What's our strategy?
  - What are the compelling messages?
  - Who are our allies?
  - When do we start?

