



---

NATIONAL ASSOCIATION OF PEOPLE LIVING WITH HIV/AIDS  
PO BOX 51 NEWTOWN NSW 2042 AUSTRALIA  
TELE: + 61 2 9557 8825 FAX: + 61 2 9557 9461  
EMAIL [admin@napwa.org.au](mailto:admin@napwa.org.au)

---

Dr Jacqueline Goodall  
Legislative Review  
Public Health  
GPO Box 1670N  
Melbourne VIC 3001

[stephen.lodge@dhs.vic.gov.au](mailto:stephen.lodge@dhs.vic.gov.au)

January 18 2005

Dear Dr Goodall,

**Re: Response to the Review of the Health Act 1958: Draft Policy Paper (2005)**

The National Association of People Living with HIV/AIDS (NAPWA) is the peak national body providing policy and advocacy on behalf of people living with HIV/AIDS in Australia. NAPWA's membership consists of state and territory-based organisations representing people living with HIV/AIDS, including People Living with HIV/AIDS Victoria.

In general, we wish to endorse the points raised in the January 12 submission from PLWHA Victoria. We would also like to comment specifically on several matters about which we are concerned, and where we feel that the proposed Victorian changes would not be in step with current national policy and practice.

**HIV testing**

You would be aware that the HIV/AIDS and STI Subcommittee of the Ministerial Advisory Council on AIDS, Sexual Health and Hepatitis (MACASSH) is currently reviewing its National HIV Testing Guidelines.

We believe it is important that Victorian legislation reflects the general tenor of the national policy.

NAPWA has concerns about several recommendations in the Draft Policy Paper which we believe are potentially at odds with national policy directions.

**1. HIV pre and post test information**

There is currently no proposal at Federal level to diminish the emphasis on appropriate information and discussion for people receiving an HIV test. NAPWA believes that appropriate discussion before an HIV test is given and on receiving a positive or negative result remains of undisputed value in terms of public health.

We believe that the Act should continue to legislate that appropriate discussion should occur when being tested for HIV, and that this should include information about treatment options,

transmission, and further care or support options. It has become commonplace lately to claim that improved treatments and clinical outcomes mean HIV is effectively “the same as any other disease” – however, NAPWA maintains that there are significant differences in receiving a HIV diagnosis because:

- it is still a serious illness, with significant risk of illness or death;
- of its mode of transmission;
- people living with HIV and AIDS continue to report experiences of discrimination and a sense of ‘stigma’ within the community;
- clinical outcomes and HIV treatment options remain poorly understood within the wider community.

For all these reasons, we believe it is to the advantage of the Health Act that pre and post test information should remain in place.

We were particularly disturbed by the comment that such provisions could be an “impediment” to antenatal screening programs.

NAPWA has done considerable work in this area, and our position remains:

- NAPWA does not support routine HIV screening for pregnant women
- NAPWA does not support any testing of pregnant women without their knowledge and consent, and without appropriate information being made available about the nature of the test, and the implications of a HIV diagnosis
- NAPWA believes that pre and post test discussion remains essential to obtain the best outcomes for both a mother and her unborn child, providing an important opportunity to ensure women are well-informed about their rights and responsibilities, treatment options, and knowledge about HIV and its transmission.

## **2. Coding of HIV test results**

Recently, HIV testing has become available under Medicare. Generally, unless requested, this information is not coded at laboratory level. However, name and address are used for billing purposes only, and this information is not routinely released for the purposes of notifications or for contact tracing.

NAPWA believes that the option for people to request and have access to anonymous, free HIV testing remains crucial, particularly in some high-risk communities. Removing the opportunity for anonymous, coded testing is critical in contexts where testing may be beneficial to individuals, but willingness to be tested may be hampered by fear of unwanted disclosure, discrimination or stigma (particularly, for example, in some Indigenous communities).

The success of HIV testing programs as a public health measure depends, in many instances, on the availability of codified, anonymous testing. Though not all people may choose to make use of this, we believe this must remain an option. Furthermore, linking of name and address data explicitly to contact tracing may have an adverse effect in many instances, with some people likely to be much less willing to be tested.

NAPWA does not see any public health benefit in this proposal.

## 2. Powers to order treatment

As is stated, other jurisdictions do retain the power to order treatment for various diseases and conditions, if this is refused. We can see few, if any circumstances, in which this would be applicable or appropriate in relation to HIV.

NAPWA's position on treatment orders is that they must be absolutely limited in nature, restricted to emergency situations, and not interfere with the rights of individuals to make decisions regarding their own health. Furthermore, due to a lack of clear evidence of a positive relationship between antiviral therapy and lowered transmission risk, and the established efficacy and availability of measures such as condoms and clean injecting equipment, NAPWA does not support the role of treatment orders to prevent the transmission of HIV in contexts such as consenting sexual relationships, injecting drug use, or commercial sex work.

We are aware that for women who choose not to take antivirals during pregnancy, and who do not give consent for their children to access standard of care measures for preventing HIV transmission to her child during childbirth and postpartum, or managing HIV in infants, this can be dealt with through measures such as child protection legislation.

NAPWA believes:

- No person with HIV should be forced to undertake treatment as a public health measure to prevent the spread of HIV
- Pregnant women should not be compelled legally or otherwise to take antiretroviral therapy
- Treatment orders should be used always and only as a last resort
- Legal coercion should remain an absolute last resort in relation to the prevention of infection of babies born to HIV positive women who do not take antiviral therapy. (We note that NAPWA has had a longstanding public call for nationally accepted counseling guidelines in this area).

Thanks for the opportunity to contribute to submit our comments to this Review. If you have any queries or for further information, please contact the Secretariat on (02) 9557 8825.



Gabe McCarthy  
**President**