



Dr Jacqueline Goodall

Legislative Review
Public Health
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Dear Dr Goodall,

Re: Response to the Review of the Health Act 1958: Draft Policy Paper, 2005

I am writing to you as a member of the Ministerial Advisory Committee on Blood-Borne and Sexually Transmissible Infections. In that role I aim to ensure that the perspectives of HIV positive gay men are thoroughly considered in its deliberations and work.

I am disturbed about the tenor of the proposed changes that would adversely alter the balance that exists now between the citizen and the state. The proposed legislative changes would see a reduction in individual rights and a potential increase in restrictions particularly placed on marginalised members of the community. The introduction of greater powers without judicial checks and balances is not supportable.

Privacy & Confidentiality Provisions

I am most concerned at the recommendations that would override existing privacy and confidentiality provisions and would give authorised officers broad entry, search and seizure powers without the need for a warrant. The draft policy paper does not make a case that there are compelling reasons for overriding these long established human rights. The potential for an infringement of human rights is greatest when these powers are delegated to a large number of officials as they would be under the new Act.

I reject the suggestion that group C and D notifiable conditions need no longer be reported in coded form. It would lead to a decline in testing, it would discourage people from seeking PEP and within a short period it would make it impossible to accurately determine the number of HIV cases because of the potential for multiple reporting. Coded notification should not prevent ethical effective Contact Tracing. The proposed extension of powers of the Contact Tracers for investigation and control of infectious diseases is very concerning and unsupportable.

Orders for Treatment

It is well established that competent adults have a right to refuse treatment. I do not support the recommendation that the Chief Health Officer/Secretary have the power to treat people without their consent. There is a difference between advocating or compelling a citizen to undertake treatment where that treatment is curative compared with treatment for HIV which is not curative and has significant and sometimes life threatening side-effects. While I see a place to treat some highly infectious disease for instances TB and the haemorrhage diseases I see no circumstances, in which this would be appropriate for HIV. The use of treatment orders should in my view be only reserved for emergencies. I do not think there is enough research and evidence to support the use of treatment orders to prevent the transmission of HIV especially in situations such as consenting sexual relationships, injecting drug use or commercial sex work. I am aware that protective legislation exists to insure that antiretrovirals can be given to pregnant mothers during pregnancy who do not consent in the interests of the infants well-being.

Pre & Post Test Counselling

I was diagnosed HIV-positive in 1984 at a time when there was no legislative requirement for pre & post test my knowledge or consent. I was given my results with no preparation for the information I was told. This single experience deeply traumatised me. I felt numbed and fell into a depression. I felt unable to comprehend what was happening making it all the more difficult to seek support from my partner who was also looking for an explanation of the facts. Since then I have discovered that I was not alone in this experience. In my previous role as President of PLWHA Victoria for 8 years I have heard from other individuals who endured similar experiences prior to the introduction of legislative changes which made pre & post test counselling mandatory. I remember when the provisions for pre & post test counselling were enacted and thinking how brave and progressive the Cain Government was (put in context there was a great deal of hysteria about HIV/AIDS at that time).

The introduction of legislative changes proposed in section 5.7 of the draft policy paper in my opinion would be a great step backwards. Being diagnosed HIV-positive is not like being diagnosed with any other medical condition because of the impact of stigma and discrimination. In addition, there are also limitations and restrictions on obtaining insurance or a housing loan or travel abroad. The kind of informed consent required for a HIV test means that people need to be told what the test is, what the consequences of the test are and have some discussion about how they might receive a positive result prior to giving consent to a test. Nobody should have to be treated the way I was and maintaining a legislative requirement for pre & post test counselling will go some way to ensuring that appropriate consent is obtained.

One argument put forward in support of removing these provisions is that they are not often complied with in practice. If this argument was persuasive many of our current laws would be repealed. Rather than repealing the law a more effective public health approach would be to conduct an information campaign to health professionals about why this type of counselling is necessary and consumers about their need and right to appropriate information prior to a HIV test being done. In my view universal post-test counselling should occur universally.

The draft policy paper acknowledges the need for post-test counselling for people with a positive diagnosis however gay men particularly those who test regularly would quickly come to assume that an appointment made following a test was a sign of a positive result unless universal face-to-face post-test counselling remains the norm. Conveying a negative result in person provides an educational opportunity in which the post-test counsellor can reinforce the ongoing need for safe sex and safe injecting behaviours and discuss with the person any barriers they might be experiencing to sustaining such behaviours. Saving the cost of a second medical consultation is a false economy if the missed educational opportunity contributes to subsequent sero-conversion.

The proposed removal of the requirement to notify schools of children who have an HIV or Hepatitis C sero-status is a progressive step forward.

Thank you for the opportunity to provide input into the review of the recommendations in the draft policy paper.

Yours sincerely

John Daye