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An independent statutory body  
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Dear Dr Goodall

### **Re: Review of the *Health Act 1958***

The Equal Opportunity Commission Victoria (EOCV) welcomes the opportunity to comment on the proposed changes to the *Health Act 1958* and the issues raised in *Review of the Health Act 1958: A new legislative framework for public health in Victoria* (the Discussion Paper).

The EOCV is an independent body set up to eliminate unlawful discrimination and promote equal opportunity in Victoria by providing a fair, impartial, confidential and free complaint resolution service and by informing and educating Victorians about their rights and responsibilities under equal opportunity laws. In that context, the EOCV offers the following general comments on some of the issues raised in the Discussion Paper.

#### **Overarching framework**

The EOCV is supportive of any amendments to the *Health Act* which would promote public health generally, and which would also address the specific health needs of disadvantaged Victorians. That public health policy should be concerned with the systemic disadvantage faced by certain communities in Victoria, is appropriate.

The groups named in the Discussion Paper include rural Victorians, Aboriginal Victorians, people with a disability and prisoners. In relation to those groups, the EOCV notes that these groups experience poor health disproportionately to other Victorians and that there are a number of systemic factors that contribute to this situation. Poor health status is both bought about and exacerbated by inadequate access to health services for these groups. The link between inequalities in socio-economic status and ill health has long been acknowledged. Discrimination, and the failure to understand and respect human rights is a critical factor contributing to those socio-economic inequalities and thus, poor health.

For example, in relation to people with a permanent or temporary disability, discrimination on these grounds constitutes the single largest ground of complaint to the EOCV (16% in 2003-2004). When an individual's health diminishes, that can further entrench, and even compound their level of socio-economic disadvantage. Accordingly, there exists a self-perpetuating cycle. The profound effects of this cycle amongst Indigenous groups and

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The EOCV complies with Victorian privacy laws and the confidentiality provisions of the *Equal Opportunity Act 1995*. For a copy of the EOCV's privacy policy, please go to [www.eoc.vic.gov.au/privacy](http://www.eoc.vic.gov.au/privacy) or contact the EOCV.

communities are well known. Programs which address unemployment, welfare dependence, substance abuse and ill health concurrently are likely to be more effective.

The EOCV believes that any proposal to specifically identify certain groups with the aim of actively promoting and addressing their health needs is a vital aim of any public health policy and legislation. This should be expressly articulated in law and policy.

### **Proposed powers for the control of infectious diseases**

In relation to the proposed powers for the control of infectious diseases, the EOCV refers to some of the powers outlined in Chapter 7 "Statutory duties, powers, offences and defences" and Chapter 8 "Control of infectious diseases".

The *Equal Opportunity Act* 1995 provides protection against discrimination on the basis of attributes, which are listed in the legislation and include "impairment". Impairment is defined in the Act to include "the presence in the body of organisms that may cause disease" (s 4). Discrimination can occur whether the person has an impairment, or whether they are presumed to have an impairment (s 7) in areas of public life. A person carrying an infectious disease, or suspected to be carrying an infectious disease, may therefore be considered, under the Act, to have an impairment.

The proposed powers to compel testing, vaccination, treatment, isolation and quarantine are restrictive of individual rights. Equally, powers of search and seizure, and the power to compel individuals or groups to provide information on the basis of them carrying or being suspected of carrying an infectious disease may have discriminatory effects.

Any powers to remove, limit or alter the rights of people carrying or suspected of carrying an infectious disease should be exercised with caution, supported by appropriate safeguards related to their exercise. The EOCV submits that vesting such powers in a single individual (the Secretary) may not allow for the necessary balance between public health protection and individual rights. The legislation, as a minimum, should provide adequate and transparent safeguards in relation to the exercise of these powers. The EOCV suggests that consideration could be given to vesting such powers in a panel of suitably qualified individuals; or requiring court or tribunal approval prior to the exercise of certain powers; or by legislating for an accessible review process (for example, in the Victorian Civil and Administrative Tribunal). The EOCV acknowledges that time is of the essence in cases such as these but submits that the legislation could allow for expedited processes.

Certainly the EOCV acknowledges the overriding policy considerations in situations which the Act is designed to deal with, however, any powers to deal with such situations should not be given lightly, without regard to the impact upon the individuals who will be the subject of these powers.

The EOCV is available to comment further on this letter.

Yours sincerely,



Matthew Carroll  
Acting Chief Executive Officer