

Recommendation 1

Name of new Act

AMA Victoria supports the new Act being named the *Public Health Act 2006*.

Recommendation 11

Statement of objects

It is noted that the following objectives are proposed for the new Act:

- a. to protect public health and prevent disease, illness, injury, disability and premature death;
- b. to promote conditions in which the people of Victoria can be healthy; and
- c. to reduce social and health inequalities and enable all Victorians to achieve the best possible state of health and wellbeing.

AMA Victoria supports this recommendation.

Recommendation 12

Evidence based information

AMA Victoria supports a requirement that the Chief Health Officer (CHO) provide evidence-based information to the public about the health of the population.

Recommendation 13

Guiding principles

The following are proposed as guiding principles in the new Act:

- a. Principle of evidence-based decision making: decisions as to the most effective and efficacious public health interventions and efficient use of resources to protect and promote public health are informed by reliable and relevant evidence, (where available in the circumstances).
- b. Precautionary principle: if there are threats of a serious public health risk, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.
- c. Principle of the primacy of prevention: preventing harm or damage is preferable to repairing it later. Promoting resilience and building capacity is preferable to allowing deficits or problems to otherwise undermine health or autonomy.
- d. Principle of accountability: public health officials should ensure, as far as is practicable, that decisions made under the Act are transparent, systematic and appropriate. The community should therefore be given:
 - i. access to reliable information in appropriate forms to facilitate a good understanding of public health issues; and
 - ii. opportunities to participate in policy and program development.
- e. Principle of proportionality: decisions made by officials under the public health Act should be proportionate to the harm to be prevented, minimised or controlled. Where action is necessary to protect public health, the action chosen must be the least intrusive means available to achieve that goal and must not be imposed in an arbitrary way.
- f. Principle of collaboration: public health is enhanced by collaborative approaches between national, state and local government, the community sector, industry and individuals.

AMA Victoria supports these principles guiding the review of legislation and then the subsequent application of the new public health Act.

Recommendation 15

Position and functions of the secretary

AMA Victoria supports the functions of the Secretary being:

- a. to develop and implement policies and programs to achieve the objects of the Act;
- b. to assist other agencies which have an impact on public health to enhance opportunities for public health;
- c. to support, equip and empower communities to address their health needs;
- d. to establish and maintain a comprehensive information system which includes information on:
 - (i) the health status of Victorians and groups of Victorians including the extent and effects of illness, injury and premature death;
 - (ii) the determinants of health;
 - (iii) health system performance in Victoria.

Recommendations 17 and 18

Position and functions of CHO

AMA Victoria supports the continuance of the position of the Chief Health Officer, who must be a registered medical practitioner appointed by the Minister and who can delegate his or her powers to an employee or officer of the Department of Human Services, who is a registered medical practitioner.

AMA Victoria supports the public health Act including the following statement of functions of the Chief Health Officer:

- a. to develop and implement strategies to promote and protect public health
- b. to advise the Minister about public health issues
- c. to carry out any other functions granted to the Chief Health Officer under the public health Act or any other Act.
- d. to ensure that a comprehensive report on the health and wellbeing of Victorians is made available to the public on a biennial basis.

Recommendation 23

Medical Officer of Health

AMA Victoria is opposed to the removal of the requirement that every municipal council must appoint a Medical Officer of Health because:

- it is hardly timely to downgrade local, public health capacity when there is a need for heightened preparedness and awareness because of a possible human influenza pandemic;
- such a decision would be at odds with guiding principles (recommendation 13) of primacy of prevention and collaboration;
- the MOH provides advice and assistance to the council environmental health officers, whose knowledge is often circumscribed especially about topical or difficult issues;
- many health related local issues have both community and individual aspects and the MOH is in a strong position to provide appropriate advice;
- on a day-to-day basis MOHs act as a useful resource for council staff (particularly child care staff and Maternal and Child Health nurses), other GPs and clients of council services by providing advice, information and reassurance;
- most MOHs are local GPs with an intimate knowledge of their particular community and environment. They are aware of geographic and demographic

peculiarities of their area, which is particularly valuable in country and remote locations;

- MOHs also have knowledge of, and contact with, other service providers such as other GPs, Divisions of General Practice, hospitals and nursing homes. Access to this knowledge and network is valuable both for councils and DHS;
- no MOH is dependent on their council for their livelihood, which gives them more professional independence than other council employees. This means that where conflicts of interest arise they can provide disinterested medical advice, or on occasion direct instructions to council which might otherwise be disregarded;
- MOHs are main stream medical practitioners, with an evidence-based scientific approach to their work. They are therefore in a position to intervene if other attitudes become prevalent within the council milieu, be these clashing business or environmental interests, or others such as the anti-fluoridation lobby;
- appointing an MOH is one mechanism for ensuring local government contributes to the cost of public health services. Abolishing the position which will shift costs to centralized services, which may or may not be able to provide an equally effective service.

Recommendations 50-54

Consultative Councils

AMA Victoria does not support the recommendations requiring mandatory reporting of specified events to Consultative Councils nor does the AMA support the disclosure of information to third parties other than to other Consultative Councils.

Specifically the policy paper proposes that the public health Act include a provision enabling consultative councils to disclose information:

- to another consultative council, if the council considers that the information is relevant to the functions of the other council;
- to the following specified entity or entities, if the councils determine it is in the public interest to do so:
 - the Secretary to the Department of Human Services;
 - the Medical Practitioners Board of Victoria;
 - the Nurses Board of Victoria;
 - the State Coroner;
 - a Ministerial Committee (ie the Victorian Child Death Review Committee);
 - a day procedure centre, multipurpose service, private hospital, public hospital and denominational hospital;
 - any other prescribed person or class of person.

It further proposes that the Act contain a regulation-making power regarding the mandatory notification of specified events by health service providers to prescribed consultative councils established by the Minister.

In short then it is proposed that there will be new powers of:

- mandatory reporting of specified events, such as a death after surgery; and
- disclosure of information to third parties by Consultative Councils.

The August 2004 Discussion Paper on review of the Health Act stated on page 29:

'There needs to be further and detailed consideration of whether the current confidentiality provisions applicable to the Councils are working effectively and are appropriate. A detailed outline of these issues will be contained in a separate Department of Human Services' discussion paper that will examine confidentiality

and privilege laws designed to foster health care quality improvement. The discussion paper should be released in 2004 and may cover:

- the interface between consultative councils and health care organisations' quality assurance committees (which may also be subject to confidentiality laws)
- the impact of Freedom of Information laws
- whether there should be sharing of information between consultative councils, or with any other bodies
- whether current confidentiality provisions pertaining to consultative councils are appropriate and effective
- consistency of confidentiality provisions.

Given two simultaneous reviews that have an impact on consultative councils, the implementation of necessary legislative amendments should be streamlined. We anticipate that the new public health Act will implement all of these legislative changes.'

Unfortunately it appears that the Department is either unable or unwilling to fulfill the commitment it made in 2004 to do this comprehensive review. Consequently it is unclear on what basis the Department has recommended such fundamental change to the role of the Consultative Councils.

In expectation that the review would provide guidance as to how the whole quality framework would operate in the Victorian health system it was possible for AMA Victoria to continue to support the anomalous situation of the Councils being established under the public health legislation. However, as there is now no overall strategy in place and it is unclear where the Consultative Councils will fit in the wider structure, it is untenable for this to continue. To improve coherence between the quality requirements governing hospitals and health services, the Councils should be established under the *Health Services Act*, as in fact was alluded to in paragraph 1.2.2 of this current policy paper, which deals with overlap with related Acts. Then it would be possible to sort out the interplay between clinical governance, sentinel event reporting, qualified privilege, Freedom of Information and open disclosure, it would be possible to judge whether mandatory reporting and disclosure requirements for the Councils would help or hinder quality of care programs.

Clearly there are major challenges ahead for the health sector with respect to quality, therefore it is essential that the legislative framework is robust and consistent and has the confidence of the clinicians who work in the system. Having key elements spread across a number of statutes will not achieve this end.

Recommendation 68

Health information management

AMA Victoria supports the Act authorising the establishment of registers with general provisions as to their purpose, use and confidentiality requirements. It is noted that registers could include:

- an environmental events register;
- a register of public health information held by the Department and provided to third parties, for example, for research purposes.

Recommendation 149

Exemption from infection control provisions of Act

AMA Victoria supports the continuation of the exemption from the infection control provisions of the Act for medical practices. It is noted that exempt businesses would still be required to comply with the requirements regarding cleanliness of equipment, including sterilization, and personal hygiene of each person in the business that conducts skin penetration activity.

Recommendation 164 and 165

Compulsory testing orders

AMA Victoria supports new provisions in the Act relating to compulsory testing orders and authorisations so that they apply to occupational incidents, irrespective of whether the person is a care-giver or custodian, as defined, and also apply to incidents involving a volunteer or 'good Samaritan'. AMA Victoria also supports that testing should continue to apply to human immunodeficiency virus and forms of hepatitis that may be transmitted by blood or body fluids, such as hepatitis B and C and infectious diseases that are prescribed for the purposes of the compulsory testing provisions.

AMA Victoria does not support a sample taken under the compulsory testing provisions being used for other purposes.

Infectious Diseases Form of notification (Section 5.6)

The Health (Infectious Diseases) Regulations provide for a system of notification to the Secretary. Schedule 3 specifies the diseases or groups of diseases that must be notified to the Department of Human Services by registered medical practitioners and pathology services. The diseases fall into four categories (group A to D), all of which require written notification to the Department within seven days, except for Group A which must be notified immediately, as they require the implementation of urgent control measures.

Schedule 3 incorporates the form of notification to be completed which includes questions concerning the name, age and sex of patient, and the type of disease diagnosed. Group C and Group D infectious diseases are reported and recorded in coded form. The notifiable diseases in Group C are:

- chlamydia trachomatis genital infection;
- donovanosis;
- gonococcal infection;
- syphilis/congenital syphilis.

Notifiable diseases in Group D are:

- AIDS;
- HIV.

It is asserted by the Department that these extra precautions protecting the privacy of individuals diagnosed with HIV/AIDS and sexually transmitted diseases may no longer be necessary, in light of privacy provisions in the *Health Records Act 2001*. The Department further asserts that coding this information makes it impossible for contact tracing to be conducted in relation to these diseases.

AMA Victoria is opposed to any change to the current coding requirements and privacy precautions as relate to Group C and D notifiable diseases, because the loss of anonymity will discourage patients from attending for diagnosis and treatment, therefore increasing the risk of further transmission and the overall morbidity caused by these diseases. Clearly if the names are reported to the Department many more persons will be aware of the identity of infected patients, so it is ridiculous to say that

privacy will be protected because of mere Departmental compliance with the Health Records legislation.

With respect to contact tracing, the paper fails to adequately portray how the system currently works, where initial contact tracing occurs through and with the co-operation of treating general practitioners. If GPs have difficulty, they are then in a position to seek the assistance of the Department's contact tracers.

HIV specific privacy provisions

Section 128 of the Health Act sets out a special provision that requires people to take reasonable steps to develop and implement systems to protect the person's privacy, if they, in the course of providing a service, acquire information regarding a person being tested for HIV or infected with HIV.

As there remains considerable stigma attached to HIV infection AMA Victoria does not yet support a change to these provisions. With the elapse of time the privacy framework for health records may well prove itself to be effective in maintaining patient confidentiality however there is as yet insufficient information to support this proposition.