

# Dismantling unscientific and stigmatising mandatory testing laws: The NSW fight for repeal

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# Disclosure of interest

- ACON and HALC are both primarily funded by the NSW Government

# How did we get here?

- *Mandatory Disease Testing Act 2021* (NSW) commenced July 2022
- Allows for BBV testing without consent
- Similar laws in other states
- Some key policy levers in NSW for oversight of the Act's operation

# The Ombudsman report

- Almost two-thirds of the applications (63%) were the result of **exposure to saliva only**, where there was no risk of transmission.
- Despite there being no risk, 60% of these applications resulted in testing, either by order, or by consent of the third party.



# The Ombudsman report

1. *The Act is mostly being used in cases where there is no real risk of a worker contracting a blood-borne disease*
2. *We saw no evidence that the Act is improving the health and wellbeing of workers*
3. *Protections for third parties are ineffective*
4. *The Act is disproportionately impacting Aboriginal and Torres Strait Islander people*
5. *There are legal complications with testing by consent*
6. *Senior officers of agencies are ill-equipped to be making determinations about MTOs, and decision-making processes within the NSWPF seem particularly poor*

# The Ombudsman report

- Case study 7:

*...the worker had nominated the GP in question as their authorised medical practitioner **despite the practice having no record of the worker as ever being a patient in their database.***

*The results of the test were therefore received by the practice, causing confusion and concern by practice staff. The GP advised us that at this stage they were **under the impression that their details had been used fraudulently,** as they had no record of the patient to whom the results related...*

# The Ombudsman report

The report's central recommendation is for the Government “**to consider whether the Act should be continued at all**, and whether the administrative resources currently applied to the scheme would be better directed toward providing improved avenues of advice and support directly to front-line workers who become exposed to bodily fluids in the workplace.”

60 recommendations for amendment, should Act proceed

# This is a national issue

- MDT laws in: NSW, Vic, QLD, WA, NT, SA
- Laws differ in terms of:
  - **Penalties for non-compliance** e.g. WA: up to \$12,000 fine or 12 months' imprisonment.
  - **Who can be tested, how are they safeguarded?** e.g. SA: exposure 'likely', no appeal.
  - **Police powers** e.g. NT: detention 'as long as reasonably necessary'
  - **Decision-making authority**
  - **Transparency: FOI?**



# So what now?

- Statutory review commencing late September
- Public vs targeted consultation
- Advocate for repeal vs amendment



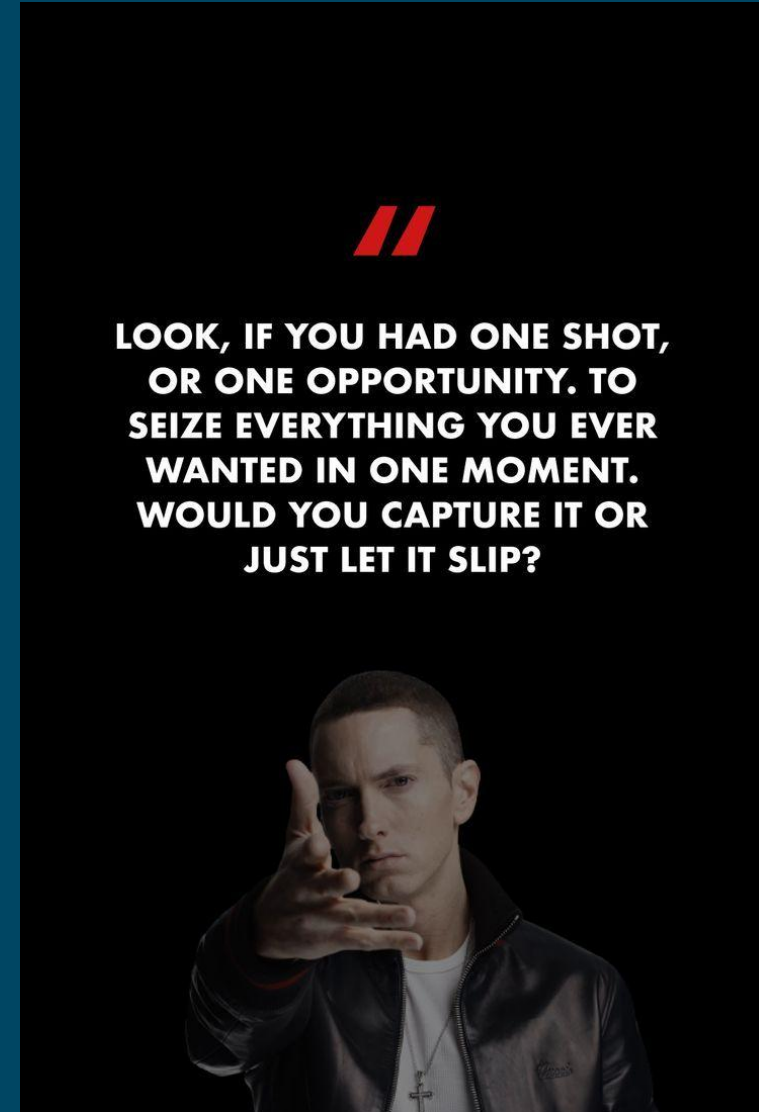
# The complications

- Complicated, unsexy policy
- Tough political adversaries
- Bipartisan support
- Highly stigmatised populations
- Special Commission of Inquiry and police relationships



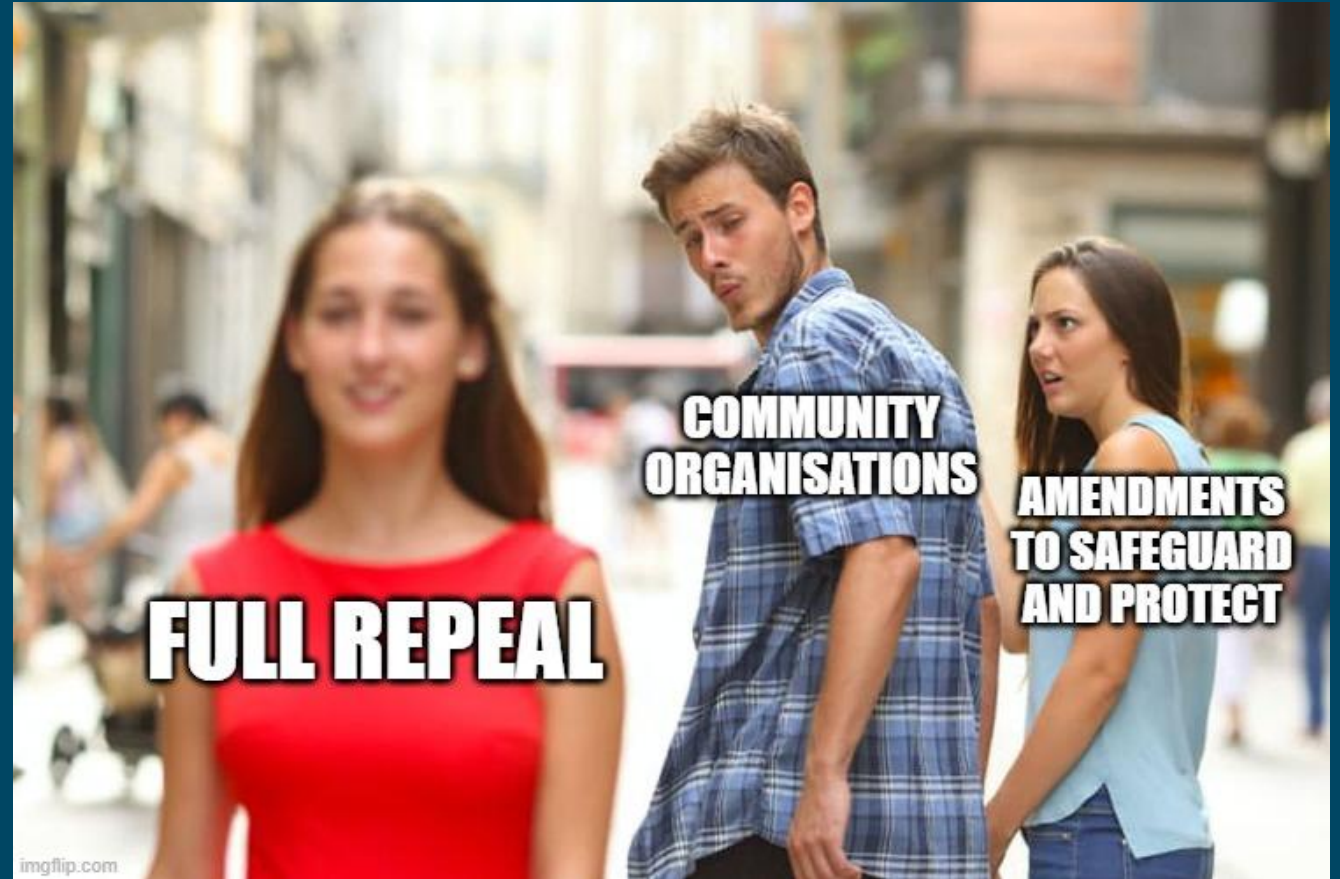
# One shot, one opportunity

- Limited policy levers
- Risk of damaging/stigmatizing public debate



# What do you think?

- Address the stigma with contemporary science
- Support the health of frontline workers without punitive measures
- Protect the human rights of third parties



# Thank you

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