

Should we be able to refuse a test? Pandemic far from over – for any of us

Governments must make access to certain privileges conditional on people accepting COVID-19 testing.

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Should those in hotel quarantine in Victoria or in the 10 Melbourne postcodes identified as COVID-19 hotspots be able to refuse a coronavirus test? The question is on the minds of many Victorians as they face a new peak in infections.

The question also raises complex issues about the proper balance between individual rights and community protection in a liberal democracy.

Generally, individuals should be free to make their own decisions about any form of medical procedure or invasive form of testing that affects their bodily integrity. This is one of the hallmarks of a free society.

But equally, there is a strong moral case for protecting the community from the risk that those with COVID-19, who are asymptomatic or pre-symptomatic, might pass it on. This is the essence of the "harm principle": the idea that individuals should enjoy broad freedoms unless and until the exercise of those freedoms harms others.

When an individual becomes infected but fails to self-isolate, they risk passing on the virus to others in the community. They also risk imposing economic costs, from impacts of the virus to the potential government response and to economic confidence and activity.

In the language of economics, they impose a "negative externality" on the community. And when transmission rates become high, so do these spill-overs.

Similar spill-overs can arise in a range of other contexts. Think of individuals who drive while under the influence of

alcohol or drugs and impose a significant risk of injury on other road users.

The best answer to this kind of conundrum is for governments to condition access to certain privileges such as rights to drive, or to grant exemption from restrictions to restart the AFL or NRL, on mandatory testing.

Several states, for example, make it an offence to refuse a random breath test (or equivalent) and such a refusal can carry with it significant adverse consequences such as being disqualified from driving and receiving a large fine. The rationale is clear: to protect other road users.

In all other cases, governments should do everything short of compulsion to encourage individuals to take actions that protect the broader community.

For COVID-19, strong encouragement of this kind would mean extending the time in hotel quarantine by at least 10 days, perhaps longer, for those that refuse a test after returning from overseas.

NSW and Victoria have both taken steps to implement this policy but should

expand it to require an even longer and more effective buffer period so that there is even less chance that those with active but asymptomatic COVID-19 cases are allowed into the community.

Similarly, it would mean governments (such as Victoria's) conditioning the lifting of lockdown measures in specific areas on a sufficient level of community testing being achieved.

Incentives of this kind make it much clearer to citizens what the stakes are if they refuse a test: they are probably imposing the need for a continued psychologically and economically costly form of lockdown on their neighbours as well as themselves.

It is important that measures of this kind are explained and promoted for

what they are: measures designed to protect public health, not to "punish" those who for good or bad reasons do not wish to take a test.

In fact, we might do well to consider why it is that some people refuse a test: a fear of discomfort or a medical condition might be one reason. But another might be a fear of the economic consequences of a positive test – and being prevented from attending work and losing the means of survival. If this is part of the reason for current non-testing, an obvious way to address it would be to expand current JobSeeker programs, so that they provided at least temporary cover to all workers, including casual and migrant workers, in self-isolation due to a pending or positive COVID-19 test.

We have suggested closing the border between NSW and Victoria as a temporary protective measure, and it is likewise critical that this is understood as an attempt at community protection, not some kind of punishment, or unwelcoming attitude toward Victorians.

This is a fight we are all in together and must win together. It is just that doing so requires swift and decisive actions to contain new outbreaks as they occur, including by imposing harsh limits that can help contain the virus before it spreads.

That should be the message of those going door-to-door across Melbourne to ask people to take a test: please help us protect the community together. Because if you don't – both you and the whole community will suffer.

Premier Daniel Andrews has that message right. It is just time for him to make crystal clear to all those in Melbourne postcodes under lockdown that lifting, or expanding, the lockdown (indeed maybe even our chances of an AFL season) depends on the response.

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Fraught job ahead for new police chief

Newly appointed Victoria Police Chief Commissioner Shane Patton has taken on one of the most complex and challenging positions in the Victorian public sector. It is complex as Patton heads an organisation that is simultaneously the coercive arm of government and the people's police. The former emphasises law and order matters while the latter is primarily about protecting democratic freedoms and serving the needs of the community. Maintaining an appropriate balance between these often conflicting roles is ultimately the responsibility of the chief commissioner.

His job is complicated by the exercise of police discretion, a necessary component of the policing function in any democratic society, where full and rigid enforcement of every law, regardless of circumstances, is undesirable and not in the community's interest.

A problem for Commissioner Patton is that police discretion is frequently applied in situations referred to as "street policing".

Colleen Lewis



When discretion is abused it does not come to public attention, if at all, until after the event. Those who head police organisations expect discretion to be applied wisely, fairly and in the interest of justice. However, as history (including very recent history) shows this does not always happen. It needs to.

Challenges facing the new chief commissioner extend to the highest echelons of the force. As the High Court found in relation to the Nicola Gobbo (Lawyer X) matter, Victoria Police had engaged in "reprehensible conduct". That conduct did not relate to those undertaking street policing duties.

Poor leadership was evident at the Royal Commission into the Management of Police Informers. Three former chief commissioners (one when assistant director of the Office of Police Integrity) and a serving assistant commissioner explained that they did not keep official diary notes. As one former

chief commissioner said, "that's the way we operated". The Victorian community needs to be assured that a no-diary regime ceases with Patton's appointment to the top job.

The then leadership team also spent millions of taxpayers' dollars trying to keep the "Lawyer X" scandal from the public gaze.

Victoria Police was also admonished by Commissioner McMurdo for the extraordinary length of time it was taking to respond to the royal commission's request for information. All of these examples point to highly questionable behaviour and defective decision-making by those leading Victoria Police.

Perhaps their own reputations and those of the organisation they led took precedence over all else. While the role of chief commissioner is, in part, to sustain and/or improve the reputation of the organisation he/she heads, such protection should not be their number-one priority. It seems that in relation to the management of the police informer program it was, and with disastrous consequences for Victoria's criminal justice system and Victorian taxpayers.

Another challenge facing Patton is how to address the closed, secretive and sometimes corrosive nature of the police culture, commonly referred to as the "blue curtain of silence". Despite this opaque curtain protecting police from external scrutiny, the same culture often turns on its own if a police officer dares to report the unethical and unlawful conduct of other officers. It is the whistleblower who is punished, and that punishment takes place at an informal level that cannot be covered in legislation designed to protect whistleblowers.

The manner in which Victoria Police, under Patton's leadership, perform their sometimes competing roles will shape the nature of Victoria's democracy. The community will be watching and evaluating the leadership qualities Chief Commissioner Patton displays when addressing the issues raised here. How he responds will determine the reputation of Victoria Police over the next five years.

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Robyn Grace



It was children's books that took us to the local shopping centre. We'd spent lockdown diligently practising our reading, supporting independent bookstores with online orders, but now, with the kids' appetites for words bordering on voracious, I needed supplies, in bulk and cheap.

Three months ago, I left a parcel unopened for four days on the verandah until I was sure it was safe to open. But on the weekend, my son and I strolled through the shopping centre, stopping for lunch, trying on clothes and picking up toys as we forgot the continuing threat of COVID-19.

On the way home, I picked up my daughter from a play date.

Another mother and I stood in the icy wind and chatted as our kids demanded 10 minutes longer. The possible consequences of that interaction cost me two nights' sleep.

What if my inability to resist cheap consumerism infected someone else's family with coronavirus?

Having made the choice to shop, why hadn't I just stayed in the car to pick up my child?

I'd spent lockdown gobsmacked by people crowding into shopping centres under the guise of essential shopping. Now I'd done the same.

The rate of community transmission in Victoria should force us all to consider the realities of every interaction. The shock of the pandemic may well have subsided, but in many ways the risk has increased.

We're tired of restrictions, no longer scared of the virus. Some people even refuse to be tested. This is right when the levels of cases with an unknown source are increasing.

Victoria reported 77 new cases of coronavirus yesterday, bringing the number of active cases in the state to 415. Twenty people were in hospital, five more than reported the day before and four were in intensive care.

Victoria's Chief Health Officer, Brett Sutton, says that with the current levels of transmission, there is "absolutely an expectation" more people will die. Of the new cases, many are in the known hotspots, but some are not.

Living outside the 10 lockdown postcodes does not mean we are protected from the next outbreak.

The bag of shopping still sitting on my kitchen floor is a reminder of the potential snowball effect of one person's actions.

And a timely wake-up reminder that this pandemic is far from over. For any of us.

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