



# PASH.tm Submission

## PROPOSED AMENDMENTS TO THE NSW PUBLIC HEALTH ACT

### Overview

PASH.tm, the Peer Advocacy network for the Sexual Health of trans masculinities welcomes the opportunity to submit feedback to the proposed amendments of the NSW Public Health Act currently under review by the NSW Ministry of Health (MoH).

Trans men and trans masculine people (assigned female at birth) who have sex with men; are gay; bisexual; or queer (known collectively as trans MSM) should always be included in the broad definition of 'men who have sex with men' (MSM).

PASH.tm understand the MoH is seeking to amend three sections of the Public Health Act that relate to people living with (PLHIV) and at-risk populations.

### Our Position

#### Section 56 (Protection of patient's identity)

PASH.tm would like to state clearly that we disagree with the MoH's conclusion that community attitudes to HIV/AIDS and PLHIV have improved to a point where the confidentiality provisions allowed for in Section 56 are no longer necessary.

We would further state that we have no confidence that this information will be used purely for health promotion for PLHIV and at-risk populations. We believe it will be quite the contrary as we have seen a recent spate of criminalising and targeting of PLHIV using the Public Health Act apparatus itself.

The State of NSW allows for the criminalisation of PLHIV, and MoH managing a named and identifiable database of PLHIV only provides further opportunity for targeting and oppression of this already marginalised group.

PASH.tm would like to state our strong belief that these changes will significantly reduce HIV testing, because if diagnosis results in becoming part of a database, individuals in at-risk groups may avoid testing and diagnosis to avoid being put on that database. Public health officials making contact with PLHIV about their treatment uptake is disempowering and applies unwarranted pressure on individuals. HIV treatment rates in NSW are already very high, it is clear that PLHIV are mobilised around the importance of early treatment.

This proposed amendment also negatively impacts on transgender and gender diverse people in NSW (and indeed across Australia) who are already counted inadequately in the HIV notification process, and in testing clinics more broadly. Many transgender people do not have the means or access to update cardinal documentation and Medicare gender-markers, a system based on 'legal' name further stigmatises transgender people and puts individuals at-risk of harm.

Data collection systems that ask gender related questions of either male, female or transgender fail to accurately capture the trans experience by situating trans people as neither male or female and positioning 'transgender' as a gender identity in and of itself, which it is not. PASH.tm released a position statement on data collection in December 2015, which can be accessed at [www.afao.org.au/pashtm](http://www.afao.org.au/pashtm).

HIV related health promotion and the management of HIV is currently delivered in a world-leading model of harm reduction, community outreach, health service provider training, and peer-led education programs. These methods are already effective in the community and promote client autonomy and confidentiality while also providing a protective role in public health by increasing testing, improving treatment uptake and reducing transmission rates.

The proposed changes to Section 56 of the Act will serve no real purpose other than to deter people from testing and further marginalise PLHIV within our society.

#### Section 56(4)(b) (Disclosure of HIV information)

PASH.tm would like to make our strong reservations for and disagreement to the proposed amendment to Section 56(4)(b) that would allow all health care professionals and medical records to share client information in regards to their HIV/AIDS diagnosis.

Currently, this information is only shareable between professionals that are delivering services for which HIV is relevant. The majority of the MoH reasoning for these changes relies upon the notion that as we move to electronic health records, it would be easier to share this information.



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The MoH also states that this would allow for proactive care services throughout multidisciplinary teams when PLHIV access any health service.

A person's HIV status is not clinically relevant when that individual is accessing many health care services. For example, obtaining an ultrasound, MRI, or ophthalmology procedure. WH&S requirements such as PPE and infection control principles are standard for all individuals regardless of whether they have a communicable disease.

Diagnoses on medical records only provides an opportunity for acute stigma to be expressed in a health care setting, directly influencing the quality of health care provided and the experience of the consumer. Health care professionals have no clinical or professional need to share HIV status of consumers among practitioners. This right to confidentiality and privacy is of particular importance in regional, remote and rural communities, Aboriginal and refugee communities.

PASH.tm firmly states that the increased manageability of electronic records does not outweigh a marked increase in the level of stigma experienced by PLHIV when they access services.

### **Section 79 (Disclosure of STI status)**

A final proposed change to the Act is to remove or replace Section 79.

PASH.tm welcomes this change to the Act as a positive step in reducing stigma of PLHIV and other STIs, and promoting a more proactive discourse around sexual health promotion and shared responsibility. Further, the removal of S79 prevents the unfair criminalisation of PLHIV as referenced above.

Existing definitions of 'sexual intercourse' in the Act are inaccurate, unclear, and not useful in relation to lesbian, gay, bisexual, transgender, intersex and queer populations where sexual acts can differ significantly from a hetero-normative presumption, this wording acts as a further barrier to interpretation of guidelines and allows for persecution of at-risk groups such as trans MSM.

In relation to Consideration 20 of the review, the Act containing principles for management and control of STIs including HIV is not recommended. Management and control principles are rich and varied across different sexual communities.

PASH.tm instead advocates that the Act contain a section advocating for individuals, communities and services to be proactive in their approach to health promotion by engaging meaningfully with resources relevant to the individual. For example, trans MSM could engage with the new PASH.tm sexual health campaign due to be released later in the year.

### **Conclusion**

Trans men and trans masculine people (assigned female at birth) who have sex with men; are gay, bisexual or queer (known collectively as trans MSM) are an at-risk population in terms of HIV prevention program considerations.

We are also a population under further stigma and pressure because we operate and live within a society ill-equipped to deliver adequate and respectful health care for transgender people particularly where legal documents are incongruent with the real and lived names and gender of individuals.

A database of named notification of PLHIV and the prospect of health professionals sharing HIV status, causes a great deal of concern for PASH.tm because our population is particularly at-risk.

Thank you for the opportunity for submission.

Please refer to our position statements and other resources available at [www.afao.org.au/PAShtm](http://www.afao.org.au/PAShtm) for further information.