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Legislative Review
Public Health
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Dear Dr Goodall

This letter is to provide you with Country AIDS Network's comments and concerns on the proposed revisions to the present Health Act 1958. While we have chosen to focus on particular issues, we also support the submissions of other community-based groups such as *People Living With HIV/AIDS Vicotira*, *Victorian AIDS Council/Gay Men's Health Centre*, *Hepatitis C Council Victoria*, *Positive Women (Victoria)* and *Straight Arrows* which together cover the full range of our organisation's concerns.

We recognize that the Health Act must be reviewed in order to respond to new and life-threatening diseases and the development of improved technology and interventions with which to control and prevent epidemics. However, we feel this needs to be done with diligent care and should provide for appropriate checks and balances that maintain the rights of individuals to informed choice and voluntary behaviour change. Greater clarity is required. Specifically what constitutes an emergency for the criteria in which the proposed powers are to be used? This is necessary so that the affected individuals can have confidence that their rights will be respected and not abused.

Our primary concerns include but are not limited to:

- A significant expansion of powers (particularly to contact tracers), the passing on of many of these powers to municipal councils, and the lack of adequate judicial oversight
- Increased access to medical records/information about infected individuals; potential confidentiality breaches and the misuse of such information; removal of codification/anonymity for HIV testing; opening of court rooms where HIV is discussed and forcing people to divulge contact tracing information.
- Removal of the requirement for pre and post test counselling.

Comments

1.2 (2 – 4)

- Needle and Syringe Programs should remain the responsibility of the DHS via the Health Act and should not be passed onto local councils and planning.

4.2 (77c)

- Last year a tattooist was permitted to not provide service to a person with HCV. The court deemed the tattooist did not have to be an expert on infection control procedures. This section should not apply to people working in industries where they need to be trained in infection control practices such as tattooists, hairdressers or beauty salon workers who use razors and people qualified to do piercing.

4.7 (98)

- CAN believes it would be best if these businesses remained under the supervision and scrutiny of the public health Act. Moving the responsibility for the licensing to Municipal Councils may result in reduced surveillance and implementation of requirements for these businesses to operate under appropriate infection control guidelines. It is also our opinion that the registration of premises may not be sufficient and registration of individuals working within such premises may be required.

4.7 (98 – 104)

- In general, any obligations under the public health Act for brothel owners should be included in the PCA. Brothel owners may be unaware of obligations unless they are included in both articles.

5.1 (144-146)

- We would recommend that these businesses remain under the responsibility of the Public Health Act and that legislation within the Act be developed to ensure that each person working within the premises of these businesses must attain an infection control certificate from the department in association with the registration of the business. Moving registration of these businesses assumes that local council officers will be provided with training and resources to ensure that infection control guidelines are enforced. CAN believes this could result in poor infection control. It has also come to our attention that the current system requires that a business be registered and not the staff. There was recently a situation where a Tattooist was permitted to discriminate against a person with HCV based on him not needing to be an expert in infection control. If situations like these are the norm then there is reason to be concerned that a serious threat to public health is imminent.

5.3 (158 – 163)

- Some diseases such as HIV, HCV and STIs should be omitted from a number of these powers. The new powers could easily create an environment of blame and punishment. This in turn could result in a decrease in STI testing, HCV testing and HIV testing and potentially increase transmissions of such diseases. The authorized powers to collect information for contact tracing are too broad and should not apply to normal operations except when an emergency has been declared and where the infectiousness of the disease is agreed to be an immediate threat to public health.
- Access to medical records for HIV and HCV should be omitted.

5.3 (159)

- We have concerns about any extra powers given to contact tracers to obtain details of HIV-positive people. Assurances need to be given that changes are justifiable and will not invade their privacy. Doctors, hospitals and HIV service providers should not be compromised in their service delivery with the thought that information they record as a part of their daily work could be accessed compulsorily by contact tracers. Clients will become hesitant to divulge these details willingly if they know of this possibility. Clinical and community care for these people will be put at risk. We are particularly concerned with the clause on page 86 which states that:
“It would be an offence not to give contact information.” --and we would like the implications of this clause explained fully in regards to people with HIV.
- No powers should be transferred to the authorized officers of the council unless a specific medical emergency has been declared where the infectiousness of the disease is an imminent threat to public health. There is a lack of relevance, training, conduct for sensitivity and confidentiality that could undermine general testing programs, especially in rural areas where confidentiality remains an issue for people with HIV and HCV.
- If increased powers are granted they should not extend to contact tracing for HIV and HCV.

5.4 (160)

- HIV testing must remain anonymous and coded. Failure to do so is a failure to understand the stigma and discrimination associated with HIV and the need for anonymous testing to be in place to ensure

successful testing programs.

- Persons with HIV should not be contacted via the non-identified testing process proposed i.e. testing needs to remain anonymous, as this would be viewed as a form of punishment and would result in less HIV testing and increases in transmissions.
- Powers should be limited pending the severity and infectiousness of the disease. HIV and HCV should be excluded from the generality and broadness of the powers proposed.
- Such access to records is outside of judicial processes. Appropriate monitoring and reporting of the use of these powers would be required to ensure civil rights are not breached.

5.4 (164)

- We are wary of provisions which allow police or the CHO to use force to test people for HIV against their will, especially in relation to allegations of rape, unless the incident has been determined to have occurred. Due process should apply in order to protect civil rights.
- Testing against a person's consent results in worse psychological adjustment to a diagnosis if the result is positive. As such any compulsory testing must be done in conjunction with appropriate counselling guidelines within a specific time frame and with follow up.

5.5 (172)

- Treatment orders should be issued only in situations where there is a threat to public health. CAN sees no reason why a treatment order might be an issue for HIV.
- It is well known that treatment greatly reduces the risk of HIV transmission to the child. However, despite the accumulating evidence of best practice, women's consent or co-operation should not be taken for granted and shortcuts must not be made to the process of negotiating their healthcare choices. Medical interventions, including HIV antiviral treatments and Caesarean section, must remain as choices, and should not be made mandatory. In circumstances, where treatment is refused, only counselling and education should be offered to ensure the expectant mother understands the benefit of treatment and the risk to the child if treatment is refused. Women must retain the right to choose what they do with their bodies and the right to refuse treatment where there is a perception of harm from the drugs.
- The refusal of parents or guardians to allow ART treatment of HIV-positive children pose particularly complicated ethical and legal situations. However, the threat of mandatory action may cause them instead to abandon the health system, to the detriment of their own health and/or their children's. It is far better to have a proper process of counselling people, to make the best informed choices and to engage their co-operation. This should be done prior to the birth of the child. Consent to treat should be sought prior to a treatment order being issued or other Government departments intervening. People need to be made aware of the legal consequences in these situations with regards to treatment orders and custody. There was an incident in Queensland recently where custody was revoked without explanation, counselling or education. CAN does not want to see this happen in Victoria and all steps should be taken to ensure consent for treatment is provided before any action is taken.
- We would like some assurance that public health orders are used sparingly, are not generally used as a routine part of the work of public health officers and that the numbers of these orders are available for public scrutiny on an annual basis.

5.5 (180 - 184)

- We are very concerned about the recommendation to remove codification of HIV testing results and introducing names and addresses. If this process became common knowledge, people at risk of HIV infection would lose confidence in the confidentiality of the testing process. This would result in less people being tested for HIV and would have serious consequences for the control of HIV in Victoria by resulting in an increase in HIV transmissions. Codification for HIV tests must remain in place no matter what.

5.7 (185 - 186)

- We **strongly oppose** recommendations to remove pre-test counselling and to no longer recommend post-test counselling (or "discussion") for people who have received a negative result. The pre-test discussion is very important for people to prepare them for the implications of a positive result—and even in this current era of HAART; a positive result is a very traumatic thing for most people.

- Post-test counselling for a negative result is useful for education purposes for people who come from high risk groups to help them to change behaviours that may have put them at risk in the first place.
- We are concerned about situations where people are tested without their consent and would like to see “informed consent” procedures for HIV testing tightened to ensure better compliance from doctors and others in the testing process.
- Pre and post test must remain mandatory to ensure modification of behavioural changes. To remove such a requirement may result in an increase in infection rates or even possible suicide rates associated with mis-information.
- Removal of pre and post test counselling opens the door to results being given over the phone. This will result in an increase in anxiety where a person is not given their result over the phone and is told to return to see the doctor. Situations such as these can result in an increase in anxiety and suicide rates.
- Pre and post test counselling should be expanded to include HCV for modification of behaviour.
- A national review for HIV testing will be released shortly by MACASH. The New Health Act should reflect the recommendations from this review when they become available otherwise Victoria will be in conflict with the rest of the nation.

5.7 (187)

- Privacy provisions must remain in place in order for people to be voluntarily tested for HIV. To remove the privacy provision can only result in less people being tested which can once again lead to an increase in HIV transmission rates. While more is known about HIV, stigma and discrimination still exist and to discount this is to show a lack of understanding of HIV/AIDS and community attitudes towards this disease. Privacy must be protected no matter what!

5.7 (188)

- HIV stigma and discrimination still exist and to discount this is to show a lack of understanding of the reality of human nature in this circumstance. Privacy must be protected no matter what even in the court room. Magistrates cannot be expected to understand or be aware of the implications of being outed as an HIV positive person and the long term impact this can have on a person’s emotional well being and privacy. As such, court rooms must still be closed during matters discussing HIV.

5.9 (203)

- This initiative **is supported** with HIV being ‘excluded’ as an infectious disease. CAN believes that it is important for educational facilities and schools to become proficient with infection control guidelines. An emphasis on universal infection control procedures will allow for the right for privacy regarding individual medical conditions and will help alleviate stigma and discrimination where people wish to keep such conditions private.

Thank you for your attention to these matters. Should you have any questions regarding our response, I can be contacted on 03 5443 8355 or 0418 836 006.

Yours sincerely,

Adam Wright
Chair, Board of Management