

By email

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Re: NEW DRAFT POLICY PAPER –Review of the Victorian Health Act 1958  
SUBMISSION –dated Friday, 27 January 2006

We wish to comment on a number of major Recommendations in the New Draft Policy Paper for which the date has been extended until 30 January 2006 for submissions.

Recommendation No.13:-

*Comment:* The guiding principles listed under (a)(b)(c)(d,i,ii)(e)(f) strike us as being left wide open to individual interpretation –who decides what is reliable and relevant where evidence is available in the circumstances, or a public health risk if there is a lack of full scientific certainty?

To suggest that a program be developed based on the ‘polluter pays’ principle in the Environmental Protection Act can be too easily a means of blaming the victim because of disease-phobias in a lot of the population especially if a particular disease scare is motivated by the media.

Much more could be made of ‘access to reliable information in appropriate forms’(d,i) with a directive issued to the Department of Human Services (DHS) and Municipal Councils with assistance from the PLWHA community regarding transmissible diseases in relation to HepC, HIV and other sexually transmitted diseases; for instance, a strong and regular, explicit campaign for condom use to students in Victorian high schools and tertiary institutions including private and religiously-based colleges. They should be required by regulation to provide information, instruction and reasons for condom use for staff and students. It’s young people including adolescent girls and women who are being increasingly diagnosed with HIV in Australia (The Age, 30 Nov.2005, ‘Staying Positive’ article).

Recommendations Nos 109 to 114:-

*Comment:* These powers are extreme and even exceed those that Victoria Police possess. For instance, no warrant (No.111) is required for health officers to enter, search or seize documents and ‘things.’ There is no Right to silence (‘self-incrimination is no excuse’ No.110) for non-compliance in an interrogation, or for a witness or a person’s legal advisor to be present. These are the kinds of controversial powers provided to ASIO and secret police and are not acceptable in a public health Act. If included they would mean that sex-on-

premises venues, where approved health standards for the best part of twenty years have worked extremely well, would be open to the *Tasty Nightclub*-type raids of the recent past. Unauthorised premises would spring up with questionable health safeguards which would be extremely difficult to police or regulate. We think these recommendations are too extreme and open to abuse and should be drastically amended.

Recommendations Nos. 146, 148, 152,153:-

*Comment:* Voluntary guidelines for sex-on-premises venues have worked well enough and, by including some additional services to registration by municipal councils, seem to us to be insufficient reason for scrapping current guidelines and imposing the statutory regulations of the extreme kind (see our comments Nos.110, 111).

Recommendations Nos.154-157, 159-161:-

*Comment:* Again in Contact Tracing the recommended powers of DHS and Council officers is in the extreme – ‘These powers authorize the collection, use and disclosure of personal information and health information’ (Nos.159, 160, 161). This means that these powers over-ride privacy and professional codes relating to confidentiality and effectively expose HIV-positive people, their doctors, carers and organizations that support them to quite unnecessary interrogation whenever these officers have been given a health-risk reason to investigate for an unidentified contact. These people know the risks and abide by the codes and do not need this kind of ASIO-style treatment. We say that tracing powers that exist for HIV, AIDS and HepC, etc. are sufficient.

Recommendations Nos.164,165,166-177:-

*Comment:* We do not see the need for extending the reach of existing provisions of the current Act relating to compulsory testing (Nos.164,165).

However, the power of the Chief Health Officer (CHO) to make a public health Order (No.172) allowing his/her officers to use ‘reasonable’ force (No.175) to require a person to comply with a whole series of actions (Nos.167, 168, 169,170,171, 172) that the CHO considers appropriate (No.173), is reminiscent of controversial anti-terrorism powers which again are not appropriate in a public health Act. Recommendation No.177 permits a health or medical officer, who is not a Victoria Police officer, to seek a warrant (incidentally, from whom?) so that the officer is able to arrest and take a person to a place of confinement which is to be named in the warrant. We have misgivings about how these compulsory testing provisions are administered to those persons to whom they are to apply. There should be some easily applied and identified safeguards despite the incident or reasons that gave rise to the need for the warrant. These actions are all very much open to interpretation, we think. One has to ask, how the CHO is going to be sure that the information from his/her officers, who come seeking an Order, are not motivated by prejudice or a disease phobia garnered by media misrepresentations?

The few cases of identified sources of deliberate infection by an HIV+ person that have come before Australian courts and found to be proved are so few that these extreme measures in recommendations seem to us unnecessary.

The small number of convictions on the other hand do not reflect the need to assume that HIV confidentiality by means of coded notification for HIV, AIDS and certain STIs are no longer required. They are still very necessary because the stigma these diseases carry is still high. The complex issues surrounding anyone with HIV or HepC mean someone can become socially isolated very easily.

There needs to be a line drawn in the application of these intrusive powers of identification. The diseases mentioned should remain confidentiality-retained. Section 120 of the present Act may be a ‘difficult provision to prove’ but in our opinion that does not provide sufficient evidence for Section 121(1) to be re-enacted and its power transferred to the CHO.

Recommendations Nos.180-184:-

*Comment:* We consider that there is still a need to protect the privacy of individuals diagnosed with HIV and AIDS. Coding this information remains a genuine safeguard despite the privacy provisions in the Health Records Act 2001. It is acceptable to the plwha communities and to the doctors treating those diagnosed. We support the contention that this proposal, if adopted, would lead to name and address notification rather than a coded notification. It would mean a return to where the communities were in 1984. The stigma of AIDS is very much alive and well. We refer to The Age article, 'Staying Positive,' (30 November 2005) which describes examples of stigma and its results particularly for HIV+ women and their children. It creates a life-span question for them in being able to continue to care for children; it creates psychological risk problems for the children because it is practically impossible to hide from them the fact that their mother is taking AIDS medication. It will give employers an option of asking job seekers for part-time or casual positions what their health status might be especially if a man is perceived to be gay.

Recommendation No.185:-

*Comment:* Withdrawal of mandatory pre-test counselling is not the way to go. Pre-test counselling is vital in relation to the impact of a positive test result. The pre-test discussion increases education and may well be the first time someone has realized the implications of HIV/AIDS in relation to themselves. Removing it will only increase the vulnerability of men, and especially of women (refer The Age article, 30 Nov.'05), who may already be in a high risk category. The fact that there is currently neither cure nor vaccine for HIV isn't an acceptable reason for dropping the requirement for pre-test counselling. Both pre- and post- test counselling are essential.

Recommendations Nos.187-189:-

*Comment:* That the Public Health Act not include specific privacy provisions for human immunodeficiency virus because the privacy framework for all health records is provided in the Health Records Act 2001, is no good reason for not emphasizing the provision in Public Health Act here. We believe the court should remain closed when dealing with HIV/AIDS matters. It should not be left to its discretionary powers (188). The closure provisions should remain. As well data surely could still be provided in coded notification for epidemiological purposes (No.189). We do not see the need for a specific regulation-making power to be imposed on pathology laboratories to refer all HIV reactive tests to a specific laboratory for confirmation.

#### *CONCLUSION*

Interpretation of laws and regulations in a disease scare can cause unnecessary panic because of people's prejudices and disease-phobias. Even normally intelligent officers may succumb. Witness the long problem over providing condoms in Victoria's prisons.

Now, that is one issue this Review should have looked into and made some worthwhile recommendations on education and availability of condoms.

Signed: Kendall Lovett and Mannie De Saxe,  
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