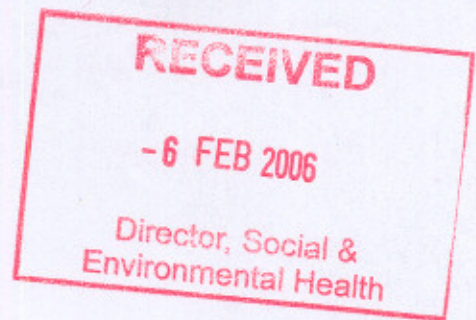


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B R A N C H



JB:ch

31 January 2006

Dr Robert Hall
Director Public Health and Chief Health Officer
Department of Human Services
120 Spencer St
Melbourne VIC 3001
By Fax: 9637 4695

Dear Dr Hall,

Review of the *Health Act 1958*

We are pleased to have received the draft policy paper for the review of the *Health Act 1958* by the Department of Human Services and would like to make the following comments.

1.4 Definitions

The broad definition of "health and wellbeing" to include physical, social and mental wellbeing is welcomed however it is difficult to comment on many terms in this document including "health" when there is no definition to comment on except that the documents suggests it needs to be narrowly defined in relation to specific areas eg coercive powers.

Medical Officers of Health (Recommendations 23-31)

The policy paper in the last paragraph states the "removal of the MOH position would not obviate the requirement for municipal councils to employ or contract registered medical practitioners to provide advice to nurse practitioners performing immunisation services"

It should be noted that it is not nurse practitioners who perform immunisations and in fact the term Nurse Practitioner is a protected classification under the Nurses Act. Also while nurses who have completed the Immunisation course recognised by the department are only required to be able to contact a MOH, those nurses providing immunisations who have not attained certification in this course or who have not maintained reaccreditation must have a MOH present when the immunisations are being carried out.

Given the powers that authorised officers may wield it is disturbing that the Public Health Act will not specify what qualifications, experience or competency is required to fill this role. In fact given the rationale for not having these specified is based on an argument of availability of Environmental Health Officers it is of concern that Councils, if unable to attract employees willing to take on this role, may lower the entry level of an authorised officer or appoint indiscriminately.

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Mandatory reporting of Certain Matters to Consultative Councils (recommendation 53)

It is unclear why there is a perceived need to give a regulation making power regarding mandatory notification to consultative councils. Also this seems not to recognise the powers of the Coroner, nor how individuals' rights to privacy and confidentiality will be maintained.

Statutory Duty of Care (Recommendation 73-81)

The establishment of a new Statutory Duty of Care when there already exists a Common Law Duty of Care will create confusion. The issue here therefore relates to which Act takes precedence in particular areas – the general Common Law Duty of Care or the Statutory Duty of Care?

Enforcement Powers of Authorised Officers (Recommendations 105- 114)

The paper notes that the present enforcement powers appear generally adequate yet goes on to expand these provisions and how this will impact will probably require viewing of the Draft Bill.

Also the recommendation 110 (o) describes use of an assistant but there is no definition or identification specific to this individual eg who nominates them, or what their powers are, etc?

Powers for Investigation and Control of Infectious Diseases (Recommendations 158-163)

Given there is an existing Health Records Act and Information Privacy Act the ANF is only willing to support contact tracing within these confines and will await receipt of the Draft Bill to comment more fully.

Public Health Orders and Management of Infected Persons (Recommendation 166-170)

The ANF is particularly concerned that the proposed changes do not adequately balance the need to provide for protection of public health, the needs of the community and basic human rights. It is unclear if there is to be an appeal process for the individual who may refuse consent, what are the individual rights, what timeframes are being identified for the isolation and detention of the individual, where this detention would take place and what sort of person may be providing supervision.

Will these public health orders apply to all persons or will there be limitations eg children?

The suggestion is that authorised officers may be able to use reasonable force and yet the fact that there is no requirement for specific qualifications or competencies for this role would seem to be a particularly dangerous path (see recommendations 29-31). The same applies to the suggestion that the power to "break, enter and search" premises(not defined) by authorised officers without a search warrant, which at the very least can provide some checks and balances for the individual without preventing the application of a Public Health Order in a timely fashion. It is not clear that the current Act has limitations in these areas that have lead to the need to make such changes.

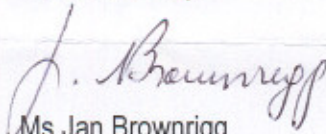
Notifiable Diseases (Recommendations 180-184)

It is not possible for the ANF to support the change from "Notifiable Disease" to "Notifiable Condition" given the lack of definition for "Notifiable Condition"

The ANF looks forward to the opportunity to viewing the draft bill which will enable us to make more informed comment.

If you have any queries in relation to this submission please do not hesitate to contact either myself or Ms Catherine Hutchings Professional Officer on 9275 9333.

Yours sincerely,



Ms Jan Brownrigg
Acting Secretary
ANF (Vic Branch)