

Submission on the Review of the *Health Act 1958*

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Introduction

In response to the invitation to make a submission to the Review of the Health Act, the following discussion relates to Section 6 Health Impact Assessment Items 27 and 28:

27. Should Victoria continue to rely on a legislative requirement for HIA in EIA legislation?
28. Alternatively should a separate requirement for HIA be introduced in the new Act and, if so, in what circumstances should HIA be conducted and what should be the threshold for triggering it?

The *Discussion Document* (2004) states that “the incorporation of HIA within EIA should be supported but that the issue to consider is whether a separate approach should be developed to determine the health impacts of projects, programs or policies that fall outside the EIA framework and if so whether such an approach should be supported by legislative requirement under the new public health Act” (p. 31). At present, HIA is not being effectively included within EIA processes in Victoria for a range of reasons outside the remit of this discussion but the requirement for the Department of Human Services to have input into EIA processes under the Environment Protection Act is an important first step in the consideration of health in broader environmental concerns and an existing strength to be built upon over time. In respect to Question 27 the response is clearly –yes because the goal of the Department of Human Services is the protection and promotion of the health of Victorians.

This submission will focus on Question 28. As the *Discussion Document* (2004) states, “the legislative requirement for HIA ... would require a careful analysis of whether the benefits of this regulatory approach outweigh the associated costs” (p. 33). It is not my intention to argue for or against the introduction of legislated requirement for HIA in Victoria because it is unclear from the *Discussion Document* the kind of HIA that is being proposed and the function it would be required to serve. HIA can, and does, exist in a range of different ways and so before a single recommendation can be made in respect to the provision of this Act, a series of issues need to be resolved. These issues are subject to a range of considerations and processes including political, strategic, inter-sectoral and budgetary factors outside the scope of my expertise.

What I intend to do is to provide an overview of the factors that need to be considered as part of the “careful analysis of benefits and cost” described in the *Discussion Document*. I am happy to provide additional specialist information on the application of HIA within Victoria if it is required. The following discussion contains examples

of experiences of other countries but these are of limited value. As Banken (2003) states, “the best strategy will depend on the particular political, administrative and economic context for each country” (p.389).

Structure of this submission

Critical components for consideration to be covered in this submission are:

- Clarifying what is meant by HIA
- Clarifying the purpose of HIA
- The intended function that HIA could serve within the Health Act
 - HIA as health promotion
 - HIA as health protection
 - Implications
- Recommendations

Clarifying what is meant by HIA: defining terms

As there is a great deal of confusion about health impact assessment both within Victoria and internationally and in terms of interpreting Questions 27 and 28, it is important both to provide an overview of the meanings that I ascribe to the various aspects under consideration in the *Discussion Document* (2004) and for the decision makers to be clear about how HIA is being defined within their discussions of a legislative requirement. At the very least the typographical errors in the current definition in the *Discussion Document* need to be corrected.

After extensive consultation during the mid to late 1990s, international agreement was largely achieved on the definition of HIA which is now used internationally irrespective of the nature of the application of HIA. This is referred to as the Gothenburg definition.

HIA is a combination of procedures, methods and tools by which a policy, program or project may be assessed and judged for its potential, [and often unanticipated] effects on the health of the population, and the distribution of those effects within the population (Lehto & Ritsatakis, 1999, modified by Mahoney & Morgan, 2001).

In a paper published in 2001, Richard Morgan and I agreed that this definition needed to include provision for consideration of ‘unanticipated’ as well as the ‘intended impacts’ implied in the definition thus bringing it into line with the principles of other forms of impact assessment.

In Australia the *Health Impact Assessment Guidelines* (2001) define HIA as

A systematic process to assess the actual or potential, and direct or indirect effects on the health of individuals, groups or communities arising from environmental conditions or hazards arising from policies, objectives, programs, plans or activities (enHealth Council, 2001)

This latter definition describes HIA as being driven by environmental conditions and hazards thus precluding consideration of policies or activities which have the potential to impact on health through social, economic, political, technological or other means. In the Health Act is it the intention to consider only policies, projects or programs which have this narrow impact? If the answer to this is no then clearly the broader Gothenburg definition is needed in the Act. With increasing awareness of the role of other sector's policies on health, there is a need to consider the use of HIA more broadly and for it to be used both during the broader strategic development stage as well as at an individual project level. How would the Act provide for potential multiple applications of HIA?

Similarly, there is no consideration in the latter definition of the need to consider differential impacts so issues of equity or consequences that are likely to result in inequalities in health status within different groups of the Victorian population, are not likely to be considered if a narrower definition is adopted.

Clarifying the purpose of HIA

Despite this fairly universal international agreement on definition, there are broad areas of confusion or contention in respect to the nature, intention or purpose, and connection of HIA to broader public health practice. By and large these can be attributed to its origin and this has a great deal to do with whether HIA should be legislated and, if so, the form that it can and should take. The *Discussion Document* rightly states that in Australia HIA has its origins in environmental impact assessment. Despite this history it is increasingly clear that many people see the intentions that HIA is designed to serve as *not* being to consider proposals such as new development projects or policies in order to *ameliorating* negative impacts and enhancing positive impacts (as is the case in traditional EIA processes), but rather to *develop* healthy public policy where health considerations are part of the planning and development processes of other decision makers. The result of these two differing expectations is a confusion about the reason for undertaking HIA and thus confusion about whether it needs to be legislated and the form such a legislated requirement would take.

The result of these two distinctive understandings of the role and purpose of HIA is clearly summarised by Morgan in a typology he presented at two recent conferences on HIA in both Australia and New Zealand (see Appendix 1). He says that the confusion about what HIA is largely arises out of the differing historical origins of HIA, environmental or public health, which means that some people think that HIA is a health *protection* tool and others think that it is health *promotion* tool. He uses the typology to show that this confusion results in a complex collection of different expectations, goals and approaches. The tensions are compounded because there is further confusion about whether the proposal in question is a project or policy and whether it is being conducted on a non- health sector policy considering unanticipated outcomes or assessing whether a particular outcome is achieved as a consequence of the proposal. I would go further and say that there is also confusion about whether HIA is perceived to be a tool to *support* the decision making process as is the case in EIA processes or a decision *making* tool where evidence of optimum health gain for a population actually determines the outcome or the decision that is made.

These points of clarification are very important to the considerations of the inclusion of HIA as a legislated requirement within the Health Act.

The way that Question 28 is framed in the *Discussion Document* suggests that the main question requiring an answer is: should a separate requirement for HIA be introduced in the new Act and the option for respondents is either yes or no (and if yes: in what circumstances should HIA be conducted and what should be the threshold for triggering it?). In this 'model' there is no consideration of the 'no' option or of alternative ways of viewing the range of alternatives which would need to be considered in parallel with the decisions around either 'yes' or 'no'.

The core question as I see it actually has less to do with HIA than with the higher order goals and principles enshrined within the Act and the function it is designed to serve. Once this is clear, then the sub-questions would be: what tools are required to help achieve these goals? Is HIA one of these tools that would be required to deliver these goals and, if so, how would it be used, when would it be used, who would use it and what capacity would be needed to support its use?

The goal of the legislative requirement for HIA would therefore be evident in a way that is current not in the *Discussion Document* and the mechanisms for implementing it would also be clear. Internationally, a great deal of energy is being expended on determining the need for legislative frameworks for HIA but these serve little purpose in respect to the goals of the review of this Act until one is clear about these broader questions. For instance, the new Health Act should clearly articulate the complexity yet vital importance of seeking to *promote* public health as well as protect it. It should, at the very least explain the broad definition of health that is underpinned by the concept of the determinants of health. This explanation would allow for the inclusion of an explanation of the links between the objects of this new Act and those of other legislation that directly and indirectly impact on the public's health.

The current questions therefore show back-the-front thinking. The inclusion of HIA as a mechanisms for determining the impacts of actions on population health (or any other mechanism which assists in promoting or protecting public health such as evaluation) have to be driven by a philosophical and ideological goal of putting health on the agenda across government. The UK model for the introduction of HIA as a recommended activity within Saving Lives: Our Healthier Nation spawned a great deal of activity linked to HIA but for government departments to take health impacts seriously there needed to be a high level Treasury-linked obligation to show the positive health gains being derived from all government departments on a regular basis. To believe that health considerations will take pride of place on their department's agendas through the legislation of HIA is fantasy. The role that HIA has actually played in England has yet to determined and may take years.

In the absence of an understanding of the way in which HIA would fit within the broad principles underpinning the Act I will focus on the functions that HIA has the potential to serve within it i.e. protection or promotion, which in turn link to whether the focus of concern of HIA is outcome or process.

The intended function that HIA could serve

Bartlett states “Impact assessment does not influence policy through some magic inherent in its techniques or procedures. More than methodology or substantive focus, what determines the success of impact assessment is the appropriateness and effectiveness in particular circumstances of its implicit policy strategy.” Banken who has studied the area of institutionalisation of HIA for many years argues that HIA has the potential to catalyse intersectoral action for health by providing information on the foreseeable consequences, both positive and negative, of proposed policies, programmes and projects. In order to do this, HIA, however, needs to be a part of the rules and procedures normally followed by the different decision making bodies or agencies not necessarily set apart from them in a different department or agency.

A review of the published literature on the functions that HIA serves shows that:

- HIA has a range of possible functions depending on the way it is applied (i.e. *process* issues) and the desired outcomes (i.e. *outcome* issues), and,
- HIA has been applied in a variety of ways to achieve these functions depending on the needs of the different decision making organisations.

These functions are linked to either the decision making process or the outcomes desired. In respect to the Health Act, the following list shows that a decision to adopt HIA within formal legislative requirements would have the potential to limit its application to *outcome* based goals rather than those concerned with the *process* of making concern for health everyone’s business.

The broad functions that HIA researchers and practitioners have consistently described it serving include (note that they are described here as ‘potential purposes’ for Victoria as they have not been applied here yet. They have been despite having shown to serve these functions elsewhere:

Intersectoral working

- HIA has the potential to put health on the agenda where it traditionally has not been considered.
- HIA has the potential to change the culture so that policy makers always take health into consideration.
- HIA has the potential to encourage inter-sectoral collaboration and is a mechanism for discussion about the potential health and equity impacts.

Identifying impacts

- HIA has the potential to identify impacts on health factors that would not otherwise have been identified.
- HIA has the potential to enhance the positive impacts and reduced the negative impacts of decisions.
- HIA has the potential to quantify the *magnitude* of harmful and beneficial impacts more precisely than could otherwise have been done.

Evidence

- HIA has the potential to provide a systematic means of including evidence about potential impacts of the policy, project or project during the decision making process and can provide a mechanism for deciding which course of action can provide the best health gains.

Help with decision-making

- HIA has the potential to encourage the people who make decisions to take into account any unanticipated effects of their decisions on population health or on different groups within the population.
- HIA has the potential to make the decision-making process more transparent and lead to more participation by stakeholders.
- HIA has the potential to clarify the nature of trade-offs in policy-making by better identification and description of the elements involved.
- HIA has the potential to help identify and make transparent, the trade-offs that are *inevitable* in the decision making process.

Change outcomes

- HIA has the potential to allow better mitigation of harmful factors or enhancement of beneficial factors.

Participation in decision making processes

- HIA has the potential to encourage local ownership about decisions which in turn has the potential to affect the health status of people who otherwise may never have participated in the planning process

HIA as health promotion

Clearly, HIA as a health promoting activity is linked to process and engagement with other decision makers about health considerations and less with health outcomes per se. It must be remembered that HIA is a formal and systematic process that seeks to determine the impacts of a proposed action on health. As such it is not the same as the broad goal of putting concern for health on the agendas of other sectors. This is a function that the formal HIA process can, and has, achieved but it is not its principal goal. For it to be effective, a detailed proposal for a change or action is required. Mittelmarch states that HIA 'is a device for forcing the relevant bodies to take action in favour of healthy public policy'. As a health promotion mechanism HIA includes intersectoral working (mostly with other sector's policies) to determine whether their policies, programs and projects have the potential to impact on the determinants of health. This is consistent with the goal of healthy public policy and with getting concern for health on everyone's agenda. There are several models for this approach including the European Union and Thailand.

The European Union provides an ideal example of HIA as health promotion mechanism that is relevant to Victoria. The goals of the European Community in respect to health are contained in Article 152 of the Treaty of Rome. Despite stating that these goals are health protection the model used to achieve them are based on a model of health promotion within the community as shown through the following examples:

- The Treaty stipulates "A high level of human health protection shall be ensured in the definition and implementation of all community policies and activities" – it requires all member states *to give consideration to possible health implications of measures and actions*
- The ways of doing this is through *inter-sectoral* working.

- The understanding that is required is focused on *improving the understanding of how different policy areas link to health*.
- The approaches used to assist in developing this understanding and the achievement of these goals are through *mandatory consultation* of the Commission's Directorate General in charge of health on proposals of policy or legislation with a potential health dimension; establishment of the *Interservice Group on Health* to coordinate health-related initiatives across Community policy; *strengthening health-related work* is a central priority of the current Commission; and through *the Community's health strategy* (May 2000) which ensures coherence and coordination between health-related policy areas.
- The way they have been ascertaining what approach will work best to deliver their goal has been to undertake relevant *intersectoral work* in HIA and to coordinate the collation and dissemination of the findings of others.

Their approach has been to start with their objective of determining the health implications of measures and actions and move to a way of facilitating this using HIA as an appropriate mechanism to achieve the broader goal. They have taken a long time to determine the principle rather than the approach to HIA and even though there is very clear commitment to HIA they have not yet legislated for its use. Hubel (2003) states that in the European Community's experience, EIA has not delivered what they wanted in terms of HIA, so they have looked to create a more appropriate approach to its application.

HIA as health protection

Under a health protection framework HIA would be used as an approval process for determining whether there are health consequences of proposed policies, programs or projects from other sectors. Inherent in this approach is the goal of modifying the outcome rather than working on broader areas of process. This approach could build on the well understood model of HIA in Australia and Victoria and can draw on current EIA approaches and guidelines for application of HIA and include a legislated requirement that actions which have health impacts need to be considered by the Minister. A similar approach has recently been developed in Quebec where all decisions that have an impact on health require the approval of the Minister.

This approach provides the authority for rejecting a proposal and would be an extension to the current legislative provisions in the Environment Protection Act but would apply to the broader policy arena. The practical weaknesses of this approach, as shown with the current arrangements under the EPA, is that HIA can be highly exposed to political abuses of its process if it becomes a formal project approval mechanism (Phoolcharoen et al, 2003). An appropriate administrative approvals processes would be required either within public health or within the organisation making the proposal. If responsibility fell outside the health sector then care would be needed to ensure that the 'tick the box' approvals system is avoided – a system that rarely picks up the unanticipated impacts on health of a proposal. Overseas experience shows that the two main reasons for this weakness are that there is not necessarily a requirement to explore the evidence of potential health effects systematically and there is often a lack of people with appropriate expertise in health impacts to complete the assessment. This system has however been used effectively

at local and regional government levels in Sweden for many years. It is not a legislated requirement.

A draw back of this approach is that HIA would largely become a top-down, expert driven process with limited participation and as yet it is difficult to argue causal links between some of the determinants of health and health effects so there would be many challenges to the evidence being used. As is the case with EIA processes, refutation of proposals would need to be supported by very strong evidence.

If this approach is adopted the Act would need to articulate the inter-sectoral nature of HIA and require that it is applied with input from professionals with expertise in health impact assessment, rather than being applied solely by professionals from the fields of EIA and other impact assessment fields. Critical questions need to be asked about the current levels of capacity to do this within public health and the resource implications inherent within it.

Implications

Whatever approach is being advocated, either health protection or health promotion, a legislative requirement for HIA will require attention to the following points:

- To ensure administrative efficiency and ease of application, HIA should be encouraged as part of future integrated impact assessment requirements with a strengthened focus on health impacts than those currently operating in EIAs
- The criteria that would trigger the application of an HIA should be sufficiently flexible to allow for application of different issues (policies, programs, projects) in a range of local contexts with a variety of different stakeholders. As HIA is a multidisciplinary activity some form of consultation would also need to be required or else the HIA simply becomes advice or appraisal.
- A generic methodology for conducting HIA would be required to ensure that a minimum standard was achieved and to permit comparisons between similar contexts and issues. This methodology does not exist at present unless existing enHealth Guidelines are modified to allow for consideration of policies and programs and for areas outside of environmental concern and hazard.
- The Act should include a clause that recognises the evolving nature of HIA to allow for changes to the approach that will undoubtedly occur over time.
- The Act should introduce the need for an independent audit to be conducted on all HIAs that will be applied in Victoria to ensure ethical conduct, professional competence and transparency.
- The Act, and subsequent administrative arrangements, will need to demonstrate firm political commitment to HIA across government, a clear bureaucratic mandate, clear lines of responsibility and accountability and commitment to professional development and competent professionals

Recommendations

As stated earlier, it is not possible to provide clear recommendations for the proposed legislative requirement for HIA. At the HIA Forum conducted in March 2002 in Melbourne which considered the feasibility of introducing policy-linked HIA into Australia, expert participants agreed that a legislated requirement for HIA was the long term goal for getting health considerations onto the agendas of all state governments. An extensive review of the international literature shows an increasing use of HIA in a range of policy and project contexts but a slowness to enshrine HIA as a formal legislative requirement of governments. It is clear that this situation will change in the forthcoming years as the lessons learnt about the role and function of HIA as a policy tool increase. There are indications that along with Quebec, Hong Kong and Thailand are working towards the legislation of a broader based HIA framework. The choice to be made by people developing the Health Act is really one of readiness. Are other sectors of government keen to prioritise health and move towards a culture of health promotion as well as health protection? Will the necessary resource commitment follow such a decision? A simpler option that might be worth considering is to embed a requirement to consider the use of HIA within another requirement within the Act such the Municipal Public Health Plan.

Careful consideration is required to position HIA in such a way that it can serve multiple functions in government and not be hijacked by a narrowly defined and enacted legislative requirement. Whatever option is chosen the following broad factors need to be considered within Victoria if HIA is to be effective:

- Appropriate analytical frameworks for a continuously participatory learning process have to be demonstrated,
- An effective institutional structure has to be designed to facilitate HIA implementation and to influence HIA process, impacts and outcomes in public policymaking,
- A critical mass of well-understood technical experts and activists needs to be formed to support the satisfactory performance of these other pillars
- An enabling environment must be established for the learning process fostering constructive dialogue and advocating healthy public policy

(Phoolcharoen et al, 2003)

The development of an appropriate analytical and institutional framework is the key challenge for successful HIA implementation.

References

The HIA Resource library at Deakin University was used to develop the model of purpose of HIA and these have not be listed separately

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Appendix 1: A typology of HIA (R. Morgan, 2004, unpublished)

