



Submission to the Review of the Health Act 1958

January 2006

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Dr. Jacqueline Goodall
Legislative Review
Public Health
GPO Box 1670N
MELBOURNE VIC 3001

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Dear Dr. Goodall,

The Western Region Health Centre (WRHC) 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. WRHC does have both some general comments as well as specific areas of concern in relation to some of the recommendations.

Please do not hesitate to contact Tamara Speed, Program Manager Health Works for further information on this submission.

Yours sincerely

Clare Amies
Chief Executive Officer

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Introduction

The Western Region Health Centre Ltd. (WRHC) is an organisation providing a range of health services to the general community in the Western Suburbs of Melbourne. Health services include: community health, general practice, specialists, mental health, podiatry, community nursing, occupational therapy, dentistry, social work, physiotherapy and public health. The Centre employs over 200 staff, and operates from 2 main sites: Footscray and Braybrook/Maidstone, and a number of smaller sites.

WRHC is committed to improving the health and well being of the people who live and work in the western region by providing an accessible range of comprehensive, high quality and integrated health and welfare services.

WRHC is a registered company managed by a Board of Directors. The company is registered under the Companies Act, is limited in liability and has membership restricted to 100. The Board of Directors is made up of 10 members from the following groups:

- 6 community representatives;
- 1 local government representative;
- 1 hospital representative;
- 1 finance representative; and
- 1 from a university with which the Centre is associated.

Health Works, a program of WRHC which operates from a purpose built facility, is an integrated, multifaceted primary health service for people who inject drugs in the western region of Melbourne. Community development, harm reduction and a social model of health care are the three principles which underpin the activities of Health Works. Many recommendations contained in the Review will impact greatly on the work of the Health Works team and the users of the service.

General Comments

We believe that, whilst there appears to be an attempt to normalize HIV/AIDS by removing specific references in the Health Act, we don't see that this is possible until HIV related discrimination is totally eradicated. In addition, there appears to be a predominance of a medical model without consideration of the social implications for people affected by blood borne viruses. As a service that works with injecting drug users, we are aware of the issues of judgment that face our clients which is only magnified for those clients who are also HIV or hepatitis C positive. Therefore, we still argue that HIV specific privacy provisions need to remain in the Health Act and that these provisions be extended to include hepatitis C.

It must be stated that some of the provisions in the Review document appear to be very broad and arguably unnecessarily intrusive, for example Sections 5.3, 5.4 and 5.5. While it is recognized that certain infectious diseases, especially those that are airborne pathogens (such as Avian Influenza or Severe Acute Respiratory Syndrome), may require strong powers to contain the onset of a pandemic, these occasions would be very infrequent. The Act should therefore be more specific about the types of infections that these sections could be applied to.

In order to safeguard people's human rights and right to privacy, the reasons for the enactment of some of the more 'emergency powers' should be clearly articulated, for example, in Section 4.8.

There is a need to expand the definition of the Authorised Officers that Local Councils can be empowered to enact. The suggestions by the review are extremely broad with no judicial oversight. It appears that local government would be able to appoint almost anyone as an Authorised Officer. We recommend that these sections be changed to set a minimum standard for training (in, for example, the health or social services areas) for Authorised Officers.

Specific Comments

Recommendation 2 – Section Reference 1.2

WRHC are extremely concerned to note in section 1.2.5.1 there is no recommendation for the Health Act to have any power to influence a Local Government over the planning application for a Needle and Syringe Program (NSP). Planning approvals for NSP establishment can take many months, if not years, due to social and moral concerns, and competing interests of Local Councillors from their constituents. Indeed, the experience of the Health Works NSP (formerly known as Western Region AIDS Prevention) was that a strong opposition to the service existed from certain residents groups in Footscray, and without an intervention from the Health Department, the NSP may not have been able to continue service delivery. WRHC would strongly recommend the Health Act provide the Chief Health Officer or her/his delegate, to have to power to override the Planning Act in relation to NSPs on the grounds of evidence-based research, and the demonstrated positive impact to public health.

Recommendation 69 - Section Reference 3.6.2

We would like to see a provision in this section that allows individuals to be notified if their information is released. This is best practice in matters regarding releasing information and privacy. In addition, it would helpful that any provisions in relation to the release of information for the purpose of research have a statement that dictates that information is de-identified prior to release.

Recommendation 77 – Section Reference 4.2

WRHC strongly disagrees with point (v), with particular reference to the term "social utility of the activity". This implies subjectivity and will be wholly dependent upon moral interpretations of a socially useful activity, for example tattooing and injecting drug use. Infection control procedures should be applied as a standard, over all occasions, to safeguards everyone's health, regardless of one's opinion on the social utility of an activity. This point leaves a gaping hole for people to make subjective and discriminatory assessments on all kinds of activities and people.

Recommendation 144 – Section Reference 5.1

WRHC does not support this recommendation as it sees this as an erosion of universal precautions. Shaving, and the use of razors, if it re-uses implements or is not carried out in a non-sterile way, is a proven risk for the transmission of hepatitis C, and other blood borne viruses. Given the number of people in our community who have hepatitis C and B, the recommendation to exempt hairdressers makes no sense from a public health point of view and will led to people being unnecessarily infected with blood borne viruses.

Recommendation 146 – Section Reference 5.1

WRHC supports the continuation of this recommendation but also supports the extension of such a registration routine. Currently, once a business has been registered, there is no requirement that successive owners also be required to understand and practice infection control procedures. In addition, there is no requirement for the staff of that business to be also trained and adhere to infection control practices.

Therefore, WRHC would like to recommend that all staff of the above mentioned businesses be regulated and be made to be trained and to comply with best practice infection control guidelines.

Recommendation 164 – Section Reference 5.4

WRHC would like to state its concern in regards to the generalized use of compulsory testing orders. Whilst we understand the anxiety that can be posed by an individual exposed to another person's blood or bodily fluid, we strongly recommend that this provision not be included in the Act.

If an individual's blood or other bodily fluid is involved in a needle-stick injury in a health care setting, that individual should have the right to be tested elsewhere. We are concerned that a person with a past history of injecting drug use, who is involved in a needle-stick incident in a hospital, may be subjected to judgment on it being found out that they have hepatitis C. In addition, this result would then be on the individual's file at that hospital, and on any subsequent visits this information would be known by the clinicians involved in their care. We know from our experience of working with injecting drug users, that often current or past drug users are declined appropriate pain management due to judgmental attitudes from hospital staff. It is that individual's right to choose whether they disclose any current or past injecting drug practices.

Given there is no post-exposure prophylaxis treatment available for hepatitis C, and current tests are able to detect the virus within a four to six weeks timeframe from initial infection, there does not seem to be any compelling reason why hepatitis C test should be carried out on a 'potentially infected' person.

In addition, hepatitis C treatments are extremely effective at resolving the viral infection if given within the first six months from the time of infection, therefore, normal testing procedure after a possible infection incident would allow plenty of time for treatment to start – if needed and/or required.

There is also no mention of the fact that if people are to be tested, counseling would need to be provided, especially since the original party may not be aware that they might have a hepatitis C infection. Given that hepatitis C is often asymptomatic, it would be very difficult to ascertain who is a potential risk, and would lead to all kind of subjective judgments.

Recommendation 165 – Section Reference 5.4

WRHC would like to state that samples should adhere to the Privacy Act and should not be kept and/or used for purposes that they were originally intended for. Any other use of the sample, other than for the original intended purposes, should not be carried out without the specific authorization of the person whose sample it is.

Section Reference 5.6.4

WHRC has strong concerns that the issue of no longer coding group C & D infectious diseases was raised in the review. Given the continued discrimination that is faced by HIV positive people, we believe that this is a backwards step and may cause certain 'at risk' groups to be reluctant to seek testing. We note that the Review stated that "coding this information makes it impossible for contact tracing to be conducted in relation to these diseases", however this has not been our experience, and our ongoing relationship with the Partner Notification Officers has been extremely efficient and worked to the advantage of our client group and the broader community, despite our use of coded notifications.

Indeed it is the recommendation of WRHC that the coding of names be extended to include hepatitis c.

Recommendation 185 - Section Reference 5.7

WRHC recognizes the value of pre and post test counseling and does not agree with the removal for the requirement of specific pre and post-test counseling provisions.

Pre test counselling has a number of functions, one of which is that it allows clinicians to do a thorough risk assessment that can be used to a) evaluate the likelihood of a positive result and b) assist with the notification process. Indeed, many of the questions asked on the DHS enhanced notification form for HIV come from the pre-test counselling and they are, in many cases, inappropriate questions to be asking when a client has received a positive result, or indeed if the positive person does not return for their results. We are of the belief that, without the legislative requirement for compulsory pre test counselling, the quality of data provided to the DHS in the form of notifications will greatly deteriorate.

Counselling is an integral part of the medical care that should be provided to people and has major beneficial impact on people's psychological and physical health. It is our experience that comprehensive pre test counselling has "softened the impact" of a positive result and greatly assisted the client to prepare for the medical interventions that they will likely require. It is our concern that individual's who do not receive pre test counselling, and are then faced with a positive result, are less likely to address to be in a situation whereby they can address their health needs.

Counselling is also a very powerful tool in a comprehensive package for the prevention of the spread of the HIV virus. Post test counselling for negative tests is an excellent opportunity for clinicians to explore prevention options and, in referring back to the information from the pre test counselling, examine any risk behaviour that the client may be engaging in, and reinforce the safer using/safer sex message.

Recommendation 186 - Section Reference 5.7

WRHC not only supports the need for post test counselling to be provided to people undergoing a hepatitis C test, but also calls for the implementation of pre and post test counselling for individuals being tested for hepatitis c. There is anecdotal evidence that hepatitis c results are being provided in ways that do not provide adequate support for the individual, and indeed, WRHC has spoken to clients who have stated that they thought a 'positive' hepatitis c result meant that they did not have the virus.

In addition, WRHC would support the introduction of a requirement that medical practitioners are not exempt from undergoing the Counsellor Accreditation Program to become people of a "prescribed class" to provide pre and post test counselling.

Recommendation 203 - Section Reference 5.9

WRHC would like to iterate its strong support for this recommendation that conditions such as HIV, hepatitis C and hepatitis B not be compulsory notified to a school if a child has one of these illnesses. The potential for discrimination against a child who is HIV, hepatitis c or hepatitis b affected is of concern, and the main risks of transmission of this infections (sexual contact for hepatitis b and HIV and sharing of injecting equipment for all three) does not warrant a notification to the school principal.