



Victorian AIDS Council Inc. Gay Men's Health Centre Inc.

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Mr Stephen Lodge
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Dear Stephen

Thank you for the opportunity to comment on the Victorian government's review of the *Health Act 1958* and for the extension of time in which to make comments.

The Victorian AIDS Council was formed in 1983 as the central part of the Victorian gay community's response to HIV/AIDS. In 1986 the Gay Men's Health Centre was formed to address the broader health needs of the gay community. Together, the Victorian AIDS Council and the Gay Men's health Centre work to confront the continuing challenges of the HIV/AIDS epidemic and, increasingly, the gay community's broader health concerns. Our core work aims to preserve the independence, dignity and health of people with HIV/AIDS and to reduce the transmission of HIV. We are committed to social justice and social change.

In preparing our comments, we conducted two community forums, one for service providers and the other for general community members. In addition, we received a number of individual comments from community members, usually by email. There was a remarkable degree of consistency in the positions we were urged to take during these consultations. The submission that is attached, while it has been informed by those consultations, represents the considered view of VAC/GMHC on the issues raised in the *Draft Policy Paper*.

We have used the response form provided by the Department as we wished to comment on a number of the recommendations in the *Draft Policy Paper*. For ease of reference, we have deleted from the table those recommendations on which we did not wish to express a view.

Prior to setting out our comments on specific recommendations, there are a few general comments we wish to make on the areas covered by the *Draft Policy Paper*. As an organization whose primary focus is on HIV/AIDS and STIs, our comments are focused primarily on those conditions as they will be impacted on by the new public health Act.

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One assumption that seems to us to underlie the changes being proposed in the *Draft Discussion Paper* is that HIV is now like any other medical condition and general provisions that apply to other conditions can now safely apply to HIV. We do not agree with this assumption. As we have set out in a number of places in our submission, HIV is still a condition that attracts substantial stigma and discrimination and we have cited the relevant areas of the *HIV Futures 4* report produced by the Australian Research Centre in Sex, Health and Society in 2003 to support this contention. We have argued that the HIV specific provisions in the existing *Health Act* that offer protections to people living with HIV/AIDS should be continued until such time as there is evidence that HIV/AIDS is a medical condition just like any other.

There are a number of recommendations that we do not support. Generally this view is grounded in two main reasons.

Firstly, in Victoria (as in the rest of Australia) at present, the cornerstone to protecting yourself and your partner is knowing your HIV (and STI) status and tailoring your behavioural prevention accordingly. We do not support any recommendations that, in our view, would diminish or act as a barrier to maintaining high levels of testing amongst at risk individuals or communities. Removing or weakening existing confidentiality provisions or increasing the coercive powers available to the State in the wake of an HIV diagnosis would quickly lead, in our view, to a decline in testing and a consequent increase in HIV and STI transmissions.

Secondly, we do not believe that the recommendations have established a necessary balance between giving the State sufficient powers to address current and possible public health threats and protecting individuals against unnecessary and unwarranted intrusion into their lives and curtailing of accepted rights and freedoms by the State. In our view, the recommendations taken as a whole, lean too strongly in the direction of enhancing State powers and do not contain enough protections of individual rights. This is particularly the case when we think of HIV, and in general we have opposed any increase in existing powers.

While we understand the desirability of drafting the new public health Act to refer to all communicable and infectious diseases and, indeed, any which might arise in the future, this poses some problems for us in commenting on these generic provisions. For example, there are significant differences in the powers we would be comfortable with the State using to contain the spread of an infectious agent which was air-borne and could be spread quickly and easily by coughing, one which was spread by poor food preparation or handling processes, and one which was spread by sexual activity.

Finally, we have looked at the legislation that might be drafted if all of the recommendations were accepted. We have evaluated this legislation against the recommendations contained in the report of the Human Rights Consultation

Committee: *Rights, Responsibilities and Respect*, which is currently being considered by the government and have concluded that any legislation drafted along the lines proposed by the recommendations would present some difficulties for the Attorney-General in presenting a Statement of Compatibility. Indeed, it is our view that, were the Charter of Human Rights and Responsibilities to be enacted at the time the new public health Act was introduced, the Parliament would need to declare its intention of passing provisions which were inconsistent with the Charter. Accordingly, we believe that in drafting the new public health Act, every effort should be made to draft it in a way that would accord with the proposed Charter.

Our more detailed comments on the recommendations are set out below. If you require further information on any of our submissions, please contact Mike Kennedy on 9865 6700.

We have no objection to this submission being regarded as a public document or to it being made available on the DHS website.

Yours sincerely



Mike Kennedy
Executive Director

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