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Dear Dr Goodall

This letter is to provide you with PLWHA Victoria's comments on the New Health Act. This is an update of the preliminary comments sent to you on 22 December 2005 and is now our official and all inclusive response.

Preamble

There are a number of concerns that the proposals in the New Health Act raise for our organization and membership. Firstly, we would like to point out that we understand the need for the changes to the Act in order for the government to respond to a medical emergency such as the potential threat to public health by the Bird Flu. However, while such an emergency may require increased powers of authority to the Department of Health via the Act, it is very difficult to balance these increased powers with what should still be classified as 'business as usual' where such powers should not be enforced. Part of the difficulty in accepting the proposed changes to the Act is where the proposed legislation can be used, or abused, in situations that perhaps should not be classified as an emergency. In such situations many of the proposed changes could be viewed as a breach of civil and human rights. The legislation as it stands does not appear to show an appropriate monitoring process for the use of the extended powers to ensure that civil and human rights are not breached by potential misuse of the extended powers.

One step towards alleviating community concerns about the potential to breach civil rights in the New Health Act would be to point out more specifically what constitutes an emergency. This may perhaps require a definition for what level of infectivity or infectiousness associated with a disease that is required before an emergency can be declared for the increased powers to be used. Along with this it would be useful to provide exclusions for certain diseases such as HIV and Hepatitis C as our organization is of the belief that the proposed increases in powers would be viewed as draconian changes in the way that these conditions are currently managed. Such increases in power, without exclusion to these diseases, will ultimately result in the changes to the Act being viewed as a form of punishment and ultimately contradict the nation's policies for harm minimization and testing procedures.

The key premise for potential damage to approaches to public health in Victoria within the New Health Act is that the document treats HIV and HCV the same as any other disease. PLWHA Victoria has first hand experience that stigma and discrimination in these areas still exist and is shown to still exist in the Futures IV survey. Some examples from the proposed changes that could conflict with harm minimization and result in decreased HIV testing and increased HIV transmissions are:

1. Increased powers to contact tracers
2. Authorising officers at local councils to provide contact tracing services
3. Forcing people to divulge contact tracing information
4. Access to medical records and the potential to breach patient doctor confidentiality
5. Removal of codification/anonymity for HIV testing
6. Removing the requirement for pre and post test counselling
7. The opening of court rooms where HIV is discussed
8. Permitting local councils to approve local Needle and Syringe Programs (NSPs)
9. Relinquishing registration of tattooing parlours, piercing and hair dressing/beauty salons to local councils for enforcement of infection control guidelines
10. Regulation of Sex On Premises Venues

The above issues are addressed in greater detail in our comments below. I would like to reiterate that PLWHA Victoria understands the need to broaden of the powers as stated within the Act in order for the Government to address disease emergencies. However, there needs to be a separation of the increased powers from other business that does not constitute an emergency. Providing a definition for an emergency based on infectiousness of a disease and the threat to public health along with the exclusion of diseases such as HIV and HCV and the introduction of a monitoring and reporting process of the use of any new powers will go a long way towards reducing our concerns about potential infringements to civil and human rights. The broadened powers need to be specifically directed only to those situations where they are required. Otherwise, the request for broadened powers of authority become a threat to civil and human rights on which our society is based.

Straight Arrows have advised PLWHA Victoria they are concerned about that the extension of powers, particularly contact tracing and transfer of information to Municipal Councils (officers or delegates), removal of mandatory pre and post test counseling and decodification of identifiable information. They believe this would reduce testing and increase HIV transmission. Straight Arrows believe that the proposed changes in the New Health Act would greatly jeopardise confidentiality and this would particularly leave families and children vulnerable to stigma and discrimination. All HIV positive people, including families, need to be protected at every level.

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. Public health must over-ride local planning.

4.2 (77c)

- Recently a tattooist was permitted to not provide service to a person with HCV as 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)

- Moving the responsibility for the licensing of tattooists, skin penetration, beauty therapy and colonic irrigation to Municipal Councils may result in reduced surveillance and implementation of requirements for these businesses to operate under appropriate infection control guidelines. As such PLWHA Victoria believes it would be best if these businesses remained under the supervision and scrutiny of the public health Act. Furthermore, 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 will be unaware of obligations unless they are included in both articles.

5.1 (144-146)

- Moving registration of these businesses to local council assumes that local council officers will be provided with training and resources to ensure that infection control guidelines are enforced.

PLWHA Victoria believes this could result in poor infection control outcomes. It has also come to our attention that the current system requires that a business be registered and not the staff. This leaves the system open to a form of self regulation that does not appear to work well. 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 the norm then there is reason to be concerned that a serious threat to public health is imminent. 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.

5.1 (152)

- We remain concerned that regulation leaves this sector and the community vulnerable to the views, be them non medical, and morals of the government of the day. This could result in the closure of venues as a result of homophobia leading to increased HIV transmissions at beats where condoms are not available and to the bashing of men who of have sex with men in unsafe environments.
- This should be left as self regulated guidelines and a code of conduct that are currently in place to which SOPVs, relevant community organizations and the DHS are currently signatories. These guidelines should be reviewed by the relevant stakeholders and a time frame for regular reviews set in place.
- Enacting such regulations would most likely result in some SOPVs not declaring potential health threats.

5.1 (153)

- Regulation making powers is too broad and becomes a threat to civil liberties. This needs to be clarified for specific direction of such regulations required i.e. regulation making powers should be limited only to those situations that require rectification according to agreed principles and guidelines by all stakeholders in 152.

5.3 (158 – 163)

- The authorized powers to collect information for contact tracing are too broad and should not apply to normal operating procedures except when an emergency has been declared and where the infectiousness of the disease is agreed to be an immediate threat to public health. Some diseases such as HIV, HCV and STIs should be omitted from a number of these powers as the new powers will create an environment of blame and punishment that will result in a decrease in STI testing, HCV testing and HIV testing with potential to increase transmissions of such diseases.
- It may be necessary to write the legislation with separate sections for regular business such as that which includes HIV, HCV and STIs, and sections that provides for powers required for an emergency where there is an imminent threat to public health. This would assist in alleviating conflict of the required powers for an emergency versus the balance required to ensure civil and human rights are not threatened by the legislation.
- We oppose access to medical records for HIV and HCV. Any overt access to medical records can only interfere in relationships and information shared between patients and health care workers.

5.3 (159)

- Re 5.3.2 Contract tracing – we have concerns about any extra powers to be ceded to contact tracers re obtaining details of HIV-positive people. We need to be assured that any changes are justified, handle issues of confidentiality for those affected properly and do not invade their privacy. Doctors, hospitals and HIV service providers generally 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. HIV-positive people will not divulge these details to these people 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 would like the implications of this clause explained in full 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 de-identified or coded. Failure to do so is a failure by the Government 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 HIV 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.
- This would be considered an abuse of human rights and privacy laws that should not be permitted outside of a declared emergency.

5.4 (164)

- Re compulsory testing orders. 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 counseling guidelines within a specific time frame and with follow up.
- PLWHA Victoria opposes compulsory testing of pregnant women in Australia for HIV.

5.5 (172)

- Treatment orders should be issued only in situations where there is a threat to public health with TB being a good example. PLWHA Victoria sees no reason why a treatment order might be an issue for HIV except in the following circumstances:
 - Pregnancy (no treatment order): It is well known that treatment greatly reduces the risk of HIV transmission to the child. In these circumstances, where treatment is refused, only counseling 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.
 - Post-natal treatment / prevention: Where a parent or parents indicate that a new born child is not to receive treatment for prevention of transmission there should be measures taken by the doctor and medical facility to ensure that the expectant parents are provided with counselling and education on the benefits of post-natal treatment to prevent HIV infection. This should be done prior to the birth of the child. Consent to treat should be sort 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 prior counselling or education made available to the mother about the benefits of post partum treatment and risk reduction. PLWHA Victoria does not want to see this happen in Victoria and all steps should be taken to ensure education and counselling for treatment with consent is provided before any action is taken.

- Treatment of children with HIV: Where a child requires treatment and treatment is refused by the parent/s, community standards and orders should apply such as those that are in place for other diseases or illnesses. Counselling, education and consequences for withholding treatment should all be offered and made explicit prior to the involvement of intervention or treatment orders.

- 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 and disease conditions are made 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 introduce names and addresses. The safety of databases is not always guaranteed. If this process became common knowledge, people at risk of HIV infection would lose confidence in the confidentiality of the testing process which would result in less people being tested for HIV. This would have serious consequences for the control of HIV in Victoria and would result in an increase in HIV transmissions. As such, codification for HIV tests must remain in place no matter what.
- To remove codification for HIV testing would show a lack of understanding of the Government on the success of testing programs as codification and anonymity are the foundations of this success.
- Concerns remain about the potential for electronic notification and the privacy implications there in should there be security breaches.

5.7 (185 - 186)

- We cannot understand the recommendations to remove pre-test counselling and to no longer recommend post-test counseling (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 counseling 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 counselling 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 counseling 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.

- There are currently no legal provisions outside of the Health Act that require a doctor to undergo any form of formal training beyond medical school. Pre and post test counselling requirements cannot be left to Professional Bodies alone and requires formal recognition by matter of law through the new public health Act for the training and implementation of the training for pre and post test counselling. Without this, counselling cannot be guaranteed and the potential for harm to public health becomes a major issue.

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!
- Privacy protections are not the same between the Health Act and the Health Records Act. PLWHA Victoria requests that privacy provisions for HIV remain in the Health Act.

5.7 (188)

- While more is known about 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 persons 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. PLWHA Victoria 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.

Should you have any questions regarding our response I can be contact on 03 9865 6708.

Yours sincerely

Sonny Williams
Executive Officer