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

Dear Mr Lodge

Thank you for the opportunity to comment on the Victorian Government's review of the Health Act. I am writing to provide additional comments to those provided in our preliminary letter of response on 23 December 2006.

The Australian Federation of AIDS Organisations (AFAO) represents Australian HIV/AIDS community based organisations at a national level. Our membership includes Scarlet Alliance, the national organisation representing sex workers, State and Territory AIDS Councils, the Australian Injecting and Illicit Drug Users League and the National Association of People Living with HIV/AIDS (NAPWA). AFAO provides HIV policy advice to the Commonwealth government, advocates for our member organisations, develops and formulates policy on HIV/AIDS issues, and promotes medical and social research into HIV/AIDS and its effects.

While the Victorian Government's action in reviewing the Public Health Act is commendable, AFAO remains concerned about a number of recommendations:

- **Section 5.3 Powers for investigation and control of infectious disease**

AFAO reiterates its concerns about the possible expansion of broad contact tracing powers. Medical services should not be compromised by the future possibility of being forced to provide medical information on people's HIV status and treatments beyond the coded systems of notification which currently exist. HIV remains a highly sensitive issue, with many people deeply concerned by the affect a breach of their privacy would have on their lives. Fear of increased powers of forced disclosure and contact tracing would likely lead to a decrease in people testing and accessing clinical and community care.

In relation to HIV, the problem in this proposed section appears to arise as a result of the lack of differentiation between highly infectious, airborne diseases (which suggest the possibility of an ‘outbreak’) and a virus such as HIV which has distinct transmission routes which involve intimate sexual or injecting behaviour. The inappropriateness of this section’s possible application to HIV is clearly demonstrated by the possibility of airlines being forced to provide passenger lists to the government, which in relation to HIV, is absurd.

- **Section 5.4 Compulsory testing**

AFAO tentatively supports the rationale behind extending the compulsory testing provisions to those situations outlined in the recommendation, provided that discussion and counselling to gain consent remain an absolute priority and standard procedure in all circumstances. Extension of compulsory testing to include all situations outlined in the broader discussion (preceding the recommendations) would be inappropriate. Clearly, it is a drastic decision for the government to forcibly draw and test blood from an individual. AFAO remains concerned that any compulsory testing be as tightly controlled as possible, and asks that if provisions recommended are put in place, then a review be conducted following a set period of the legislation’s implementation to ensure that the powers have not been misused and that no unintended consequences have arisen.

- **Section 5.5 Public health orders**

Similarly, AFAO offers tentative support for the broad rationale behind changes to the public health provisions although we strenuously oppose the inclusion of HIV as a condition for which people can be forced to receive treatment. Again, HIV appears to have been swept under the broad banner of highly contagious diseases which can be effectively ‘cured’ or treated to significantly reduce risks of transmission. HIV/AIDS treatments are complex with significant side effects that differ greatly among individuals. HIV positive people’s clinical management decisions should be made on the basis of what is in the best interests of the individual involved, not on the basis of a population-based prevention strategy. This is particularly the case where there is a lack of evidence demonstrating a simple correlation between treatment, viral load and transmission. The availability and use of condoms and clean injecting equipment remain the best measures for avoiding transmission. Positive people must retain the right to make decisions regarding their own health.

- **Section 5.6 Notifiable conditions**

AFAO reiterates our stringent objection to the removal of codification for HIV/AIDS notifications. While those in the Department of Human Services may have unquestionable faith in their data storage systems and all those who are able to access it, many in the community do not. Privacy remains a key concern for people infected with HIV and many of those at increased risk of infection. Reduction in privacy controls will be a disincentive for individuals to test for HIV. A single breach of protocols or a leak would have a catastrophic effect on people’s faith in the system, and would cause many to avoid HIV testing.

The draft policy paper also states that “coding this information makes it impossible for contact tracing to be conducted in relation to these diseases.” In fact, contact tracing is currently conducted although not through one centralised

database. AFAO maintains that the benefits of the current system far outweigh any possible gains from the recommended changes. Anonymous testing and codified results have been critical to the success of the HIV testing and screening system to date.

AFAO would also like to reiterate our concern that these recommendations pre-empt the current review of Australia's National HIV Testing Policy being undertaken by the Commonwealth's Ministerial Advisory Committee on AIDS, Sexual Health and Hepatitis (MACASHH) and the Intergovernmental Committee on HIV/AIDS, Hepatitis C and Related Diseases (IGCAHRD). While this Review is not yet concluded there is every indication that the measures proposed in the Victorian discussion paper would be in conflict with the revised National HIV Testing Policy if they were to be enacted

- **Section 5.7 Human Immunodeficiency Virus**

Section 5.7 proposes that a legislative requirement for pre-test counselling is no longer required. AFAO maintains this is far from the case. Current Australian HIV testing guidelines (ANCARD/IGCARD 1998) recommend that people engage in a HIV test discussion prior to testing. Despite this, the *HIV Futures 4* report found that only 25.5% of those surveyed had received pre-test counselling or engaged in a HIV test discussion.

In practice, pre and post test counselling, perhaps better defined as pre and post test discussion, is a very modest commitment from those who implement testing. Many people continue to be misinformed about HIV/AIDS and have little understanding of what a positive diagnosis will mean in terms of possible symptoms, treatments and long term outcomes. Pre- and post-test discussion must form an integral part of HIV testing procedure. It is crucial to providing a satisfactory level of service to individuals being tested in the health care setting and vital to the success of Australia's HIV prevention strategies.

The argument that a legislative requirement for pre-test counselling 'may present obstacles to [the] introduction of screening programs, such as antenatal HIV screening' is alarming. Any suggestion that a broad based program be introduced that does not include discussion and informed consent is completely unacceptable.

This recommendation also pre-empts the MACASHH/IGCAHRD review of HIV Testing Policy.

- **Section 5.9 Outbreaks of infectious diseases at schools and children's services**

AFAO supports the proposal to limit the requirement on parents and guardians to notify schools only if their child has, or has been in contact with a person that has, a vaccine preventable or excludable disease. As clearly demonstrated by scientific and social research the potential risk of transmission of diseases including HIV and hepatitis B and C, is minimised by basic hygiene, safety, infection control and first aid procedures.

Charter of Human Rights and the proposed Health Act changes

Finally, AFAO would like to draw your attention to the issue of the above recommendations in relation to the Victorian Government's plans to introduce a charter of human rights and responsibilities. It is AFAO's position that the recommendations above (except for Recommendation 203, Section 5.9) are either in direct conflict with, or sit most uncomfortably within, the charter's broad aims. Perhaps further consideration should be given to the difference between governmental powers required in a 'state of emergency' or an 'outbreak' and normal life (or the actions of the rare, non-cooperative individual in normal life), and the intersection between those demands and the values that should be enshrined in a human rights charter.

I would like to take this opportunity to thank you for the opportunity to comment further on the review of the Victorian Health Act. Please contact me directly should you wish to discuss these issues further.

Yours sincerely

A handwritten signature in black ink that reads "Don Baxter". The signature is written in a cursive, slightly slanted style.

Don Baxter