

Mr Tony Keenan
Chair, MACGLH
Policy Projects Branch
C/- William Leonard
5/555 Collins Street
MELBOURNE 3000

25 January 2006

Mr Stephen Lodge
Manager, Legislation Review
Public Health
Department of Human Services
GPO Box 1670N
MELBOURNE 3001

Re: Submission on the *Review of the Health Act 1958 – Draft policy paper* November 2005.

On behalf of the Victorian Ministerial Advisory Committee on Gay and Lesbian Health (MACGLH), thank you for the opportunity to provide comment on the *Review of the Health Act 1958 – Draft policy paper*, November 2005.

The MACGLH provides advice to the Minister for Health and the Department of Human Services on action required to promote and support the health and well-being of gay, lesbian, bisexual, transgender and intersex (GLBTI) Victorians and to ensure their optimal access to mainstream and, where appropriate, specialist health services.

The Committee strongly supports changes to the Act that focus on population health and wellbeing and address the health inequalities that persist between different population groups and communities. However, the Committee has a number of concerns regarding the degree to which the paper is committed to the principles of health prevention and promotion and changes that would increase the powers of the Chief Health Officer and Departmental Secretary. Increased powers may assist in a more timely and effective response to public health emergencies. However, they must be balanced by a continued commitment to the principles of health prevention and promotion that have been so successful in limiting the spread of HIV and a range of other infectious diseases.

The Committee's submission addresses these and other proposed changes that are likely to affect the health and wellbeing of GLBTI Victorians. I hope that Public Health Division will consider the needs of GLBTI Victorians and other marginal and disadvantaged groups in the final drafting of its policy paper on changes to the Victorian Health Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Keenan', with a long horizontal flourish extending to the right.

Tony Keenan
Chair, MACGLH

Comments from the Victorian Ministerial Advisory Committee on Gay and Lesbian Health on the *Review of the Health Act 1958 – Draft policy paper*, November 2005

1. Framework

The Committee strongly supports a Public Health Act that moves beyond narrow definitions of health and illness. It supports a model in which disease control and surveillance sit within and are part of a broader health promotion and prevention framework. However, a number of the position paper's proposals are inconsistent with a population health framework and health promotion principles.

1.1. Definitions (Recommendation (7) p.6)

Although there may be instances in which "health and wellbeing" is narrowly understood as "health", the two should not be defined as separate entities. It is a central tenet of health prevention and promotion that health always means "health and wellbeing".

More worrying is the implication in Recommendation (7) that "health and wellbeing" involves a social dimension whereas "health" narrowly defined does not. This distinction contradicts the intent of renaming the Health Act the *Public Health Act* and suggests that areas of the Act deal only with individuals or individual behaviours in isolation from their social causes and effects.

If this distinction is to be maintained, the Committee recommends that the Act clearly specify under what conditions the *narrow use* of "health" is warranted.

1.2. Infectious disease categories

The draft policy paper employs a generic understanding of infectious disease. This does not allow for an appreciation of the differences between different types of infectious agents and their modes of transmission, and between different types of public health interventions.

It is important that the position paper acknowledge the differences between infectious diseases in general and sexually transmissible infections (STIs) in particular, and the differences between HIV and a number of other STIs. For a range of infectious diseases *social factors* may be the key to understanding their mode and patterns of transmission and effective public health responses. Interventions that may be appropriate in addressing a public health emergency or that may assist in limiting the spread and effects of non-sexually transmissible infectious agents may be inappropriate or in fact increase the risk of transmission of HIV and other STIs (see **2.2** below). In addition HIV remains a highly stigmatized condition and responses need to be sensitive to the social impact a diagnosis can have in a person's life.

The Committee recommends that a more nuanced understanding of infectious diseases be employed throughout the entire paper. The Committee also recommends that public health interventions be tailored to maximize the health prevention and promotion outcomes for different infectious agents and diseases.

1.3. Reducing health inequalities between different population groups and communities

The Committee strongly endorses legislative reform that frames public health policy in terms of reducing the health inequalities that persist between different

communities and population groups. Clearly such reforms are consistent with the Government's human rights and social justice agenda and are vital to improving the health and wellbeing of not only GLBTI Victorians but of other marginal and disadvantaged groups. Indeed, one of the distinguishing features of Australia's successful HIV/AIDS policy has been the implementation of broad legislative reforms that include but are not restricted to specific health issues. The rationale behind this strategy has been a belief that laws that do not create the optimal climate for HIV prevention and treatment should be reformed. It may be worth DHS and the Attorney Generals Department embarking on a similar review of all Victorian Legislation in so much as it impacts on public health.

The draft policy paper makes explicit reference to race as a key social determinant of health and wellbeing in Victoria. The historical context and current health status of Indigenous Victorians clearly warrants this inclusion. It is important, however, that the revised Act acknowledge that a range of social determinants shape patterns of health and illness. The Victorian GLBTI health and wellbeing action plan, *Health and sexual diversity*¹ demonstrates how sexual orientation and gender identity operate as social determinants of health and lead to reduced health outcomes for GLBTI people. More recent research has shown how the effects of discrimination are even more pronounced on the health of members of vulnerable groups within the GLBTI community, including same sex attracted and transgender young people and GLBTI people in institutional settings such as students and seniors².

Although the Committee is not suggesting that a revised Public Health Act provide a list of the key social determinants of health, it does look forward to the Secretary, under Recommendations (15) c and d (ii), p.12, providing information on the health status of GLBTI Victorians and in particular of vulnerable subgroups in the GLBTI community.

2. Specific issues

2.1. Increased powers for the Chief Health Officer, the Secretary and other Departmental Staff

The draft policy paper calls for increased powers for the Chief Health Officer, the Secretary and other departmental staff. These powers may be warranted when addressing new and emerging infectious diseases or public health emergencies. However, it is not clear how such powers will improve health outcomes for people suffering from an STI (including HIV) or reduce rates of infection. In some instances these changes could actually work against improved health outcomes as they may discourage people at risk of HIV infection from being tested (see **2.2** below).

At the same time the Committee is concerned that sections of the Act may be incompatible with the Government's proposed charter of human rights. Any proposed increase in powers must balance public health outcomes against individual liberties and freedoms.

Legislative changes that discourage those at risk of HIV from being tested and that make HIV prevention work more difficult are bad public health policy and

¹ *Health and sexual diversity: A health and wellbeing action plan for gay, lesbian, bisexual, transgender and intersex (GLBTI) Victorians* (2003) Prepared by William Leonard on behalf of the Victorian Ministerial Advisory Committee on gay and lesbian Health. Victorian Department of Human Services: Melbourne.

² Hillier, Lynne, Turner, Alina and Mitchell, Anne (2005) *Writing Themselves In Again: 6 years on – The 2nd national report on the sexuality, health and well-being of same sex attracted young people in Australia*. Australian Research Centre in Sex, Health and Society, La Trobe University Melbourne

contradict social justice and human rights principles. The Committee recommends that increased powers be limited to those situations (current and projected) where the public health benefits can be clearly specified.

2.2. Issues relating to HIV and AIDS

The draft policy paper does not acknowledge differences between different types of infectious diseases and appropriate and effective public health interventions (see 1.2 in this submission) nor how individuals living with certain conditions, including HIV and AIDS, are subject to discrimination and abuse.

- Contact tracing (Section 5.3.2 and Recommendations (159) to (161), p.88) and Named notification of HIV/AIDS and other conditions (Sections 5.6 and 5.7)

The draft policy paper recommends a significant increase in the powers of authorized officers in relation to the collection, use and disclosure of personal information. Officers would be authorized to request information from anyone they believe could assist with contact tracing—to withhold such information would be an offence.

The draft policy paper also suggests that the level of privacy provided by coded notification to DHS of current cases of Chlamydia, donovanosis, gonorrhoea, syphilis and HIV and AIDS may no longer be required. This may result in a return to name and address notification. The draft paper also proposes abolishing the HIV-specific privacy provisions under the current Act (Recommendation (187), p.102) and the provision that a court may be closed when evidence is presented relating to HIV (Recommendation (188), p.102).

It may be the case that for a range of infectious diseases increased powers result in better public health outcomes, including effective treatment and a reduction in rates of transmission. However, this is unlikely in the case of HIV. Despite the draft paper's claim that "there is a greater understanding of HIV than existed in 1988" (p.100), people living with HIV and AIDS (PLWHA) are still subject to high levels of abuse and discrimination. These increased provisions are likely to discourage those most at risk of contracting HIV from being tested. Recent research shows that HIV positive people who know their HIV status are those most likely to minimize the risk of HIV transmission. Research also suggests that those most at risk of transmitting HIV are positive men who have not been tested and believe themselves to be HIV negative.

The Committee opposes in the strongest terms measures that are likely to discourage members of high risk populations from undergoing HIV testing, including the extension of authorized officers' contact tracing powers or named notifications. Such changes would constitute a significant departure from the principles underpinning Australia's and a number of UN agencies HIV/AIDS policies (developed using Australia's strategy as a best practice model). Nor does the Committee support the removal of special privacy provisions for HIV from a revised Health Act, or the provision that courts may be closed when hearing HIV-related evidence.

- Compulsory testing and treatment (Section 5.4 and 5.5)

The draft paper recommends extending existing powers to test a person who does not consent to testing and to force them to undergo treatment and shifting this authority from the Secretary to the Chief Health Officer.

The Committee is concerned by the increasing centralization of “emergency” powers and recommends that further consideration be given to having these powers reside with an expert advisory committee or panel (with community representation). The Committee is also concerned that these provisions may not be consistent with proposed human rights legislation. The Committee recommends that any increased powers relating to compulsory HIV testing and treatment be measured against their potential reduction of individual freedoms and improved public health outcomes (such as rates of transmission).

The Committee notes that HIV is a chronic condition and the notion of treatment as described in the draft paper does not apply.

- Changes to pre and post-test counseling requirements (Section 5.7, Recommendations (185) and (186), p.102)

The draft paper recommends removing the current provision that a person must receive pre and post test HIV counseling from a registered medical practitioner or a trained and authorized person when undergoing a HIV test. The draft proposal, however, includes the provision that people with positive results must receive post-test counseling.

Pre test counseling is important for individuals, given the continuing discrimination and stigma associated with HIV. It is particularly important that pre and post test counseling be given to members of high risk groups, regardless of their HIV status. It provides an opportunity to reinforce health promotion messages, to provide updated information on safer sex practices and emerging issues. At the same time both pre and post test counseling provide a unique opportunity to raise awareness of issues relating not only to HIV and AIDS with the range of practitioners who currently seek training, but awareness of issues relating to GLBTI health and wellbeing more generally and the development of more inclusive and sensitive practice.

The Committee does not support the removal of HIV-specific pre and post counseling provisions.