

# Review of *Public Health Act 2010*



3 June 2016

## About NCOSS

The NSW Council of Social Service (NCOSS) works with and for people experiencing poverty and disadvantage to see positive change in our communities.

When rates of poverty and inequality are low, everyone in NSW benefits. With 80 years of knowledge and experience informing our vision, NCOSS is uniquely placed to bring together civil society to work with government and business to ensure communities in NSW are strong for everyone.

As the peak body for health and community services in NSW we support the sector to deliver innovative services that grow and evolve as needs and circumstances evolve.

Published June 2016

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## Introduction

NCOSS welcomes the opportunity to respond to the issues raised in the discussion paper relating to the statutory review of the *Public Health Act 2010*.

This response has an equity focus, concentrating on the issues affecting people experiencing disadvantage. It is informed by the NCOSS Health Policy Advice Group (HPAG), a forum of peak and state-wide non-government organisations with an interest in health and equity issues.

## Summary of recommendations

1. That an objective 'to reduce inequality in the state of public health and well-being' be inserted into the *Public Health Act 2010*.
2. That principles be added to the *Public Health Act 2010*, modelled on the *Public Health and Wellbeing Act 2008 (Vic)*. A principle promoting consumer consultation and engagement should also be included.
3. That the *Public Health Act 2010* include an objective relating to monitoring of disease.
4. That a compliance regime is established under the *Public Health Act 2010* in relation to s. 25, applying to all suppliers of drinking water listed in s. 5.
5. That the compliance regime involve improvement notices rather than penalties.
6. If a penalty notice regime is introduced, penalties should be proportional to an operator's income, or administrators should be given the discretion to waive or reduce fees for smaller operators.
7. That provisions concerning de-identifying notification of cases of HIV remain in the *Public Health Act 2010*.
8. That s. 56 (4)(b) of the *Public Health Act 2010* be maintained in its current form.
9. That s. 79 be removed from the *Public Health Act 2010*.
10. That a section be inserted into the *Public Health Act 2010* setting out the principles relating to the management and control of infectious disease, similar to s. 111 of the *Public Health and Wellbeing Act 2008 (Vic)*.
11. That the current provisions in the *Public Health Act 2010* relating to vaccine preventable diseases be extended to apply to high schools. This should be accompanied by adequate funding for mobile immunisation programs to visit all schools.

12. If the conscientious objection provisions are removed from the *Public Health Act 2010*, additional resources should be directed towards supporting families experiencing disadvantage overcome barriers to vaccinating their children. Appropriate measures include:
- a. Extending the Sustained Nurse Home Visiting program across NSW.
  - b. Ensuring adequate funding for mobile immunisation programs to visit early childhood education and care centres, as well as schools.
  - c. Other programs that educate parents about the science surrounding immunisation, and its benefits.

In addition, the 16 week grace period which applies in to immunisation Victoria should be replicated in the *Public Health Act 2010*, and schools and childcare centres provided with appropriate resources, information and documentation to assist parents during the grace period.

13. That s. 98 of the *Public Health Act 2010* be amended to require consultation and co-design to occur with health consumers and community representatives before public health registers are developed.
14. That s. 106 of the *Public Health Act 2010* be amended to require:
- a. the Secretary to consult with health consumers and community representatives before initiating an inquiry:
  - b. the Secretary to seek the input of consumers and community representatives while the inquiry is being conducted, and publicly report how this input has been acted on.
15. That s. 104 of the *Public Health Act 2010* be retained, and mechanisms for enforcement added to the Act
16. That s. 104 of the *Public Health Act 2010* be applied to facilities within the wider definition of ‘nursing home’ in the *Aged Care Act 1997 (Cth)*.

## 2 Objects of the *Public Health Act 2010*

While NCOSS considers the objects of the *Public Health Act* are valid and appropriate, we believe the Act would be strengthened by an explicit focus on equity, and recommend that equity therefore be reflected in the objects of the Act.

A focus on equity is important given the disparity in health outcomes in NSW, including in relation to infectious disease. It has been clearly established that Australians from lower socioeconomic backgrounds have significantly poorer health, and a shorter life expectancy compared to their more advantaged peers.<sup>1</sup> An

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<sup>1</sup> Draper et al (2004) [Health Inequalities in Australia: Mortality: Final Report](#), Australian Institute of Health and Welfare

objective relating to equity would signal the Government's commitment to redressing these inequities. In addition, such an objective would be in line with Goal 10 of the Sustainable Development Goals, to which Australia is a signatory.

In Victoria, the *Public Health and Wellbeing Act 2008* has a focus on equity. Section 4 states that the Act seeks to obtain the highest attainable standard of health and wellbeing by: *reducing inequalities in the state of public health and wellbeing*.<sup>2</sup> The Victorian Act also contains principles with an equity focus, including:

- Primacy of prevention, including capacity building and health promotion activities<sup>3</sup>;
- Accountability, including opportunities for public participation in policy and program development<sup>4</sup>;
- Collaboration between sectors of the community<sup>5</sup>.

We recommend that these principles are added to the *Public Health Act 2010*. We also suggest a principle of consumer consultation and engagement, which would enhance public health by empowering consumers to take an active role in matters relating to their health.

As suggested in the *Public Health Act 2010 Statutory Review Discussion Paper*, we support the inclusion of an objective relating to monitoring of diseases.

#### **Recommendation 1**

That an objective 'to reduce inequality in the state of public health and well-being' be inserted into the *Public Health Act 2010*.

#### **Recommendation 2**

That principles be added to the *Public Health Act 2010*, modelled on the *Public Health and Wellbeing Act 2008 (Vic)*. A principle promoting consumer consultation and engagement should also be included.

#### **Recommendation 3**

That the *Public Health Act 2010* include an objective relating to monitoring of diseases.

## 3.3 Safe supply of drinking water

NCOSS considers that a compliance regime should be established under the *Public Health Act 2010* in relation to s. 25, so that all suppliers of drinking water (as defined in s. 5 of the *Public Health Act*) must establish and adhere

<sup>2</sup> s.4(2)(c) *Public Health and Wellbeing Act 2008 (Vic)*.

<sup>3</sup> s.7 *Public Health and Wellbeing Act 2008 (Vic)*.

<sup>4</sup> s. 8 *Public Health and Wellbeing Act 2008 (Vic)*.

<sup>5</sup> s.10 *Public Health and Wellbeing Act 2008 (Vic)*.

to a quality assurance program. This would ensure quality assurance programs are properly implemented. We note local councils exercising water supply functions would be included in this regime.

We recommend that the compliance regime involve improvement notices rather than penalties.

While existing penalty notice levels under the *Public Health Regulation* are insufficient to reflect the seriousness of quality breaches, their potential impact on public health and the income of large water utilities, we note that substantial penalties may have a disproportionately harsh impact on smaller rural and regional council water suppliers, who have a lower income and capacity to pay. Therefore, if a penalty notice regime is introduced instead of improvement notices, equity would be increased if:

- the penalty was proportional to an operator's income, or;
- administrators had discretion to waive or reduce fees for smaller operators.

#### **Recommendation 4**

That a compliance regime is established under the *Public Health Act 2010* in relation to s. 25, applying to all suppliers of drinking water listed in s. 5.

#### **Recommendation 5**

That the compliance regime involve improvement notices rather than penalties.

#### **Recommendation 6**

If a penalty notice regime is introduced, penalties should be proportional to an operator's income, or administrators should be given the discretion to waive or reduce fees for smaller operators.

## 3.5 Scheduled medical conditions and other disease control measures and notifications

### 3.5(c) Section 56 and notification of HIV and AIDS

NCOSS endorses the position of ACON Health that the provisions concerning the de-identification of cases of HIV should not be removed from the *Public Health Act 2010*. While we acknowledge that the stigma against people living with HIV has decreased, it is still at a level that justifies an individual's privacy being treated as paramount.

Stigma is particularly prevalent in healthcare settings. For example, the 2012 Stigma Audit conducted by the National Association of People with HIV Australia found that that 30% of people with HIV sometimes or often feel excluded, avoided, rejected or blamed in health care settings.<sup>6</sup> Accordingly, we recommend s. 56 (4)(b) of

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<sup>6</sup> National Australia of People with HIV Australia (2012), [The HIV Stigma Audit Community Report](#).

the *Public Health Act* is 2010 be maintained in its current form, so that health professionals are only aware of a person's HIV status if this is necessary to the consultation.

We consider that peer networks are the most appropriate vehicle for education focused on harm minimisation, and must be funded appropriately.

**Recommendation 7**

That provisions concerning de-identifying notification of cases of HIV remain in the *Public Health Act 2010*.

**Recommendation 8**

That s. 56 (4)(b) of the *Public Health Act 2010* be maintained in its current form.

### 3.5(d) Disclosure of STI status –s79

NCOSS supports the removal of s. 79 from the *Public Health Act 2010*, which we believe runs counter to messages promoting safe sex and has the potential to stigmatise people with HIV. The principles in the Victorian *Public Health and Wellbeing Act 2008* appropriately balance the individual's responsibility for disease prevention with the protection of rights.

**Recommendation 9**

That s. 79 be removed from the *Public Health Act 2010*.

**Recommendation 10**

That a section be inserted into the *Public Health Act 2010* setting out the principles relating to the management and control of infectious disease similar to s. 111 of the *Public Health and Wellbeing Act 2008 (Vic)*.

## 3.6 Vaccine preventable diseases

### 3.6(a) Extension of existing provisions relating to vaccine preventable diseases to high schools

NCOSS is strongly supportive of immunisation, and believes a consistent regime should apply across early education and care, primary and high school settings. As highlighted in the discussion paper, the extension of the Australian Childhood Immunisation Register makes a consistent approach possible.

Extension of these provisions should be accompanied by adequate funding for mobile immunisation programs to visit all schools, in line with NSW Government's obligation to fund school immunisation programs.<sup>7</sup>

<sup>7</sup> Ward et al (2013) "[Adolescent school-based vaccination in Australia](#)" *Communicable Diseases Intelligence*, Volume 37 No

## **Recommendation 11**

That the current provisions in the *Public Health Act 2010* relating to vaccine preventable diseases be extended to apply to high schools. This should be accompanied by adequate funding for mobile immunisation programs to visit all schools.

### **3.6(c) Childcare enrolment requirements**

NCOSS recognises the importance of early childhood education, particularly for children in families experiencing poverty and disadvantage, and has advocated for increased investment in order to achieve universal access.

Provisions in the current *Public Health Act 2010* obligate early childhood education and care directors to obtain, prior to enrolling a child, a vaccination certificate in an approved form (indicating that the child is age appropriately vaccinated, on a catch up schedule, has a medical contra- indication to vaccination, or has parents who have a conscientious objection to vaccination). Recent amendments to Commonwealth legislation create an additional incentive for parents to vaccinate their children by removing the ability of parents who are conscientious objectors to vaccination to receive the Child Care Benefit, Child Care Rebate and the Family Tax Benefit Part A end of year Supplement. Partly in order to bring NSW into line with Commonwealth requirements, the discussion paper proposes removing the conscientious objection exemption from the *Public Health Act 2010*.

NCOSS considers that if the conscientious objection provisions are removed the *Public Health Act 2010*, additional effort and resources to support families experiencing disadvantage to vaccinate their children.

These measures include:

- Extending the Sustained Nurse Home Visiting program across NSW, starting with vulnerable families. This will raise awareness of the importance of vaccination.
- Ensuring adequate funding for mobile immunisation programs to visit early childhood education and care centres, as well as schools.
- Other programs that educate parents about the science surrounding immunisation, and its benefits.

Additionally, we recommend that the 16 week grace period which applies to immunisation in Victoria is replicated in the *Public Health Act 2010*<sup>8</sup>, and schools and childcare centres are provided with vaccination and documentation to assist parents in the grace period.

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<sup>8</sup> Vic Health (2016) [Frequently Asked Questions: No Jab, No Play](#).



**Recommendation 12**

If the conscientious objection provisions are removed the *Public Health Act 2010*, additional resources should be directed towards supporting families experiencing poverty and disadvantage overcome barriers to vaccinating their children. Appropriate measures include:

- Extending the Sustained Nurse Home Visiting program across NSW.
- Ensuring adequate funding for mobile immunisation programs to visit early childhood education and care centres, as well as schools.
- Other programs that educate parents about the science surrounding immunisation, and its benefits.

In addition, the 16 week grace period which applies to immunisation in Victoria should be replicated in the *Public Health Act 2010*, and schools and childcare centres provided with appropriate resources, information and documentation to assist parents in the grace period.

## 3.7 Public Health Registers and 3.8 Public Health inquiries

NCOSS supports the creation of public health registers under ss. 97-98 of the *Public Health Act 2010* and the Secretary's ability to initiate public health inquiries under s. 106.

In our view, these important processes would be strengthened if consultation and co-design took place with health consumers and community representatives before public health registers were developed. This engagement would add an additional level of accountability and ethical oversight to the process, respecting both the rights and expertise of consumers.

Similarly, we consider the Secretary should consult with health consumers and community representatives before initiating an inquiry under s. 106 of the *Public Health Act 2010*. Consumer input should also be sought while the inquiry is being conducted. To ensure accountability, the Secretary should publicly report how this input has been acted on after the inquiry has concluded.

**Recommendation 13**

That s. 98 of the *Public Health Act 2010* be amended to require consultation and co-design to occur with health consumers and community representatives before public health registers are developed.

**Recommendation 14**

That s. 106 of the *Public Health Act 2010* be amended to require:

- the Secretary to consult with health consumers and community representatives before initiating an inquiry;
- the Secretary to seek the input of consumers and community representatives while the inquiry is being conducted, and publicly report how this input has been acted on.

## 3.9 Nursing homes

NCOSS considers it important for s. 104 of the *Public Health Act 2010* be retained.

Our members believe that removing the requirement for there to be at least one Registered Nurse on duty in nursing homes will lead to a drop in the standard of care received by residents, an increase in unnecessary presentations to emergency departments and the potential loss of life. We believe that patient safety is a higher priority than the regulatory burden on the aged care system.

We note that this recommendation was put forward by the Legislative Council in its recent inquiry into registered nurses in New South Wales nursing homes.<sup>9</sup> In the interests of patient safety, we also support the Inquiry's recommendations that an enforcement regime be established for s. 104 of the *Public Health Act 2010* and that s. 104 be applied to facilities within the wider definition of 'nursing home' in the *Aged Care Act 1997 (Cth)*.<sup>10</sup>

**Recommendation 15**

That s. 104 of the *Public Health Act 2010* be retained, and mechanisms for enforcement added to the Act

**Recommendation 16**

That s. 104 of the *Public Health Act 2010* be applied to facilities within the wider definition of 'nursing home' in the *Aged Care Act 1997 (Cth)*.

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<sup>9</sup> NSW Legislative Council. General Purpose Standing Committee No. 3 (2015) [Registered nurses in New South Wales nursing homes](#)

<sup>10</sup> Ibid, recommendations 7 and 9.