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Draft South Australian Public Health Bill 2009
Principal Policy Officer
Policy and Legislation
Department of Health
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Health.PublicHealthBill@health.sa.gov.au

7 October 2009

Dear Madam/Sir,

Re: Draft South Australian Public Health Bill 2009

The Australian Federation of AIDS Organisations (AFAO) represents Australian HIV/AIDS community-based organisations at a national level. AFAO members include AIDS Councils in each state and territory, the National Association of People Living with HIV/AIDS, the Australian Illicit and Injecting Drug Users League, the Anwernekenhe Aboriginal and Torres Strait Islander HIV/AIDS Alliance (ANA), and Scarlet Alliance, the national organisation representing sex workers. AFAO advocates for its member organisations, promotes medical and social research into HIV/AIDS and its effects, develops and formulates policy on HIV/AIDS issues, and provides HIV policy advice to Commonwealth, State and Territory Governments.

AFAO welcomes the South Australian Government's decision to review South Australia's Public Health legislation to better promote and protect public health, and thanks the Government for the opportunity to provide comment. The following comments relate to the draft Public Health Bill as it impacts HIV prevention, care and support.

In general, AFAO supports the measures included in the draft Public Health Bill including the Government's endeavours to provide consistency with the *International Health Regulations*, as well as the introduction of measures recognising related laws from other jurisdictions, and consequently public health related orders made outside South Australia. However, the Bill includes a number of areas of concern:

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1. Draft Objects and Principles (Clauses 4-15)

AFAO welcomes the inclusion of principles and objects to guide the administration of the draft Bill, and supports the framing of the guiding principles of precaution, appropriate regulation, sustainability, prevention, population focus, participation, partnership and equity. AFAO also supports the specific principles at clause 14 that protect the rights of individuals with controlled notifiable diseases, including HIV. However, AFAO submits the principles should be reconsidered in relation to two areas.

Firstly, AFAO questions whether the Principles effectively entrench the notion that human rights must be safeguarded, given fear of a heavy-handed response to HIV infection has the potential to alienate people with HIV and therefore undermine HIV prevention and care strategies.

Issues related to the protection of human rights are raised in 6(2) Precautionary Principle¹, expressed in terms of ensuring 'minimum disruption to an individual's activities'. AFAO questions whether using the term 'individual's activities' includes the scope of possibilities that might be included under the notion of 'rights', as in Victoria's new *Public Health and Wellbeing Act 2008* (notably in relation to infectious diseases only): 'the spread of an infectious disease should be prevented or minimised with the minimum restriction on the rights of any person' (section 111).

The South Australian *Code for the Case Management of Behaviours that Present a Risk for HIV Transmission*:

That in responding to cases where the behaviour of a person with HIV may be placing others at risk, the restriction of that person's rights and personal liberties shall only be imposed in proportion to the risk presented to others and that the least restrictive options be used, consistent with the overriding principle.

That wording, consistent with national guidelines on managing people who place others at risk of HIV infection, provides some effective protections to HIV-positive person's civil liberties. AFAO asks that such language and the principle of proportionality be considered in relation to the proposed Bill (while continuing to be administratively applied to cases relating to HIV through application of the Code).

¹ Precautionary Principle (2) In the application of this principle, decision-making and action should be proportionate to the degree of public health risk and should be guided by—

(a) a careful evaluation of what steps need to be taken to avoid, where practicable, serious harm to public health; and
(b) an assessment of the risk-weighted consequences of options; and
(c) an aim to ensure minimum disruption to an individual's activities, a community's functioning and commercial activity while ensuring any necessary protection from identified public health risks.

Secondly, the principles fail to address the need for disease prevention and control measures to avoid or minimise stigmatising of individuals and groups of people affected by disease. Although this notion is related to Clause 13 'Equity'², AFAO submits that notions of stigma should be specifically addressed in the Act's principles.

Despite discrimination on the basis of HIV-status being unlawful in all jurisdictions in Australia, many people living with HIV continue to experience less favourable treatment in many aspects of their lives, including access to health care. The *HIV Futures 5 Report* (2006) which surveyed 982 HIV positive Australians, found that respondents had experienced discrimination in relation to work (16%), accommodation (7%), and medical treatment (27%). That discrimination, anticipation of discrimination and sense of stigma impacts people's capacity to approach services for testing and support, to fully engage with health care providers, and to disclose all relevant symptoms and behaviours to ensure the highest possible level of care. It also impacts capacity to disclose HIV to family, friends and potential sexual partners. Principles 11 'Participation' and 12 'Partnership' are only practicable if the proposed Public Health Act enables processes that generate trust and facilitate genuine engagement by those communities most affected by HIV. The Public Health Act should acknowledge the role of stigma in undermining public health strategies by explicitly mandating the avoidance/minimising of stigma as one of its guiding principles.

2. Powers of Authorised Officials (Clauses 42-48)

Different diseases and infections require different responses. This is particularly the case for HIV which has increasingly become a more manageable disease for most HIV-infected people as available treatments have improved.

While the powers conferred to authorised officials under the Bill are appropriate for some instances requiring public health protections, some of those powers conferred to authorised officers are problematic in relation to HIV. These include provisions allowing authorised officers to enter or inspect any premises or vehicle at any reasonable time, with a warrant required only when force is used³. This degree of invasion of privacy is likely not intended to apply to HIV but given the structure of the draft Bill, could be applied. AFAO seeks further consideration of the draft Bill's structure, as well as other legal/administrative constraints that may impact the Bill's interpretation, so that provisions intended to apply to food and hygiene or highly contagious air borne pathogens cannot be applied to the management of people with bloodborne diseases.

3. Controlled Notifiable Conditions (Clauses 65-80)

Part 10, Division 2 outlines controls relating to the powers of the Chief Public Health Officer (CPHO). While those clauses include some guidance and limitations, the

² Clause 13 Equity: Decisions and actions should not, as far as is reasonably practicable, unduly or unfairly disadvantage individuals or communities.

³ Clause 46(1)(a)

CPHO's powers remain wide ranging. In particular, it is noted that this section runs counter to the rationale of the *Code for the Case Management of Behaviours that Present a Risk for HIV Transmission* which specifically relates to persons 'known to be infected with HIV [where] it is reasonable to believe that the person's behaviour is, or may be, presenting a risk for the spread of HIV to others'.

AFAO remains concerned about the CPHO's power to instigate onerous and invasive actions, including HIV testing, based on the belief that a person has been exposed to a disease. AFAO seeks clarification of the checks and balances that may be used to determine 'reasonable grounds' for such a belief.

Further, AFAO submits Part 10, Division 2 would benefit from the inclusion of an introductory clause requiring public health measures to respect the rights of individual persons and be the least restrictive possible on the rights of those persons.

Thank you for the opportunity to respond to the Bill. If you require further information on any aspect of our submission, please contact Ms Abi Groves, Manager, Policy and Communication, on (02) 8568 1110.

Yours sincerely,

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

Don Baxter
Executive Director