

January 24, 2006

Dr. Jacqueline Goodall
Legislative Review
Public Health
GPO Box 1670N
Melbourne Vic 3001

Dear Dr. Goodall,

The Hepatitis C Council of Victoria (HCCV) would like to take this opportunity to formally respond to the Review of the Health Act 1958. We would also like to thank the Department of Human Services of Victoria for undertaking this much-needed review.

The HCCV feels that while overall it is a positive document we do have both some general comments as well as specific areas of concern in relation to some of the recommendations.

General comments

- Some of the provisions appear to be very broad and unnecessarily intrusive (see Sections 5.3, 5.4 and 5.5). While it is recognised that under certain conditions sweeping powers may be necessary in order to protect the health of the public, these occasions would be very infrequent. The conditions under which these 'emergency powers' would come into force should be more clearly spelled out. We are concerned that these powers potentially conflict with people's human rights and their rights to privacy (see Section 4.8).
- To ensure that the rights of people are adequately safeguarded, it is recommended that the Health Act conform to the Human Rights Charter that is currently being proposed by the State Government for adoption later this year.
- The Health Act allows Local Councils to authorise individuals to police the act as "Authorised Officers". There is a need for greater

detail and precision in the definition of what makes an “Authorised Officer”. The definition (see section 1.12.3) is currently so broad that a local Council can authorise almost anyone to act as an Authorised Officer. There is no provision to assess the skills or qualifications of individuals selected by Councils. We are also concerned that under this Act Authorised Officers would have powers greater than the police, and yet would not be subject to judicial review.

- In general, there is a tendency in the Act to regard all illnesses/diseases from a purely medical paradigm. The Act does not take into consideration the various social ramifications that people with certain illnesses, for example hepatitis C, can suffer due to stigma and discrimination. The social context in which diseases such as hepatitis C are located should be factored into this Act.

Specific comments

Recommendations

	Issue	Section reference
2	That non-legislative mechanisms, such as a Memorandum of Understanding, be entered into with agencies administering legislation that interface with public health legislation, as required in the particular circumstance.	1.2

Comment: In section 1.2.5.1 we note with concern that there is not a recommendation for the Health Act to have any power to influence Local Government over planning applications for Needle and Syringe outlets.

Australia's Needle Syringe Program is recognised worldwide as a successful public health initiative in preventing the spread of blood borne viruses. A government report indicates that NSPs have prevented 25,000 HIV and 21,000 hepatitis C infections during 1991-2000.

Currently, planning approval for NSPs can drag out for many months, if not years, and NSPs can be closed without any consideration of the public health impact. Given the demonstrated positive impact that NSPs have on public health, the Hepatitis C Council of Victoria would strongly recommend that the Health Act include the power to override the Planning Act in relation to NSPs when public health concerns can be demonstrated.

- 77 **That the following limits be imposed on the scope of the General Duty:** 4.2
- (a) **applies only to material risks and not trivial risks**
 - (b) **requires people to refrain from conduct that is injurious to public health, rather than create a positive duty to promote public health**
 - (c) **only requires people to act reasonably and appropriately, and by expecting them to do the things that can practicably be expected of them.**

Reasonableness of a person's conduct would be considered having regard to:

- (i) **the nature of the conduct and the circumstances in which it occurred**
- (ii) **the likelihood of a person suffering harm as a result of the conduct**
- (iii) **the nature and seriousness of the harm that may be suffered as a result of the conduct**
- (iv) **the number of people who may be harmed by the conduct**
- (v) **the reason why the person engaged in the conduct and the social utility of the activity**
- (vi) **the knowledge and information that the person had or ought reasonably to have had**

Issue	Section reference
<p>or acquired about the risk, nature and scale of harm that may be suffered as a result of the conduct</p> <ul style="list-style-type: none"> (vii) whether and, if so, what precautions the person took to prevent or reduce the harm that may be suffered as a result of the conduct, or to reduce the risk that harm may occur as a result of the conduct (viii) the ease or difficulty with which people at risk of suffering harm as a result of the conduct could protect themselves against the risk of harm and the extent to which they voluntarily accepted the risk (ix) any other relevant factors. <p>(d) Could specifically exclude harm to self and hypersensitivities.</p>	
<p>Comment: the Hepatitis C Council of Victoria strongly disagrees with point (v) as it is a totally subjective test and is open to all sorts of moral interpretations of what is, and what isn't a socially useful activity. As the recent case of <i>Hay vs. Dubbeld</i> (VCAT ref. No. A286/2004) highlighted, individuals should not be left to judge whether adherence to infection control standards is warranted in a particular circumstance.</p> <p>Infection control procedures should be applied as a basic standard on all occasions, to safeguards everyone's health, regardless of one's opinion on the social utility of an activity. This point allows for people to make subjective and discriminatory assessments on all kinds of activities and people.</p>	
<p>144 That the requirement that businesses conducting hairdressing be registered with municipal councils not be re-enacted in the public health Act.</p>	<p>5.1</p>

Issue	Section reference
<p>Comment: The Hepatitis C Council of Victoria does not support this recommendation as it reflects a weakening of the standard application of infection control procedures.</p> <p>Shaving, and the use of razors, if it involves the re-use of implements is a proven risk for the transmission of hepatitis C and other blood borne viruses.</p>	
<p>146 That businesses conducting tattooing, skin penetration and colonic irrigation be required to be registered with municipal councils.</p>	5.1
<p>Comment: The Hepatitis C Council of Victoria supports both the continuation of this recommendation <u>and</u> the extension of the conditions for registration.</p> <p>Currently, once a business has been registered, there is no requirement that successive owners also understand and practice infection control procedures. In addition, there is no requirement for the staff of that business to either be trained in or adhere to infection control procedures.</p> <p>The Hepatitis C Council of Victoria recommends that the above businesses be regulated in a way that ensures training for all staff in complying with best practice infection control guidelines.</p>	
<p>164 That the provisions in the public health Act relating to compulsory testing orders and authorisations:</p> <ul style="list-style-type: none"> (a) continue to apply to human immunodeficiency virus and forms of hepatitis that may be transmitted by blood or body fluids, such as hepatitis B, C and D (b) continue to apply to infectious diseases that are prescribed for the purposes of the compulsory testing provisions (c) apply to occupational incidents, irrespective of whether the person is a care-giver or custodian (d) apply to incidents involving a volunteer or "Good Samaritan". 	5.4

Issue	Section reference
<p>Comment: The HCCV would like to state its concern about the generalized use of compulsory testing orders. Apart from occupational needle stick injuries where insurance/compensation issues may be involved, there are not reasonable grounds for compulsory testing for hepatitis C.</p> <p>There is currently no post exposure prophylaxis treatment available for hepatitis C. There does not therefore seem to be any compelling reason why a hepatitis C test should be carried out on a person who may have exposed another to hepatitis C (i.e. a 'potentially infected' person).</p> <p>In addition, diagnostic tests are able to detect whether a person has become infected with hepatitis C at between four and six weeks after exposure. Current research suggests that treatment for hepatitis C is frequently effective at resolving the viral infection if given within the first six months after exposure. Testing the blood of the person exposed to the virus (rather than the person who potentially transmitted the virus) would allow plenty of time for treatment to be effective if needed.</p> <p>There is also no mention of the need for pre and post-test counselling. A provision should be added to ensure that appropriate pre and post test counselling are provided</p>	
<p>165 That there is further consideration regarding whether there should be specific restrictions in the Public Health Act regarding the permitted use of a sample taken under the compulsory testing provisions.</p>	5.4
<p>Comment: Any collection of samples should be undertaken in accordance with the Privacy Act, and samples should <u>not</u> be kept and/or used for purposes other than those they were originally intended for.</p>	
<p>185 That the public health Act not re-enact the HIV-specific pre and post-test counseling provisions.</p>	5.7

Comment: The Hepatitis C Council of Victoria does not agree with the removal of the provision related to pre and post-test counselling. The Hepatitis C Council submits that the provision be changed to include provision for pre and post test counselling for all blood borne viruses and sexually transmissible infections, rather than just HIV.

Counselling is an integral part of the quality medical care that should be provided to people with these conditions, and has major beneficial impact on people's psychological and physical health. It also provides a vital opportunity for education about risk practices and health maintenance behaviors. Given concern about rates of transmissions of blood borne viruses and some sexually transmissible infections this opportunity for education about preventing transmission is extremely important.

The Hepatitis C Council recognizes that in an ideal world legislation for this counselling should not be required as it is an integral part of quality care, however our day-to-day work clearly demonstrates that it does not currently occur.

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| 186 | <p>That the public health Act includes a regulation-making power that requires post-test counseling to be provided for prescribed diseases and by a prescribed class of people (if any). It is expected that the Regulations would require post-test counselling for positive test results for human immunodeficiency virus (and possibly hepatitis C) by registered medical practitioners, and non-medical practitioners who have completed an approved course.</p> | 5.7 |
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Issue	Section reference
<p>Comment: the Hepatitis C Council of Victoria not only supports the need for post-test counseling to be provided to people undergoing a hepatitis C test, but also calls for the implementation of pre test counselling.</p> <p>The Hepatitis C Council of Victoria is aware of too many cases in which hepatitis C test results are communicated in a totally inappropriate way, for example over the phone, or without information/explanation of hepatitis C being given with the diagnosis. If people are expected to be responsible for ensuring that they do not pass on a blood borne virus to others, then they must be given accurate information on how to avoid this when they are diagnosed.</p>	
<p>203 That a parent or guardian be required to notify the school if their child is infected or comes into contact with a person infected with a vaccine preventable or excludable infectious disease.</p>	5.9
<p>Comment: The wording of this provision indicates that students with hepatitis B, which is a vaccine preventable disease, would need to notify the school. The Hepatitis C Council of Victoria believes strongly that notifying a school that a pupil has either HIV, hepatitis C or hepatitis B should not be made compulsory. The compulsory disclosure of such illnesses to schools could potentially have all kinds of serious consequences in terms of social exclusion, discriminatory attitudes and social isolation.</p> <p>An adherence to standard infection control procedures, which hold that any person's blood is potentially infectious, is enough to protect the health of all persons.</p>	

Thank you again for the opportunity to review and comment on the proposed changes.

Yours sincerely

Helen McNeill
Executive Officer