


Submission
in response to the

*Review of the Health Act 1958
A new legislative framework for
public health in Victoria*

21 December 2004

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EXECUTIVE SUMMARY

This submission responds to the *Discussion Paper* released by the Department of Human Services in August 2004. The submission supports the overall tenor of the suggestions made in the *Discussion Paper* about building public health through democratic principles of accountability and transparency, intersectoral collaboration, community participation, and protection for individual rights. Our submission, then, is focused on recommendations aimed at strengthening the proposals made in the *Discussion Paper*. In particular, Health Issues Centre argues that the *Health Act 1958 (Vict.)* should provide a framework for public health policy that builds greater community engagement into public health effort across all sections of the health sector.

In order to strengthen public health policy in Victoria, Health Issues Centre believes there needs to be more comprehensive community consultation about public health, the *Health Act 1958 (Vict.)*, and the roles and responsibilities of different stakeholders in addressing public health priorities. Consultations with the community need to be distinguished from the extensive consultations occurring with public sector agencies and organisations. It should include a focus on meeting with the marginalised and disadvantaged groups in Victoria who would most benefit from more effective public health interventions. Secondly, we are proposing that under the *Health Act 1958 (Vict.)*, the State Government should be required to develop a Public Health Strategy and to establish a Community Advisory Committee to advocate and advise the Government about the development, implementation and monitoring of a Strategy.

The submission then shifts from discussing a broader public health policy, to make some specific recommendations about additions to the legislation. These suggestions include amending the *Health Act 1958 (Vict.)* to provide an explanatory memorandum, to create the capacity for the Minister to develop Public Health Guidelines and for the Secretary to publish guidelines for committees. The submission makes some suggestions about measures to protect individual's rights by strengthening the checks and balances relating to Public Health Orders. Finally, while Health Issues Centre supports the Principles and Objects being proposed in the *Discussion Paper*, this *Paper* does not provide enough information to enable a considered response to the approach to public health that is being flagged, and we request that more detail be provided about what is being proposed. We are also concerned about the extent to which the collection of health information overrides consumers' privacy protections.

RECOMMENDATIONS

Recommendation 1

That a more comprehensive consultation process about the proposed changes to the *Health Act 1958 (Vict.)* be developed to ensure input from interested consumers and community groups from across the State.

Recommendation 2

That in this consultation process, special effort be made to consult with those disadvantaged groups who have the poorest health outcomes, in order to develop agreed approaches to addressing the current inequalities in population health outcomes.

Recommendation 3

That the *Health Act 1958 (Vict.)* recognise the community interest in improving public health and the value of engaging the community in developing and implementing public health interventions.

Recommendation 4

That the *Health Act 1958 (Vict.)* be amended to include a mandatory requirement for a three year Public Health Strategy to give effect to the (proposed) Principles and Objects contained in the *Act*.

Recommendation 5

That the Public Health Strategy should engage the community debates about responding to public health problems in a concerted and systematic manner, informed by evidence based practice.

Recommendation 6

That the Public Health Strategy should include a gendered focus on family as integral to improving public health in Victoria.

Recommendation 7

That the *Health Act 1958 (Vict.)* be amended to establish a Community Advisory Committee to provides advice to the Secretary on the development and implementation of a Public Health Strategy.

Recommendation 8

That the *Health Act 1958 (Vict.)* be amended to include an explanatory memorandum that provides:

- a statement of purpose;
- the Objects and Principles of the legislation;
- definitions; and
- a summary of the content of different sections of the *Act*

Recommendation 9

That the Objects of the *Health Act 1958 (Vict.)* should be written into the legislation as statutory obligations.

Recommendation 10

That the *Health Act 1958 (Vict.)* be amended to provide the Minister with the power to develop *Public Health Guidelines* and for the Secretary to publish guidelines for departmental committees.

Recommendation 11

That DHS provides information to the public explaining the triggers and thresholds for Public Health Orders, the time limits on their application, and the processes for review and then redress if, or when, people's rights have been unnecessarily encroached on.

Recommendation 12

That the review process for Public Health Orders should providing people who are subject to Public Health Orders with free legal representation to judicial review through the Supreme Court. Alternatively, DHS should consider establishing a review process similar to that used by the Mental Health Review Board.

Recommendation 13

That the *Health Act 1958 (Vict.)* identify a mechanism for community representatives to request that a public health inquiry be conducted.

Recommendation 14

That more information be provided about the application of the Principles that are proposed in the Discussion Paper.

Recommendation 15

That more information be provided to the public about the data collection regime operating under the *Health Act 1958 (Vict.)* and that opportunity be provided for the public to comment on its expectations regarding the collection of health information and the protection of privacy.

INTRODUCTION

Health Issues Centre welcomes the opportunity to have input into the review of the *Health Act 1958 (Vict.)*. Health Issues Centre believes that the *Health Act 1958 (Vict.)* needs to be updated to provide a legislative framework for the organised and deliberate efforts to promote, protect and restore the health of the community for the 21st Century. Public health law has a broader mandate than just environmental health. Effective public health policy needs to acknowledge the significance of social, economic and political factors in the incidence and prevalence of disease in different populations. Health Issues Centre believes that Victoria would benefit from legislation that provides a framework for:

- Building a focus on population health;
- Behaviour modification in a social context;
- Community participation in policy and planning; and
- Recognising social justice and equity as important determinants of health outcomes

COMPREHENSIVE COMMUNITY CONSULTATIONS REGARDING AMENDMENTS TO THE *HEALTH ACT 1958 (VICT.)*

Health Issues Centre believes that the State Government's efforts to improve public health through amending the *Health Act 1958 (Vict.)* would be more effective if they included a comprehensive community consultation strategy. Public health legislation is an important tool for providing a framework for protecting and promoting the public's health. It is important, then, that the legislation recognises community values and priorities, and provides a considered response to the varied circumstances of different consumer and community groups across the population of Victoria. These interests need to be identified separately from the views of government departments, statutory authorities, health services and health professionals, who are better able to make the kinds of submissions that will influence legislation.

Government needs to take responsibility for ensuring that all groups in the community are given an opportunity to comment on what the public health priorities are and what strategies are, or would be, acceptable to the community. However, as the List of Stakeholders for this review shows, there are only a small number of non-government organisations and peak bodies available to comment on issues as complex as, for example, cultural diversity and public health. If government is to rely on peak bodies to represent the complexity and diversity of views across the Victorian population, then this needs to be properly resourced.

Health Issues Centre is particularly concerned that the consultation process for a new legislative framework is weighted against those groups in the community who are currently most disadvantaged – by language and cultural differences, by distance from Melbourne, by poverty, social stigma and discrimination - and who carry a greater burden of illness because of the social determinants of health. It is, however, precisely these groups who could make the most valuable contribution to improving public health by explaining how current public health interventions fail to meet their needs. Following on from this, the legislation needs to ensure that the public health system is responsive to the views of the community. This needs to include engaging consumers and community groups in the decision-making processes that develop policy, make planning decisions, allocate resources and implement models of care.

A comprehensive community consultation process needs to hear directly from the community – through focus groups, forums and public meetings. Government needs to recognise the knowledge, skills and relationships that peak bodies have, and work with these organisations to facilitate an ongoing dialogue with those communities. Under-resourced organisations will always struggle to respond to government processes with the result that crucial perspectives in the debates are not represented. Government should make a commitment to resourcing the peak bodies to facilitate consultations that are comprehensive of the diversity in the population and to represent their constituents' views at Government's policy and planning forums.

Health Issues Centre makes these comments with the knowledge that the community consistently requests more investment in public health information, education, prevention and early intervention as an approach to improving population health outcomes¹. Health Issues Centre believes that the review of the *Health Act 1958 (Vict.)* provides an opportunity to review resource allocation priorities and look at measures to encourage greater investment in health promotion.

Recommendation 1

That a more comprehensive consultation process about the proposed changes to the *Health Act 1958 (Vict.)* be developed to ensure input from interested consumers and community groups from across the State.

Recommendation 2

That in this consultation process, special effort be made to consult with those disadvantaged groups who have the poorest health outcomes, in order to develop agreed approaches to addressing the current inequalities in population health outcomes.

GREATER COMMUNITY ENGAGEMENT IN IMPROVING PUBLIC HEALTH

Health Issues Centre believes that public health is an issue of great interest to the community, and that the community would be keen to provide input in order to improve public health strategies for Victoria. It is an area that would benefit from greater community engagement in the development and delivery of public health strategies.

The Department of Human Services (DHS) should develop a strategy for engaging the community in efforts to improve health and wellbeing across Victoria. A Community Engagement Strategy would provide formal, structured opportunities for DHS to receive feedback about public health efforts to date, local information about gaps in service and areas of unmet needs, plus advice from disadvantaged groups about responding to issues that disproportionately impact on their health and wellbeing.

Community engagement would also lessen the risks associated with the exercise of the statutory powers under the *Health Act 1958 (Vict.)*, by educating the public

¹ See *Community Participation in Action, An Evaluation Of Community Participation Methods Trialled At A Forum Conducted by Southern Health* September 2004, Australian Institute for Primary Care, pp 14 -19, <http://www.healthissuescentre.org.au/docs/southernhealthreport.pdf>

about the importance of these powers and formalising accountability processes to the community about the exercise of the powers.

Recommendation 3

That the *Health Act 1958 (Vict.)* recognise the community interest in improving public health and the value of engaging the community in developing and implementing public health interventions.

A PUBLIC HEALTH STRATEGY

Health Issues Centre believes that Victoria needs a Public Health Strategy to guide stakeholders' efforts in improving public health. Health Issues Centre believes that the Review of the *Health Act 1958 (Vict.)* provides an opportunity to develop a coherent and integrated framework for action across the health sector to improve the health and wellbeing of Victorians. We recommend that the legislation be amended to include the requirement that the State Government must develop a three-year Public Health Strategy that is consistent with the (proposed) Objects and Principles of the *Health Act 1958 (Vict.)*, and can build on the local planning that occurs through the Municipal Public Health Plans.

The Public Health Strategy would provide the opportunity for Government to describe how it would give effect to the Principles and Objects contained in the legislation. Health Issues Centre is particularly concerned about the growing differences in health outcomes between different population groups in Victoria. A Public Health Strategy would provide a basis for focusing the sectors' efforts to address population based inequalities, guide government activities and provide direction and support for other stakeholders. The Strategy should set minimum standards for improving the health and wellbeing of different population groups, and use these measures as the basis for identifying priorities for public health action and planning interventions to address the discrepancies in health outcomes. It is unacceptable that the *Health Act 1958 (Vict.)* prescribes that local government must undertake such planning but that the Department of Human Services is not subject to comparable statutory obligations.

There is also a need to define the roles and responsibilities of government and non-government stakeholders in working to improve public health. A Strategy would provide a process for identifying gaps and areas of duplication and for developing a rational, consistent and concerted approach to resolving the issues in resourcing and planning that impact on the capacity of health services and local government to meet the needs of disadvantaged communities. A Strategy would also provide an opportunity to establish a quality framework that can monitor, provide feedback and direction to public health effort in order to track the long-term effect on population health outcomes.

The development of a Public Health Strategy would also provide an opportunity for DHS to develop public support for addressing health issues according to the evidence about what is effective. Substance abuse and harm minimisation, reproductive health education and abortion and violence in relationships are major public health issues. Each of these issues is also a sensitive topic in the community. Public health's potential role is sometimes complicated by the involvement of the criminal justice system in responding to people affected by these behaviours. The community needs to be engaged in debates about community standards and expectations, informed by the evidence about what is effective. These debates need to occur outside of the media, which rarely has public interest as a priority.

An effective public health system would provide interventions aimed at preventing issues, such as substance abuse, from escalating to the point of involving the criminal justice system. Public health has a proven capacity to educate and support women to control their fertility and to address addictive behaviours. A Public Health Strategy needs to include a gendered approach to building health and wellbeing in families. The health system is regularly used by women who have violent partners and health professionals need to be better educated in recognising and responding to violence in relationships. Building on this, resources for counselling and support need to be invested according to a planned approach to addressing needs. Community support for evidence based policy and practice in response to these difficult social problems would provide a mandate for the health system to play a leadership role in providing public health interventions for families affected by these issues.

Recommendation 4

That the *Health Act 1958 (Vict.)* be amended to include a mandatory requirement for a three year Public Health Strategy to give effect to the (proposed) Principles and Objects contained in the *Act*.

Recommendation 5

That the Public Health Strategy should engage the community debates about responding to public health problems in a concerted and systematic manner, informed by evidence based practice.

Recommendation 6

That the Public Health Strategy should include a gendered focus on family as integral to improving public health in Victoria.

ESTABLISHING A COMMUNITY ADVISORY COMMITTEE

Health Issues Centre proposes that the *Health Act 1958 (Vict.)* should establish a Community Advisory Committee as a forum for giving effect to the (proposed) principle recognising the community interest in public health. The Community advisory Committee should include in its membership representatives who are able to advocate for the interests of disadvantaged groups. Such a Committee could provide a number of useful functions for building public health as it is being promoted in the Discussion Paper. A Community Advisory Committee would provide a forum for:

- Providing a community perspective on achieving the Objects of the Act, and implementing the Principles of the Act;
- Discussing community priorities, policy frameworks, planning and resource allocation with public health stakeholders;
- Providing DHS with guidance about consulting the broader community about a Public Health Strategy and its implementation across Victoria;
- Monitoring the implementation and impact of the Public Health Strategy from a community perspective; and
- Monitoring issues in the quality and efficacy of public health strategies, especially as it relates to issues where there is strong public interest such as intersectoral coordination and planning, and resource allocation to build the health system's capacity to deliver effective early intervention services to different population groups

Recommendation 7

That the *Health Act 1958 (Vict.)* be amended to establish a Community Advisory Committee to provides advice to the Secretary on the development and implementation of a Public Health Strategy.

AN EXPLANATORY MEMORANDUM

It would assist lay readers and users of the *Health Act 1958* (Vict.) to understand and apply the *Act*, if there could be an explanatory section at the front of the legislation. This would include shifting the Purposes, which are currently detailed in Section 119, into the opening section, along with the Objects, Guiding Principles, Definitions and then adding a guide to the content of different sections of the *Act*. We note that the *Health Records Act 2001* begins with an explanatory memorandum, and provides a guide to the content of the different sections. This is very useful for helping people who are unfamiliar with the structure and content of legislation to understand the law in relation to health information in Victoria.

Recommendation 8

That the *Health Act 1958* (Vict.) begins with an explanatory memorandum that includes:

- a statement of purpose;
- the Objects and Principles of the legislation;
- definitions; and
- a summary of the content of different sections of the *Act*

In relation to the Objects of the *Act*, Health Issues Centre believes that legislation should provide certainty about different stakeholder's statutory obligations in regard to public health and that the Objects should be written into the *Health Act 1958* (Vict.) as a statutory obligation.

Recommendation 9

That the Objects of the *Health Act 1958* (Vict.) should be written into the legislation as statutory obligations.

CAPACITY TO DEVELOP GUIDELINES

Health Issues Centre believes that the *Health Act 1958* (Vict.) would be better able to respond to emerging public health issues in the population if it included the capacity for the Minister to develop Public Health Guidelines. Such Guidelines would be useful for providing direction to the diverse range of services and agencies that have a stake in public health about the implementation of a Public Health Strategy. Part 2 of the *Health Services Act 1988* (Vict.) provides for Health Services Development Guidelines.

Health Issues Centre also believes it would be useful if the *Health Act 1958* (Vict.) gave the Secretary the capacity to issue guidelines regarding the management of committees. Health Issues Centre's experience of working with Community Advisory Committees in Metropolitan Health Services has been that the non-statutory guidelines issued by the Department of Human Services have provided a consistent basis for building organisational commitment to community participation.

Recommendation 10

That the *Health Act 1958* (Vict.) be amended to provide the Minister with the power to develop *Public Health Guidelines* and for the Secretary to publish guidelines for departmental committees.

Triggers and thresholds for Public Health Orders

Health Issues Centre is concerned that proposed amendments to the *Health Act 1958 (Vict.)* will provide the Secretary with a range of increasingly coercive powers over individuals. It is not clear from the Discussion Paper what the triggers are for the Secretary to issue Public Health Orders, what the thresholds are for the application of these Public Health Orders and what the time limits are on their application. A plain language guide explaining what these powers entail, why the powers need to be increased, how these powers have been exercised and the process for review and redress would provide also be useful.

Recommendation 11

That DHS provides information to the public explaining the triggers and thresholds for Public Health Orders, the time limits on their application, and the processes for review and then redress if, or when, people's rights have been unnecessarily encroached on.

Review Process For People Subject To Public Health Orders

Health Issues Centre understand that the powers in relation to Public Health Orders have to date been exercised with restraint and caution. However, we believe that the greater power being vested in the Secretary under the proposed amendments to the *Health Act 1958 (Vict.)* needs to be balanced by strengthening the processes for review and redress in relation to the exercise of these powers. In times of uncertainty, fear and crisis (such as public health emergencies) it is important that the interests and behaviour of unpopular minorities are not stigmatised or misconstrued as a threat to public health. The legal system needs to continue to provide for timely and robust defence of individual's entitlements, free of the influence of public panic. The forums for judicial review of Public Health Orders need to take into account the circumstances of the people who are subject to these Orders. The Victorian Civil and Administrative Tribunal (VCAT) and the Supreme Court are not accessible forums for people who are, often, socially marginalised and economically disadvantaged. In recognition of this, the *Health Act 1958 (Vict.)* could require the State to provide free legal representation to people subject to a Public Health Order. Alternatively, the Mental Health Review Board should be considered as a model for providing an alternative to the Supreme Court for reviews of Public Health Orders.

Recommendation 12

That the review process for Public Health Orders should provide people who are subject to Public Health Orders with free legal representation to judicial review through the Supreme Court. Alternatively, DHS should consider establishing a review process similar to that used by the Mental Health Review Board.

Inquiries

Health Issues Centre believes that there needs to be some discussion about a mechanism for enabling community representatives to make a formal request to the Chief Health Officer to undertake an inquiry into issues that pose a serious public risk. This could include consideration of whether the *Health Act 1958 (Vict.)* should identify a criteria by which the proposed Community Advisory Committee could request such an inquiry.

Recommendation 13

That the *Health Act 1958 (Vict.)* identify a mechanism for community representatives to request that a public health inquiry be conducted.

COMMENTS ON THE PROPOSED PRINCIPLES AND OBJECTS, AND HEALTH INFORMATION AND PRIVACY

In the August 2004 *Discussion Paper*, a number of important issues are raised – such as privacy and the collection of health information - and proposals, such as the introduction of Health Impact Assessments, are flagged. As well, important principles for accountability, for recognising the community interest in health, for protecting against the unnecessary encroachment on individual rights and for promoting public health as a collaborative and intersectoral effort are raised and put forward for comment.

Health Issues Centre is requesting more information about the possible application of these Principles. For example, the section in the *Discussion Paper* on addressing health inequalities describes different groups in the community who are currently disadvantaged, as well as different areas that could be targeted by public health activities, but there is no detail about what measures government is prepared to consider in its efforts to improve the health status of these groups. It is also not clear from the *Discussion Paper* how the Principle recognising the community interest in public health would be given effect, or in the case of the Principle of accountability, what mechanisms, aside from those already operating, would be introduced to ensure that public health officials can be held accountable for their actions.

Recommendation 14

That more information be provided about the application of the Principles that are proposed in the *Discussion Paper*.

Privacy and Health Information

Similarly, it is not clear from the *Discussion Paper* how the *Health Act 1958 (Vict.)* would interact with the *Health Records Act 2001 (Vict.)* in regards to protections for consumers' privacy, or about how privacy principles relate to health service's data collections, the operation of registers and data matching. Where the *Health Act 1958 (Vict.)* overrides the protections provided to consumers under the *Health Records Act 2001 (Vict.)*, there needs to be greater transparency about what health information is collected, and why, how it will be used, stored, shared, accessed and corrected. Health Issues Centre would also like to see more transparency and public discussion about data matching and health information registers, to ensure that consumers are providing fully informed consent to these information collection practices. There needs to be further public discussion about how health information will be used to strengthen and protect public health and greater debate about responding to possible conflicts between protecting privacy and collecting health information.

Recommendation 15

That more information be provided to the public about the data collection regime operating under the *Health Act 1958 (Vict.)* and that opportunity be provided for the public to comment on its expectations regarding the collection of health information and the protection of privacy.