



18 November 2004

Dr Jacqueline Goodall
Legislation & Policy Officer
Public Health
Department of Human Services
GPO Box 1670N
Melbourne VIC 3001

Dear Dr Goodall

Thank you for inviting comment on the discussion paper about review of the *Health Act 1958*. As you may be aware Mr Lodge was good enough to allow us an extension of time to respond. I hope this has not caused you any inconvenience.

Our response will be limited to the issues of specific interest to AMA Victoria.

3.2 Scope of the new Act

Whilst there is a clear obligation upon the health system to establish circumstances to promote public health and to address inequalities in the health and well-being of Victorians, it is unclear that these matters can be addressed in a meaningful and specific way in general public health legislation.

4.1 Power for the Secretary to conduct inquiries into matters of public health concern

AMA Victoria supports the retention of a power for the Secretary to conduct inquiries which can be initiated at the direction of the Governor-in-Council, the Minister or the Secretary.

4.5 Medical officers of health

AMA Victoria supports a legislative requirement that every Council must appoint a Medical Officer of Health. Mandating the requirement in legislation ensures that the Council:

- appreciates that the State has a clear view as to the importance of the role; and
- has ready access to expert advice which is informed and relevant to the local community.

Removing the legislative provision will allow matters to 'slip under the radar' to the detriment of the community.

5.1 Health Information

Clearly the collection, analysis and use of high quality data are integral to ensuring the government can effectively fulfil its obligations with respect to public health. Therefore it is sensible that consideration be given to the Act explicitly identifying which registers, data bases and collections can be established under the Act and then defining how that information can be used.

5.3 Consultative councils

AMA Victoria supports an ongoing role for Consultative Councils. It is noted that there is a DHS review of privilege, confidentiality and open disclosure also under way, which as indicated in the discussion paper may impact upon the statutory role of Consultative Councils, therefore detailed comment on these matters will be made in the context of the forthcoming review. However, in advance of that review AMA Victoria supports a consolidation of the provisions regarding Consultative Councils, but is opposed to a mandatory requirement to provide information to Councils, beyond what is currently the case.



7.8 Emergency powers

It is important that there is a strong, coherent legislative basis for the exercise of emergency powers, so that the community is adequately protected. The emergence of new highly contagious infectious diseases and the prospect of other public health emergencies occurring do warrant the introduction of new powers to enable an effective and timely response, however individual freedoms must be protected from the unfair or arbitrary use of these powers. These safeguards could be couched in terms similar to the Siracusa Principles on public health and human rights, which provide that:

- the action is provided for and carried out in accordance with the law;
- the action is to achieve a legitimate objective of general public interest;
- there is no less intrusive and restrictive means available to achieve the same goal;
- the action is not arbitrary, unreasonable or discriminatory.

With appropriate safeguards, AMA Victoria does not oppose:

- emergency powers for general public health emergencies;
- an extensions of the time period for the proclamation of an emergency;
- a fast-track mechanism for notifying a disease associated with a public health emergency;
- the Secretary being given powers to compel examination, testing, vaccination, treatment, isolation and quarantine.

An individual will also need to be given access to judicial appeal in relation to the new power to compel testing and treatment.

8.4 Incident involving care giver

AMA Victoria supports an amendment to allow the Secretary to the Department of Human Services to authorise testing where the person does not have the legal capacity to consent. AMA Victoria also gives in-principle support to other persons being authorised to order such testing. This support is conditional upon the authority to test being invested in a senior medical officer, that this medical officer is aware of his/her responsibilities under the Act, and that this medical officer organises post-testing counselling. Support is also conditional on the current provisions of section 120A remaining in force.

8.5.4 Orders for restriction, treatment, isolation and detention

AMA Victoria does not support an amendment to the Act to introduce a power to order treatment.

8.6 Notifiable diseases

AMA Victoria supports the introduction of new provisions which allow the Governor in Council to declare a new notifiable disease. It is also appropriate that hospitals are required to have processes in place to ensure that they can meet the notification requirements of the Act.

I hope this information is of assistance.

Yours sincerely

Dr Paul Woodhouse
Director of Policy