



Dr Jacqueline Goodall  
Legislative Review  
Public Health  
GPO Box 1670N  
Melbourne  
VIC 3001  
Email: [jacqueline.goodall@dhs.vic.gov.au](mailto:jacqueline.goodall@dhs.vic.gov.au)

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Dear Dr. Goodall,

Straight Arrows thank you for the extension of time to comment on the *Review of the Health Act 1958*. We are the Victorian support group for Heterosexuals with HIV/AIDS. As such, one of our major concerns is for families and children affected by HIV. Those of us in the HIV community, who have children, have profound concerns about the effect of stigma and discrimination on our children.

Straight Arrows would like to acknowledge the assistance of Positive Women in the development of this submission. Rather than reiterate their well argued concerns Straight Arrows endorse Positive Women's submission in its entirety. We would also like to acknowledge the advice of People living with HIV/AIDS Victoria (PLWHA) and the Victorian AIDS Council (VAC) for their assistance.

Straight Arrows have not attempted to deal with the policy in detail as other issues have been dealt with in depth in other submissions that have been made available to us.

We have concentrated on the difficulties with the Draft Policy and the negative effects it may have on the welfare of families.

Family groups by necessity have greater contact with their municipal councils, through schools; child-care facilities etc. and are particularly vulnerable to the stigma and discrimination that results from any breach of confidentiality.

**Straight Arrows opposes:**

- The granting of the power of contract tracers to municipal councils to delegate on an unregulated basis at their sole discretion.
- The removal of codification of the personal details of people with HIV and the failure to extend this protection to people with HCV.
- The removal of the requirement for mandatory pre and post test counselling.
- Any requirement for the status of an HIV+ child to be revealed to school authorities.
- Any attempt to “mainstream” HIV as another infectious disease. HIV in its manifestation is a complex web of different diseases and other illnesses and consequently requires expert specialist care and facilities.

Straight Arrows maintain that as HIV HCV and STIs are not generally infectious as are influenza, hepatitis A, TB etc. as they are all caught through direct intimate human contact that is in most cases private and consensual.

To suggest they present the same sort of risks, or require the same draconian controls as airborne or food and water carried epidemic threats is absurd.

The principle of “proportionality” [1.7] has been ignored by the catch-all wording of the policy. Australia has been recognised internationally for its excellent response to the need to change lifestyle practices in an attempt to slow HIV transmission.

Our success has rested on the swift action of the community and the strong relationships of trust and confidentiality that have been built across the sector.

We believe that a draconian and punitive approach is counterproductive. It has been demonstrated that coercion, the fear of a lack of confidentiality and the fear of exposure causes a reluctance to test. Preparedness to test in any risk group population is essential and provides an excellent interface to educate that population and reduce the risk of exposure.

Education and community confidence are the keys to the reduction of infection in these at risk communities. If confidentiality is threatened then social isolation of people with HIV and HCV will increase and their confidence in accessing appropriate support will be reduced

### **CIVIL LIBERTIES:**

Accepting that the Draft Policy possibly pre-empts the proposed Charter of Human Rights. It also appears to contravene the *Siracusa Principles*<sup>1</sup> in many ways including the principle that any limitation on human rights is:

**“Strictly Required by the Exigencies of the Situation” (D)**

**“No Limitation Should Be Applied in an Arbitrary Way”**

**“Should only be Applicable in a Declared State of Emergency”**

It follows that according to these principles and in terms of the vectors of contagion relevant to HIV, HCV, and STIs. They have been arbitrarily included in the proposed imposition of powers that should only be available after the declaration of a “public emergency”. This would appear to suggest that by their inclusion, people with HIV, HCV and STIs have been made the subject of arbitrary and discriminatory attention.

Particularly when most research indicates that the outcome of the imposition of these inappropriate and coercive regulations is counterproductive where these diseases are concerned.

There is no apparent reason why the department should include such oppressive powers in a general policy document particularly as legal remedies already exist for most of the postulated needs. In a “**Declared State of Emergency**”, which can be declared by the Governor in Council, should the need require at any time, any further powers may be granted.

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<sup>1</sup> United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, Annex, UN Doc E/CN.4/4 (1984)

The Draft Policy suggests that these extraordinary powers should be available to Municipal Health and/or Environmental Officers to delegate at their own **unregulated discretion** to an “**Authorised Officer**”. It appears that their powers will include the power:

**To detain you, search you, your home and your workplace. To have access to your confidential medical records and your computer files. To have access to the records of organizations to which you belong, your child’s school, your support organizations (SA). All without the need for a warrant! 4.8 would deliver to “delegated” officers greater powers than those available to the police without recourse to a warrant or judicial oversight.**

While SA recognises the need for extraordinary powers in the case of a genuine and declared emergency the application of these powers in an arbitrary, and discriminatory manner to people with HIV HCV and STIs, in the face of strong evidence suggesting that such a move will be counterproductive in terms of infection control, is unsupportable and would only add to the further marginalisation of people with these conditions.

SA also opposes the transfer of these powers to municipal councils as it will increase the vulnerability of Indigenous Australians who have historically poor relations with Municipal Authorities and also itinerant workers, who are not accepted as part of the municipal community. The derogation of civil rights inherent in the proposed legislation is open to misuse and could be used broadly as an instrument for discrimination and harassment.

Jeffery Robertson

Lloyd James

Chairperson

Director