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Dr Robert Hall
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Dear Dr Hall

Review of the *Health Act 1958*

Thank you for the opportunity to provide comments on recommendations in the draft policy paper, in particular in relation to infectious diseases especially HIV/AIDS.

In general many of the principles supporting this legislative review are laudable however in Infectious Diseases especially HIV and HCV where the prevalence and risks differ across differing populations, simplifications when applied to an entire population often do not recognize subgroup public health risks and opportunities.

In particular we support the following:

- 5.5.5 Not re-enacting the offence of knowingly and recklessly infecting another person with an infectious disease and are in support of the reliance on the *Crimes Act* in these matters as this more normalizes response to such offences.
- 5.9 We endorse the removal of the requirement to notify schools of HIV or HCV status of infected children as this is in line with current knowledge of transmission risk and the efficacy of Universal Precautions.

Whilst many of the changes are supported the following are matters of significant concern:

- 1.2.5.1 Matters related to NSP
Given the level of evidence for the effectiveness of NSPs we would argue that public health should take precedence over planning restrictions in relation to this high priority prevention strategy.
- 4.10. The description of Chief Health Officer's Additional Powers in an epidemic or where there is a serious risk of epidemic does not specify the conditions where this might apply and would be problematic if applied to HIV, HCV and sexually transmitted infections.

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4.14.3 Automatic review of isolation and detention orders at 28 days has been included but appeal is dependent on Supreme Court access. There is a concern that costs may limit accessibility.

5.3 Powers for investigation and control of infectious diseases.

Whilst acknowledging that the guiding principles are to include the proportionality principle, there remains particular concern that Contact Tracing powers will be substantially increased. This will happen in the absence of guiding principles of the type in the US model act i.e. first requesting individuals to participate voluntarily prior to the exercising of mandatory or compulsory power.

HIV contact tracing has being widely supported in the Victorian community by individuals infected, their contacts and HIV physicians and other health-care workers. This has resulted in confidence in the existing system.

Unfortunately this system will be changed markedly under the proposed recommendations 160 to 161.

The proposed extensions permit access to information in the setting of contact tracing from "any other person who has or may have relevant information including business records and other records held about the person". This is a major extension of scope and a major increase in the potential invasion of privacy. This may preclude the maintenance of patient care information on state and national databases. Both the patient and the practitioner will need to take into account the potential for such information to be traced without an individual's voluntary participation. It is not clear how this extension will provide any benefit.

5.5 Public Health Orders

Once again in relation to HIV/AIDS the Chief Health Officer will have substantial powers as is designated in recommendations 166 to 179. Without guiding principles and appropriate pretest information, post-test information and counseling (modeled on US Model Act) or any criteria in relation to efficacy of treatment or durability of response such an order may potentially result in lifelong incarceration and long term treatment of an individual (in HIV this may be for life, in HCV for 6 to 12 months).

5.6 Notifiable Conditions

The notification for HIV/AIDS in a named form would have a substantial detrimental effect on at risk populations presenting for testing for this and other sexual transmitted and blood-borne infections. The response is likely to include reduced presentation for testing, provision of false names and deterioration in the quality of communication of medical information.

A subsidiary concern exists in relation to hospitals having processes in place to ensure notification. If this were to require review or reporting by the hospital of clinical research and care information for the purposes of meeting reporting notification requirements then these activities would be severely compromised. Any HIV information searchable without individual patient consent would largely cease to be collected or collated.

5.7. HIV Testing

The proposal to change the public health act to only require post-test counseling for individuals with a positive test results for HIV will diminish the opportunity to provide education regarding safe sex and injection practice at the time of delivery of the negative

HIV result. This is of particular importance in individuals from high prevalence, high risk populations.

Without pretest consent or information a larger number of individuals will be tested without consent and the incorporation of risk assessment and risk reduction education will be markedly reduced.

With regard to screening programs amongst low prevalence, low risk populations consent is required however pre test and post test counseling should be appropriately modified.

The introduction of rapid testing methodologies will have profound implications not dealt with by the proposed legislation.

Yours sincerely



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