



Global Commission on HIV and the Law – Secretariat
United Nations Development Programme
Via email: info@hivlawcommission.org

20 December 2010

Dear Sir or Madam,

Following please find the Australian Federation of AIDS Organisations' (AFAO) submission to the Global Commission on HIV and the Law. Our submission outlines Australia's public health response to HIV, and the significant part that gay law reform and policy advocacy has played in the success of that response.

The Australian Federation of AIDS Organisations (AFAO) is the national federation for the HIV community response. AFAO's members are the AIDS Councils in each state and territory; the National Association of People Living with HIV/AIDS (NAPWA); the Australian Injecting and Illicit Drug Users League (AIVL); the Anwernekenhe Aboriginal and Torres Strait Islander HIV/AIDS Alliance (ANA); and Scarlet Alliance, Australian Sex Workers Association. AFAO advocates for its member organisations, promotes medical and social research into HIV and its effects, develops and formulates policy on HIV/AIDS issues, and provides HIV policy advice to Commonwealth, State and Territory Governments.

As noted in the submission, the National Association of People Living with HIV/AIDS (NAPWA) has provided a submission to the Commission regarding the impact of criminal laws applying to the sexual transmission of HIV, and the interaction of these laws with Australia's public health laws. AFAO endorses NAPWA's submission, and we recommend that AFAO's and NAPWA's submissions be considered together.

Thank you for the opportunity to provide input to the Commission.

Yours sincerely,

A handwritten signature in black ink that reads 'Don Baxter'.

Don Baxter
Executive Director

About AFAO

The Australian Federation of AIDS Organisations (AFAO) is the national federation for the HIV community response. AFAO's members are the AIDS Councils in each state and territory; the National Association of People Living with HIV/AIDS (NAPWA); the Australian Injecting and Illicit Drug Users League (AIVL); the Anwernekenhe Aboriginal and Torres Strait Islander HIV/AIDS Alliance (ANA); and Scarlet Alliance, Australian Sex Workers Association. AFAO advocates for its member organisations, promotes medical and social research into HIV and its effects, develops and formulates policy on HIV/AIDS issues, and provides HIV policy advice to Commonwealth, State and Territory Governments.

Background

In this submission we outline Australia's public health response to HIV, and the significant part that gay law reform and policy advocacy has played in the success of that response. From early in the epidemic, the Australian response to HIV has been characterised by a progressive law reform and policy agenda that aims to support the public health response. This multi-faceted response has prioritised education and the engagement of marginalised communities affected by HIV, over punitive legal sanctions that entrench marginalisation.

NAPWA has provided a submission to the Commission regarding the impact of criminal laws applying to the sexual transmission of HIV, and the interaction of these laws with Australia's public health laws. AFAO supports and endorses NAPWA's submission, and we recommend that AFAO's and NAPWA's submissions be considered together.

Cornerstones of Australia's successful HIV response

Australia's HIV response is recognised globally as a success, and HIV prevalence rates in Australia have consistently been among the world's lowest – both generally and for the most at-risk populations. In 2009 the number of new HIV diagnoses in Australia was 1,050. The number of diagnoses has remained relatively stable in Australia over the last four years at about 1,000 per annum.¹

Fundamental to Australia's success in responding to HIV has been the creation of an 'enabling environment', i.e., the construction of a supportive legal and policy framework which complements HIV education campaigns and other public health measures, by enabling and encouraging healthy behaviours within populations most at-risk of HIV. The two areas of particular focus for law reform given the early and continuing prevalence of HIV among gay men in Australia, have been the decriminalisation of homosexuality, and the creation of anti-discrimination laws specifically addressing discrimination against gay, lesbian, bisexual, transgender and intersex (GLBTI) people.

HIV/AIDS devastated the Australian gay community from the early 1980s. Due to the need to focus on the development of services for people with HIV/AIDS and their carers, there was much debate within the gay community about whether advocacy to reform Australian state/territory laws that criminalised sex between men, and advocacy for the introduction of anti-discrimination protections, should be put on hold or delayed while the community focussed on more obvious and immediate treatment, care and support issues. By 1991, when the first National HIV/AIDS Strategy was launched, it had become accepted wisdom that laws regulating or penalising homosexual behaviour were counter-productive, given that such laws potentially drive communities of homosexually-active men underground and away from testing, counselling and support services. Accordingly, the first HIV strategy adopted the view that the issues are inseparable². Ensuing advocacy efforts on the part of

¹ National Centre in HIV Epidemiology and Clinical Research. *HIV, viral hepatitis and sexually transmissible infections in Australia Annual Surveillance Report 2010*. National Centre in HIV Epidemiology and Clinical Research, The University of New South Wales, Sydney, NSW, available at: [http://www.nchechr.unsw.edu.au/NCHECRweb.nsf/resources/SurvRep07/\\$file/ASR2010-rev1.pdf](http://www.nchechr.unsw.edu.au/NCHECRweb.nsf/resources/SurvRep07/$file/ASR2010-rev1.pdf)

² Leach T, (2005) Gay men and the response: political, legal & health promotion perspectives, in *HIV and Hepatitis C – policy discrimination, legal and ethical issues*, p. 25, Australian Society for HIV Medicine Inc. This paper, which provides an excellent overview and analysis of the development of the HIV legal and policy framework in Australia, is available at available at:

the community sector resulted in the repeal of laws criminalising homosexual behaviour across Australia and since Tasmania's decriminalisation of homosexuality in 1997, all Australian jurisdictions have been free of such laws.

Reform of Australian federal and state/territory laws that discriminate against GLBTI people is ongoing. In 2008 the Australian Government introduced legislation to remove discrimination affecting same-sex couples and their children from a swathe of Commonwealth statutes, however, federal marriage law continues to preclude same sex marriage. Community based health GLBTI organisations continue to advocate for the introduction of specific Commonwealth anti-discrimination legislation covering sexual orientation and gender identity.

Anti-discrimination protections are provided by state and territory anti-discrimination laws, under which gay, lesbian, bisexual, transgender and intersex people have generally reasonable levels of protection from discrimination.

The HIV Partnership

The driving force behind Australia's successful HIV response and its capacity to ensure that public health responses continue to be supported by an enabling legal environment, is the collaborative partnership between federal and state/territory governments, affected communities, health professionals and research bodies - often referred to as the 'HIV partnership'. This partnership has driven the creation and implementation of targeted HIV programs under the six national HIV strategies developed to date. The Sixth National HIV Strategy, launched in May 2010, clearly identifies priority action areas which include exploring options for more innovative prevention programs targeting gay men, as well as how best to address emerging issues such as the increasing rates of injecting among Aboriginal and Torres Strait islander communities. Complementing these actions targeting specific affected communities are over-arching Priority Areas for Action in respect of human rights, legislation and anti-discrimination³. These complementary and mutually reinforcing activities under the National HIV Strategy will ensure that due regard is had to human rights and discrimination issues faced by gay men, Aboriginal and Torres Strait Islanders and injecting drug users in the development and implementation of HIV prevention, care and support initiatives targeting these communities.

HIV Partnership viability – political, financial and social support

The collaborative HIV partnership, so crucial to Australia's successful HIV response – past and ongoing - could not have developed, let alone thrived, in an environment which continued to criminalise homosexuality.

Crucial protagonists in the Australian HIV partnership have been the state and territory AIDS Councils. It is important to recognise that these organisations would not have been able to work as equals in partnership with governments on policies and programs targeting the gay community if homosexuality had not been decriminalised. Decriminalisation has allowed genuine government engagement at all levels, which has in turn ensured essential political support for potentially controversial initiatives.

From a resourcing viewpoint, the activities of state and territory AIDS Councils are dependent upon state and territory government funding. In countries where homosexuality is criminalised, such activities are vulnerable to political attack and fail to attract funding. Without stable, adequate funding, secured by the partnership, Australia would not have been able to develop its highly effective HIV prevention, care and management resources and programs for which it is renowned. Gay law reform has thus been pivotal to the success of Australia's HIV response.

http://www.ashm.org.au/images/Publications/Monographs/HIV_hepCpolicyissues/hiv-hepc-policy.pdf

³ Sixth National HIV Strategy, Commonwealth of Australia 2010. Available at:

[http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-national-strategies-2010-hiv/\\$File/hiv.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-national-strategies-2010-hiv/$File/hiv.pdf)

Effective community health education

State and territory AIDS Councils have had much success in developing and implementing HIV prevention, care and support resources and campaigns. However, from time to time these resources and campaigns have generated controversy as they often refer to intimate sexual behaviours and employ explicit language and images. Over the years this has at times led to government censorship, even in environments where homosexuality was already decriminalised. Among campaigns banned was the Victorian AIDS Council's 1990 'When you say yes, say yes to safe sex' campaign which featured two young men kissing, and the Queensland AIDS Council's 'Bubble Boy' campaign - due to its being perceived as inappropriate.⁴

It is noteworthy that even in a more advanced 'enabling' legal environment where homosexuality has been decriminalised, such campaigns may be viewed as inappropriate by government authorities and this resistance can undermine the effectiveness of targeted health promotion campaigns. When reflecting on the HIV/AIDS response in Queensland prior to the decriminalisation of homosexuality there in 1990, the then head of the Queensland AIDS Council, Bill Rutkin, stated that:

[t]here can be no serious doubt that lives have been lost in Queensland because of the laws...If there had been State government support for education and behavioural change programs for gay men then, from November 1984, it would not be unreasonable to claim that 25 per cent of the cases of AIDS we now have wouldn't have occurred.⁵

Collaboration with police

Decriminalisation of homosexuality in Australia has facilitated important collaboration between police forces and state/territory AIDS councils and their member organisations. Such collaboration was impossible prior to decriminalisation, and represents a fundamental shift in perceptions on the part of both the police force and the gay community. For example, the NSW Police Force has for some years been actively engaged with the NSW AIDS council, ACON, and has supported GLBTI community engagement in encouraging the reporting of incidents of violence, crime and anti-social behaviour towards or involving members of the community. The police force expressly commits itself to providing high quality, professional policing services for the GLBTI community; and to building and maintaining effective community partnerships, including attending community events such as Fair Day and Mardi Gras.⁶

Efforts to develop the NSW GLBTI community's trust in the police are an integral part of the NSW HIV response, facilitating the reporting of homophobic violence. Such collaboration with the police is undeniably an important element in breaking down structural barriers to HIV services for members of marginalised communities who historically have had cause to mistrust or fear the police. Establishing such trust in the police in a context where homosexuality is criminalised is impossible.

Schools

With the decriminalisation of homosexuality, and the more progressive environment that has ensued, Australian senior schools have been able to develop educational programs dealing with safe sex, including homosexual sex, and in relation to sexuality and gender identity. For example, Western Australia's Department of Education provides resources for addressing, among other issues, discrimination regarding gender-identity and homosexuality.⁷ Initiatives in both these areas have significant public health impacts for communities at risk of HIV.

⁴ Leach T, op cit., p. 27.

⁵ Bull M, (1991) Pinto S and Wilson P, Homosexual Law Reform in Australia, *Australian Institute of Criminology*, No 29: p. 4, available at: <http://www.aic.gov.au/documents/F/2/E/%7BF2ED9BD3-0314-4EAA-AD03-410635E620DE%7Dt29.pdf>

⁶ NSW Police Force, Gay, Lesbian, Bisexual and Transgender Issues, available at:

http://www.police.nsw.gov.au/community_issues/gay_lesbian_and_transgender_issues

⁷ WA Department of Health, Education, Growing and Developing Health Relationships, Relationship (Sexuality) Education, available at: <http://gdhr.wa.gov.au/teaching-context/relationships-sexuality-education/view>

Conclusion

Australia's partnership approach to responding to HIV has ensured that public health and law reform initiatives are complementary and mutually supportive. The recognition of the need to engage affected communities in policy development, and address human rights issues they face, has underpinned the success of Australia's HIV response and has been enshrined in the various National HIV Strategies. The effective targeting of HIV prevention, care and support initiatives to the gay community is a case in point; Australia would not have been able to so successfully address the HIV epidemic among gay men without gay law reform.