

23 December 2016

Review of Ambulance Services Act
c/o Health Service Performance and Programs –
Ambulance
Department of Health and Human Services
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Table of Contents

Executive Summary and recommendations	2
Introduction.....	3
‘Support the operation of a modern ambulance service’, ‘Reaffirm Ambulance Victoria’s role’ and ‘Improve patient outcomes and experiences’	3
Why is that question important?	6
Consultation Questions 1, 3 and 4.	8
Address any scope, policy or operational issues in the current legislation	11
‘Service provision in cross-border settings’	11
‘Legislative protection for interventions within scope of practice’	12
‘Ambulance Victoria’s role in the broader state emergency management space’	14
Vicarious liability	17
Compensation for volunteers	18
Conclusion	20

Executive Summary and recommendations

This submission addresses some, but not all, of the Consultation Questions in the *Review of the Ambulance Services Act 1986 and Supporting Legislation: Consultation Paper*. This submission recommends:

- A review of the *Ambulance Services Act 1986* and supporting legislation should focus on developing legislation to regulate the operation of ambulance services in Victoria, not just Ambulance Victoria. Ambulance Victoria may be the agency through which the State of Victoria delivers ambulance services but it is not the only ambulance service in Victoria. Further, it is inevitable that the private ambulance sector will continue to grow so planning now to regulate the delivery of ambulance services will be necessary to support the operation of modern ambulance services in Victoria and improve patient outcomes and experiences.
- A revised Act should cover all aspects of ambulance services, not just emergency ambulance services. It is my submission that the regulation of NEPT services should be brought under Ambulance Services legislation as should the regulation of event first aiders. Victoria should consider legislation modelled on the *Emergencies Act 2004* (ACT) providing for a prohibition on the provision of ambulance services without approval and providing for a transparent and publicly accessible review process.
- Facilitating ‘Service provision in cross-border settings’, including extending authority to practice as a paramedic and to carry drugs should be seen as a matter requiring urgent attention. Victoria should, as a matter of urgency, extend authority under the *Drugs, Poisons and Controlled Substances Act 1981* to any person who has an equivalent authority under the law of another Australian state or territory. Any prohibition on the delivery of ambulance services should not apply to an ambulance service that is created by, or authorised by law, to operate in another state and territory of Australia.
- Legislative protection for intervention within scope of practice is not usually required. Ambulance services, including Ambulance Victoria should be expected to provide a reasonable level of care to all patients. Legislative provisions to limit the ‘duty of care’ are unnecessary. What should be considered, however, is legislative authority to undertake

acts that are necessary to preserve life where those acts may involve interference with property rights and the liberty of others, for example rights to force entry into premises, close roads and disconnect utilities. Although the law would recognise that the grant of power includes the right to exercise the power, a legislative provision to the effect that a ‘good faith’ decision is immune from suit can avoid arguments about whether the decision to force entry rather than say wait for a keyholder was ‘reasonable’ in all the circumstances.

- Ambulance Victoria is a key player in Victoria’s emergency management arrangements and should be fully incorporated into those arrangements. Consideration should be given to adding legislative provisions that require Ambulance Victoria to work with Emergency Management Victoria and the Emergency Services Commissioner to ensure that the services they provide during a disaster or emergency are coordinated and effective.
- Regulations should be enacted to define ‘ambulance work’ as community work for the purposes of the *Wrongs Act 1958* (Vic) s 37.
- Legislative provisions should be enacted to ensure volunteer ambulance officers are compensated on the same basis as employees if they are injured in the course of their volunteer duties.

Introduction

This submission is made in response to the *Review of the Ambulance Services Act 1986 and Supporting Legislation: Consultation Paper* issued by the Department of Health and Human Services in November 2016. In making this submission I address some, but not all, of the Consultation Questions in that paper.

‘Support the operation of a modern ambulance service’, ‘Reaffirm Ambulance Victoria’s role’ and ‘Improve patient outcomes and experiences’

In my submission, the first question that should be answered in any review of the *Ambulance Services Act 1986* (Vic) is ‘is the Act intended to regulate ambulance services in Victoria, or the services of Victoria Ambulance?’

The consultation paper says (at p 10):

Victoria's ambulance service is delivered solely by Ambulance Victoria... A key action in the Action Plan is to "reaffirm Ambulance Victoria's role as the state's pre-hospital emergency care and transport provider". This indicates Ambulance Victoria will continue to operate as the State's preferred provider of ambulance services.

It may be true that the ambulance service operated by the State of Victoria is delivered by Ambulance Victoria but it is not true that Victoria Ambulance is the only ambulance service operating in Victoria. In submissions to the Senate inquiry on paramedic regulation, the Australia and New Zealand College of Paramedicine noted the growing private ambulance sector¹ and Professors Bange, Brightwell and Maguire reported that 'Advertised vacancies indicate that there are more than 120 private service providers in Australia'.²

The *Ambulance Services Act 1986* (Vic) does not define what are ambulance services. New South Wales defines 'ambulance services' to mean 'services relating to the work of rendering first aid to, and the transport of, sick and injured persons'.³ South Australian legislation says that an ambulance service is 'the service of transporting by the use of an ambulance [that is 'a vehicle that is equipped to provide medical treatment or to monitor a person's health and that is staffed by persons who are trained to provide medical attention during transportation'] a person to a hospital or other place to receive medical treatment or from a hospital or other place at which the person has received medical treatment'.⁴ In Tasmania, ambulance services means 'services relating to the work of rendering out-of-hospital clinical care to, and the conveyance of, persons suffering from illness or injury'.⁵ These definitions are not limited to emergency health care.

¹ Australia and New Zealand College of Paramedicine submission to the Australian Senate's Standing Committees On Legal And Constitutional Affairs inquiry into '*The establishment of a national registration system for Australian paramedics to improve and ensure patient and community safety*' (January 2016, accessed 23 December 2016) <<http://www.aph.gov.au/DocumentStore.ashx?id=322c4ad9-5846-488c-a303-bcc4d20ca2a5&subId=408071>>.

² Ray Bange, Richard Brightwell and Brian Maguire submission to the Australian Senate's Standing Committees On Legal And Constitutional Affairs inquiry into '*The establishment of a national registration system for Australian paramedics to improve and ensure patient and community safety*' (January 2016, accessed 23 December 2016) <<http://www.aph.gov.au/DocumentStore.ashx?id=4e3e5711-1565-44ed-a03b-4b20e423327e&subId=408268>>, 18.

³ *Health Services Act 1997* (NSW), Dictionary.

⁴ *Health Care Act 2008* (SA) s 3.

⁵ *Ambulance Service Act 1982* (Tas) s 3.

In Queensland ambulance services are defined as ‘service relating to the work of rendering emergency treatment and patient care to, and the transport of, sick and injured persons’.⁶ It is a function of Queensland Ambulance Service to ‘provide transport for persons requiring attention at medical or health care facilities’.⁷ Whilst it is not clear it can be inferred that the definition involves two elements so that ‘rendering emergency treatment and patient care to ... sick and injured persons’ is an ambulance service, as is ‘service relating ... the transport of, sick and injured persons’. Sick and injured persons being transported do not also have to be receiving ‘emergency treatment and patient care’.

Traditionally state operated ambulance services, like Ambulance Victoria, provided both emergency and non-emergency patient transport (NEPT). Today the NEPT service has been increasingly separated from state provided emergency ambulance services. There is an increasing number of private organisations offering NEPT services. To the extent that these services are transporting sick and injured persons and providing some level of clinical care, it is my submission that that they are providing an ‘ambulance service’.

Apart from non-emergency patient transport there is an increasing market in event first aid services. Traditionally the domain of St John Ambulance, today there is a growing number of private first aid companies providing services ranging from basic first aid to advanced life support.⁸ These services, to the extent that they are providing emergency medical and health care are also providing ‘ambulance services’.

What follows from this discussion is that ambulance services provided by the State of Victoria may be provided ‘solely by Ambulance Victoria’ (including contracted NEPT services) but ambulance services within Victoria include more than Ambulance Victoria. This begs the question stated at the start of this section - is the Act intended to regulate ambulance services in Victoria, or the services of Victoria Ambulance?

⁶ *Ambulance Service Act 1991* (Qld) Dictionary.

⁷ *Ibid* s 3D(c).

⁸ A simple google search of ‘event first aid services’ turned up 8 providers on the first page, not counting St John Ambulance. They were: [Colbrow Medics](#); [Pink First Aid](#); [First Aid Services](#); [Sports Medicine Australia](#); [Sports First Aid Services](#); [Event Safety Services](#); [EMS Event Medical](#); [Paramedical Services](#); and [Life: Survival Training and Medic Services](#). It may be that some, or none, of them operate in Victoria, but there is evidence of a growing industry.

Why is that question important?

Historically ambulance officers were employed by a state based ambulance service, given training by that service and then allowed to practice their skills within the terms set by the employing ambulance service. Today most ambulance services employ graduates from universities teaching degree programs in paramedicine. The Council of Ambulance Authorities⁹ currently accredits tertiary courses as providing suitable qualifications for employment. There are 23 degree and diploma programs with ‘Full Accreditation’, ‘Provisional Accreditation’ or ‘Preliminary Accreditation Approval’. These courses are offered by 18 separate tertiary institutions.¹⁰ In January 2016 the Australia and New Zealand College of Paramedicine reported that ‘There are currently more than 6500 students in undergraduate and postgraduate university courses in Australia alone’.¹¹

The supply of university graduates will exceed the number of positions available in state based and state contracted ambulance services. There has been significant growth in the ambulance private sector¹² and this is likely to continue.

Notwithstanding the growth in the number of qualified paramedics, the sector is largely unregulated. The use of the title ‘paramedic’ is restricted only in South Australia,¹³ Tasmania¹⁴ and New South Wales.¹⁵ There is no consistent procedure to receive complaints about paramedics and private ambulance services and no minimum standards or processes for quality assurance. Some of this will be resolved in 2018 when paramedics join other health professionals to be

⁹ A peak body representing the ambulance services operated by the Australian states, New Zealand’s Wellington Free Ambulance and St John Ambulance in Western Australia, the Northern Territory, New Zealand and Papua New Guinea. The Council of Ambulance Authorities Inc., *CAA Members* (u.d, accessed 23 December 2016) <<http://www.caa.net.au/about-us/caa-members>>.

¹⁰ The Council of Ambulance Authorities Inc., *CAA Accredited Courses* (u.d, accessed 23 December 2016) <<http://www.caa.net.au/paramedic-education/accredited-courses>>.

¹¹ Australia and New Zealand College of Paramedicine, above, n 1, p. 6.

¹² Ibid; Bange et al, above n 2; Paramedics Australasia, *Paramedics in the 2011 Census* (November 2012, accessed 23 December 2016) <<https://www.paramedics.org/content/2012/11/Paramedics-in-the-2011-census-final.pdf>>.

¹³ *Health Practitioner Regulation National Law (South Australia) Act 2010* (SA) Sch 2, cl 120.

¹⁴ *Ambulance Service Act 1982* (Tas) s 39A.

¹⁵ *Health Services Act 1997* (NSW) s 67ZDA.

regulated under the Health Practitioner National Law.¹⁶ At that time the title of ‘paramedic’ will be protected and paramedics will be subject to professional disciplinary process in a manner akin to other health professionals including medical and nursing practitioners.

That process won’t however, regulate service providers nor will it regulate others who provide emergency health care but who don’t claim to be a paramedic. People who adopt titles such as ‘Emergency Medical Technician’ (EMT) or ‘First Responder’ or even ‘First Aider’ will remain outside the scope of the National Law but will still be able to provide ambulance services if that is defined to mean emergency medical care and/or transport of the sick or injured. Under the current Victorian Act it is not an offence to provide an ambulance service, as long as the word ‘ambulance’ is not used,¹⁷ hence the use of titles such as ‘Event First Aid Services’.

If a new Ambulance Services Act in Victoria is limited to regulating Ambulance Victoria and maintaining ‘Ambulance Victoria’s role as the state’s pre-hospital emergency care and transport provider’ it will have limited scope. One would anticipate that it would prohibit other providers from providing ‘emergency’ ambulance care but would leave Event First Aid sector unregulated.¹⁸ The NEPT sector would continue to be regulated by the *Non-Emergency Patient Transport Act 2003* (Vic).

If it is intended to regulate ambulance services in Victoria, a revised Victorian Act could and should provide a comprehensive and single point of reference setting out quality assurance mechanisms to be applied to the entire sector. Such an Act would need to define what is meant by the term ‘ambulance services’ and could then prohibit the provision of those services without prior approval.

In the Australian Capital Territory it is an offence to provide an emergency service (which includes an ambulance service) without prior approval.¹⁹ A process to obtain approval is provided for²⁰

¹⁶ ‘National Registration for Paramedics’ *Council of Australian Governments (COAG) Health Council Communique* (7 October 2016).

¹⁷ *Ambulance Services Act 1986* (Vic) s 39.

¹⁸ This is largely the model adopted in NSW in the *Health Services Amendment (Ambulance Services) Act 2015*. Although this Act has passed through the Parliament and received Royal Assent, it has not yet commenced operation.

¹⁹ *Emergencies Act 2004* (ACT) s 63.

²⁰ *Ibid* ss 60-62.

and the various approvals are published on the ACT Legislation web site.²¹ The publication of approvals means event organisers are able to identify potential contractors and patients who may have concerns about the level of care can complain to the Commissioner or government and, in relevant circumstances, an approval could be withdrawn. This is an example of an Act that regulates ambulance services within the Territory, not just the Australian Capital Territory Ambulance Service. It provides for approval to be granted to allow for the provision of all forms of ambulance services, including event first aid and NEPT services. If adopted in Victoria, current standard for NEPT providers could be incorporated into the Act or its regulations to still set minimum standards for those seeking to enter that market. This form of regulation can help enhance patient safety and quality assurance across the sector.

Consultation Questions 1, 3 and 4.

Let me then turn to some of the consultation questions.

Question 1: What further changes are necessary to support the operation of a modern ambulance service in Victoria?

With respect, I submit this is the wrong question to ask. A better question to ask is ‘What further changes are necessary to support the operation of modern ambulance services in Victoria?’ As noted above, Ambulance Victoria may be the only ambulance service operated by the State of Victoria but it is not the only ambulance service operating in Victoria and the growth in non-government ambulance services is likely to continue. To ‘support the operation of modern ambulance services in Victoria’ a new Act should seek to regulate ambulance services in Victoria, not just services provided by Ambulance Victoria.

To do that it would be necessary to define what is meant by ambulance services. The definition should be wide enough to include non-emergency patient transport and event first aid services as well as private, industrial ambulance services. Definitions from other Australian states (cited above) are all in such broad terms. Once a definition has been settled upon, the legislation should provide that it is an offence to operate an ambulance service without approval. Victoria may find

²¹ See various *Emergencies (Service Provider) Approvals* at <http://www.legislation.act.gov.au/a/2004-28/ni.asp>.

that the *Emergencies Act 2004* (ACT) provides a useful model to regulate the entire ambulance sector, not just Ambulance Victoria.

Question 3: What additional issues could the review consider to strengthen Ambulance Victoria's ability in its role as Victoria's primary pre-hospital emergency care and transport provider?

As with my comments on question 1, if the aim is to secure Ambulance Victoria as the 'primary pre-hospital emergency care' provider steps need to be taken to restrict others from providing emergency care.

There is a question of whether Ambulance Victoria should be maintained as the primary, or only, pre-hospital emergency care provider. Victoria's 'Competitive neutrality policy' says that 'Government business should not enjoy any net competitive advantage simply as a result of their public sector ownership'.²² It may be thought that Ambulance Victoria is not a 'business' but there is, as noted, a growing private ambulance sector providing emergency care in industrial settings.²³ Given the growing number of paramedics and the inevitable reality that many graduates will not be able to get employment with state ambulance services, the pressure on graduates to find other ways to use their training and earn a living will increase pressure to allow private ambulance services including private emergency ambulance transport services.

Whether Victoria Ambulance should maintain a virtual monopoly on emergency ambulance services is, however, a policy matter upon which I make no comment. If, however, that is the intended outcome, the regulation of emergency ambulance services would need to be much stronger than the prohibitions in the 1986 Act.

²² Department of Treasury and Finance, *Competitive Neutrality Policy* (Victoria, 2012), p 2.

²³ See for example, *Police v Zammit* [2007] SASC 37. In that case 'The second respondent, Workcare, contracted with client companies to provide services that included a call-out service, whereby if employees of the client company were injured or became ill at work the client company would telephone Workcare for assistance. Workcare would then dispatch a vehicle to the worksite. The vehicle was driven by one of its employees who was a trained paramedic. The level of service provided by the paramedic was determined by the degree of illness or injury'. The respondents were acquitted of unlawfully providing an ambulance service given the definitions under South Australian law. The case is cited here as an example of a private sector, emergency ambulance service.

It is my submission that the template provided by the *Emergencies Act 2004* (ACT) provides an effective and comprehensive approach to the regulation of ambulance services including NEPT and event first aid services.

Question 4: What extra measures could be in place to ensure that patients receive the best care and have a positive experience when using ambulance services?

It is my submission that Victoria should be concerned about all ambulance services, not just services provided by Ambulance Victoria. It follows that extra measures should and could be in place to ensure that patients receive the best care and have a positive experience when using ambulance services. These should include restrictions on who can provide ambulance services. This should not be designed to secure a monopoly for Ambulance Victoria but to ensure that those providing ambulance services, including NEPT and Event First Aid services have appropriate quality assurance mechanisms and can provide services at a level expected by the Victorian public. A process of approval must also allow for approval to be withdrawn if it turns out that providers are not meeting expectations.

The regulation of ambulance services would go further than registration of paramedics. Registration of paramedics will ensure that the title of ‘paramedic’ is protected and there are professional standards for paramedics but it won’t ensure the quality of service providers and those that don’t claim to be paramedics. Just as Australian Commission on Safety and Quality in Health Care provides standards and accreditation for health services, so too quality assurance for ambulance services, not just ‘paramedics’ is warranted ‘to ensure that patients receive the best care and have a positive experience when using ambulance services’. Victoria could implement that process at least by ensuring that those that wish to provide ambulance services – whether they are emergency services, event first aid services or NEPT services - seek approval to operate in Victoria and continue to operate subject to appropriate standards and reviews.

Address any scope, policy or operational issues in the current legislation

The consultation paper identifies ‘a number of practical issues with current legislation which could be addressed during a review of the Act and other related legislation’.²⁴ I will address three of those issues:

1. ‘Service provision in cross-border settings’;
2. ‘Legislative protection for interventions within scope of practice’; and
3. ‘Ambulance Victoria’s role in the broader state emergency management space’.

To that list I add

4. Vicarious liability; and
5. Compensation

for volunteers.

‘Service provision in cross-border settings’

The consultation paper notes that there is no authority under the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) to allow paramedics from interstate to travel into Victoria. This is a clear anomaly as paramedics in cross border towns, such as Albury and Wodonga, may cross the border and paramedics may be called to travel to Victoria to help with counter disaster operations such as the response to the Black Saturday bushfires. Resolving this issue should be a matter of urgency.

The Australian Capital Territory is an island within New South Wales. Both jurisdictions have in place legislation to allow paramedics to travel across the border and still carry scheduled drugs. In New South Wales the Director General of the Department of Health can give authority to supply, prescribe or administer scheduled drugs.²⁵ The regulations further provide that ‘... any exemption in force under a law of the Commonwealth, or of another State or a Territory, corresponding to this

²⁴ Department of Health and Human Services, *Review of the Ambulance Services Act 1986 and Supporting Legislation: Consultation Paper* (Victoria, 2016), p. 11.

²⁵ *Poisons and Therapeutic Goods Regulation 2008* (NSW) r 170(1).

clause has the same effect as an exemption under this clause'.²⁶ It follows that if a person has an authority issued in the ACT, or Victoria, that will be honoured in New South Wales.

In the ACT 'The Act requires that a person must not deal with a medicine in a particular way unless the person is authorised to deal with the medicine'.²⁷ A person is authorised to deal with a medicine if 'the person has a licence or permit under a Commonwealth Act, this Act or another territory law that authorises the dealing'.²⁸ It follows that if a person has an authority under an interstate law that too will be honoured in the ACT.

Failure by Victoria to have in place dispensation to allow interstate paramedics to carry their drugs and 'tools of trade' should be seen as a major failing in emergency preparation.

If the recommendations of this submission are adopted, Victoria would also have laws to prohibit the unauthorised provision of ambulance services. Saving legislation would need to be in place to ensure that interstate ambulance services can operate in Victoria. When paramedics are registered under the *Health Practitioner National Law* it will be relatively easy to give registered paramedics authority to carry drugs and to practice their profession but that won't give authority to service providers and those involved in the delivery of ambulance services that are not paramedics.

It is my submission that Victoria should, as a matter of urgency, extend authority under the *Drugs, Poisons and Controlled Substances Act 1981* to any person who has an equivalent authority under the law of another Australian state or territory. Further, any prohibition on the delivery of ambulance services should not apply to an ambulance service that is created by, or authorised by law, to operate in another state and territory of Australia.

'Legislative protection for interventions within scope of practice'

Legislative protection for intervention within scope of practice is not usually required. The practice of paramedicine is largely unregulated so specific authority is not required for the interventions paramedics perform, other than the use of scheduled drugs (discussed above).

²⁶ Ibid, r 170(3).

²⁷ *Medicines, Poisons and Therapeutic Goods Regulation 2008* (ACT) r 10.

²⁸ *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) s 20(1)).

It is often suggested that paramedics and other emergency service personnel need legal indemnity for acts done ‘in good faith’. Provisions like this reduce the standard of care from the common law’s test of ‘reasonable care’ to some lower standard. Provisions to that effect apply to most emergency services legislation and in what is colloquially known as ‘good Samaritan’ legislation.²⁹ This legislation is largely unnecessary. The law, when considering what is reasonable, considers all the circumstances including the nature of the emergency.³⁰ For ambulance services, that are professionals in the delivery of out of hospital health care, patients should expect that the care they receive will meet the standard of what can reasonably be expected from other, similarly qualified paramedic or ambulance professionals. There is no reason to lower the standard of care. It is noted that there is no immunity clause in the current Victorian Act.

In the review of the *Ambulance Services Act 1986* and supporting legislation it would, however, be prudent to consider whether ambulance officers (however described) should be given special statutory powers to exercise authority at the scene of an emergency. It is common for officers with the fire and State Emergency Services to be given specific authority to take action such as force entry into a building, close roads, order that gas, electricity or other utilities are disconnected and generally take action that might otherwise be unlawful in order to take control of an emergency.³¹ Victorian ambulance officers have no such authority.

An authorised officer with the Queensland Ambulance Service may:

- ... take any reasonable measures—
 - (a) to protect persons from any danger or potential danger associated with an emergency situation; and
 - (b) to protect persons trapped in a vehicle, receptacle, vessel or otherwise endangered; and
 - (c) to protect themselves or other officers or persons from danger, potential danger or assault from other persons.
- (2) Without limiting the measures that may be taken for a purpose specified in subsection (1)(a) or (b), an authorised officer may, for that purpose—
 - (a) enter any premises, vehicle or vessel; and
 - (b) open any receptacle, using such force as is reasonably necessary; and

²⁹ For example, *Wrongs Act 1958* (Vic) s 31B.

³⁰ Commonwealth of Australia, *Review of the Law of Negligence* (the Ipp Review) (2002) [7.22].

³¹ See for example *Metropolitan Fire Brigades Act 1958* (Vic) s 32B; *Country Fire Authority Act 1958* (Vic) s 30; *Victoria State Emergency Service Act 2005* (Vic) s 32AB.

- (c) bring any apparatus or equipment onto premises; and
- (d) remove from or otherwise deal with, any article or material in the area; and
- (e) destroy (wholly or partially) or damage any premises, vehicle, vessel or receptacle; and
- (f) cause the gas or electricity supply or motor or any other source of energy to any premises, vehicle, vessel or receptacle to be shut off or disconnected; and
- (g) request any person to take all reasonable measures to assist the authorised officer; and
- (h) administer such basic life support and advanced life support procedures as are consistent with the training and qualifications of the authorised officer.³²

The inclusion of a list of powers may assist ambulance officers to feel confident that they can take action that may otherwise be unlawful. For example an ambulance officer needs to feel confident that if they have been called to a home and they can't raise the occupant, that they can force entry which may cause damage to the property, in order to ensure that a person is not left in need of care. Equally they may need to compel utility providers to disconnect gas or electricity or other utilities so they can safely provide care to those in need. It would be better for ambulance officers to have that clear authority rather than have to rely on good will or the attendance of fire or police services.

Many examples of emergency services legislation have clauses such as this coupled with a clause that says an officer or the emergency service is not liable for the good faith exercise of special powers.³³ Such a clause is not really necessary as the grant of statutory authority includes an expectation that the authority will be used and there is no liability for the non-negligent exercise of a statutory power.³⁴ The inclusion of such a clause may however reassure officers and will limit subsequent legal discussion of whether an alternative course of action was open to them.

Providing a 'good faith' defence in those circumstances will not significantly detract from the rights of those affected by the actions of the emergency services.

'Ambulance Victoria's role in the broader state emergency management space'

Victoria has developed an all hazards all agencies response to emergency management.

Ambulance Victoria 'as the state's pre-hospital emergency care and transport provider' has a

³² *Ambulance Service Act 1991* (Qld) s 38.

³³ See for example *Metropolitan Fire Brigades Act 1958* (Vic) ss 32B and 54A; see also *Board of Fire Commissioners of NSW v Ardouin* (1961) 109 CLR 105 and *Stephens v Stephens* (1970) 72 SR (NSW) 459 for cases on the limited application of immunity clauses.

³⁴ *Vaughan v Webb* (1902) 2 SR(NSW) 293, 299.

critical role in responding to all manner of emergencies. Floods, storms and bushfires all create casualties and require an ambulance response. During an emergency, Ambulance Victoria (supported by St John Ambulance (Victoria) and the Department of Health and Human Services) is to:

- Provide pre hospital care to people affected by emergencies
- Establish field primary care clinics
- Provide other health and medical relief assistance measures.³⁵

As a key player in Victoria's emergency management arrangements,³⁶ Ambulance Victoria should be fully incorporated into those arrangements and the quality assurance mechanisms that are in place to ensure that in times of disaster,³⁷ emergency or major emergency,³⁸ Victorian's receive the benefit of a coordinated and effective response.

Victoria's emergency management legislation provides for the appointment of an Emergency Management Commissioner who is, inter alia, 'responsible for the coordination of the activities of agencies having roles or responsibilities in relation to the response to Class 1 emergencies or Class 2 emergencies'.³⁹ The Emergency Management Commissioner has powers to impose controls on the response of all agencies including Ambulance Victoria.

There is also an Inspector-General for Emergency Management.⁴⁰ The Inspector-General is to, inter alia, 'develop and maintain a monitoring and assurance framework for emergency management ...' and 'undertake system-wide reviews, including reviewing the emergency management functions of responder agencies and Departments in relation to the monitoring and

³⁵ Emergency Management Victoria, *Emergency Management Manual Victoria; Part 7 Emergency Management Agency Roles* (November 2016), 7.

³⁶ Ibid, 21-22.

³⁷ *Emergency Management Act 1986* (Vic) s 23.

³⁸ *Emergency Management Act 2013* (Vic) s 3.

³⁹ Ibid s 32(1)(a). Section 3 gives the following definitions: **Class 1 emergency** means— (a) a major fire; or (b) any other major emergency for which the Metropolitan Fire and Emergency Services Board, the Country Fire Authority or the Victoria State Emergency Service Authority is the control agency under the state emergency response plan. **Class 2 emergency** means a major emergency which is not— (a) a Class 1 emergency; or (b) a warlike act or act of terrorism, whether directed at Victoria or a part of Victoria or at any other State or Territory of the Commonwealth; or (c) a hi-jack, siege or riot.

⁴⁰ Ibid s 61.

assurance framework'. It is important that Ambulance Victoria is fully incorporated into these arrangements.

In reviewing the *Ambulance Services Act 1986* (Vic) and supporting legislation, consideration should be given to adopting legislative provisions like those inserted into the *Metropolitan Fire Brigades Act 1958*, the *Country Fire Authority Act 1958* and the *Victoria State Emergency Service Act 2005*. The relevant sections of the *Metropolitan Fire Brigades Act 1958* (Vic) say:

7AA Duty to assist in major emergency

In addition to any other of its duties and functions under this Act, the Board must assist in the response to any major emergency occurring within Victoria...

7A Objective

The objective of the Board in performing its functions and exercising its powers under this Act is to—

- (a) contribute to a whole of sector approach to emergency management;
- (b) promote a culture within the emergency management sector of community focus, interoperability and public value.

7AB Emergency Management Victoria

The Board must, in performing its functions and exercising its powers, collaborate and consult with Emergency Management Victoria.

7AC Compliance with operational standards of Emergency Management Commissioner

The Board must use its best endeavours to carry out its functions in accordance with the operational standards developed by the Emergency Management Commissioner under the **Emergency Management Act 2013**.

7AD Report on compliance with operational standards developed by the Emergency Management Commissioner

- (1) The Board must, at the expiration of each period of 6 months, report in writing on the action it has taken during the preceding 6 months to comply with the operational standards developed by the Emergency Management Commissioner under the **Emergency Management Act 2013**.
- (2) A copy of the report prepared by the Board under subsection (1) must be given to the Emergency Management Commissioner.

7AE Strategic Action Plan

- (1) The Board must implement the applicable work program to give effect to the Strategic Action Plan.⁴¹

⁴¹ The Strategic Action Plan is provided for in the *Emergency Management Act 2013* (Vic) s 12.

- (2) The Board must prepare a written report on the progress made, and achievements attained, by the Authority to give effect to the Strategic Action Plan at intervals determined by the State Crisis and Resilience Council.
- (3) The intervals must not be less than one a year.
- (4) The Board must give a copy of a report prepared by the Board under subsection (2) to the State Crisis and Resilience Council and the Inspector-General for Emergency Management.

7B Compliance with incident management operating procedures

The Board must comply with any incident management operating procedures.⁴²

Similar obligations should be imposed on Ambulance Victoria.

Vicarious liability

If a paramedic or other ambulance employee negligently injures a patient, it is their employer that will be liable under the doctrine of vicarious liability. My research has identified only four cases of litigation where it has been alleged that a paramedic has been negligent and this has caused injury to the patient. In no cases was the paramedic sued in a personal capacity.⁴³

There may however, be an issue with volunteers. The notion of vicarious liability is traditionally an employment concept so there could be a dispute about whether or not an agency is vicariously liable for its volunteers. Whilst I do not doubt that vicarious liability may be applied to volunteers⁴⁴ some legislation makes the position clear. For example, s 42 of the *Victoria State Emergency Service Act* says:

- (2) This section applies to a Service member or a volunteer emergency worker.
- (3) A Service member or a volunteer emergency worker is not personally liable for any thing done or omitted to be done in good faith—
 - (a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or the regulations.

⁴² See also *Country Fire Authority Act 1958* (Vic) ss 6B to 6E; *Victoria State Emergency Service Act 2005* (Vic) ss 4A to 4F.

⁴³ *Metropolitan Ambulance Service v State of Victoria* [2002] VSC 222; *Ambulance Service of NSW v Worley* [2006] NSWCA 102; *Neal v Ambulance Service of New South Wales* [2008] NSWCA 346; *Roane-Spray v State of Queensland* [2016] QDC 348.

⁴⁴ See Michael Eburn, *Emergency Law* (4th ed, 2013, Federation Press), 27-33.

- (4) Any liability resulting from an act or omission that would but for subsection (2) attach to a Service member or a volunteer emergency worker attaches to the Authority.

This section does not lower the duty of care but does ensure that the service is vicariously liable for both its employees and its volunteers, but the section is not necessary. In Victoria, the *Wrongs Act 1958* s 37 says:

- (1) A volunteer is not liable in any civil proceeding for anything done, or not done, in good faith by him or her in providing a service in relation to community work organised by a community organisation.
- (2) Any liability resulting from an act or omission that would but for subsection (1) attach to the volunteer attaches instead to the community organisation.

Community work is defined to include work ‘for the purpose of promoting the common interests of the community generally or of a particular section of the community’ work ‘for any other purpose specified in the regulations for ...’⁴⁵ To ensure that ambulance volunteers are covered it may be appropriate to create a regulation to ensure that ambulance work is defined as community work. The advantage of this approach is that it would ensure that this protection would apply to volunteers with any ambulance service, not just Ambulance Victoria.

Compensation for volunteers

The final issue that I wish to address is compensation for volunteers. As the consultation paper notes:

Volunteers (including first responders and community emergency response teams) provide basic emergency care services within their local community. They do not transport, but provide emergency response in locations that have a low caseload and no ambulance station. They are recruited using Ambulance Victoria’s standard recruitment procedures and are required to undergo initial and ongoing training. There are no provisions clarifying the rights and obligations of volunteers under the current Act. For example, a provision in the Country Fire Authority Act 1958 provides comprehensive insurance cover for medical, loss of wages and property damage to volunteers who are injured in the course of firefighting.⁴⁶

⁴⁵ *Wrongs Act 1958* (Vic) s 36.

⁴⁶ Department of Health and Human Services, *Review of the Ambulance Services Act 1986 and Supporting Legislation: Consultation Paper* (Victoria, 2016), p. 13.

It is axiomatic that volunteers are not employees and are not thereby entitled to workers' compensation if they are injured in the course of their duties. It is important that an agency that uses volunteers has in place appropriate procedures and reserves to compensate volunteers. The model used across Australia varies. In Western Australia 'A local government that maintains a bush fire brigade shall obtain and keep current — (a) a policy of insurance that insures volunteer fire fighters for compensation ... for injury caused to them while they are engaged under this Act in normal brigade activities...' ⁴⁷ The policy of insurance is required to give benefits equivalent to those provided for in the *Workers' Compensation and Injury Management Act 1981* (WA).

Another model is to establish statutory compensation schemes that bring volunteers within the relevant workers' compensation scheme as if they were employees. This is the model adopted in Victoria with respect to the Country Fire Authority ⁴⁸ and Victoria State Emergency Service. ⁴⁹ It is also the model adopted in New South Wales for firefighters and other emergency service volunteers. In New South Wales there is a separate Act that provides for compensation and modifies the workers compensation legislation generally for the benefit of volunteers. ⁵⁰

Another model, also adopted in New South Wales is to simply deem volunteers as workers so they are compensated under the workers' compensation scheme applicable in that state. ⁵¹ For ambulance volunteers:

A person who (without remuneration or reward) voluntarily and without obligation engages in any ambulance work with the consent of or under the authority and supervision of or in co-operation with the Health Administration Corporation constituted by the *Health Administration Act 1982* is, for the purposes of this Act, taken to be a worker employed by that Corporation. ⁵²

Whatever model is adopted, legislative provisions should be enacted as part of the review, to ensure volunteer ambulance officers are compensated on the same basis as employees if they are injured in the course of their volunteer duties.

⁴⁷ *Bush Fires Act 1954* (WA) s 37.

⁴⁸ *Country Fire Authority Act 1958* (Vic) s 63.

⁴⁹ *Victoria State Emergency Service Act 2005* (Vic) s 47.

⁵⁰ *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* (NSW).

⁵¹ *Workplace Injury Management and Workers Compensation Act 1998* (NSW), Sch 1.

⁵² *Ibid*, cl 16.

Conclusion

I note that the Consultation paper has raised many significant and important issues. It has not been possible to address them all given the time allowed for a response⁵³ and given that 12 days of the response time are effectively lost to the Christmas/New Year break, accordingly I have addressed what I consider to be the most important issues.

In summary, I submit that:

- Victoria should act to regulate the provision of ambulance services in Victoria, not just ambulance services provided by Victoria Ambulance;
- Victoria should take urgent steps to facilitate cross border authority to allow interstate paramedics to travel into Victoria;
- Consideration should be given to authorising ambulance officer to take necessary steps including those that might interfere with the rights of others where that is necessary to preserve life;
- Ambulance Victoria should be fully incorporated into Victoria's Emergency Management arrangements;
- Regulations should be enacted to define 'ambulance work' as community work for the purposes of the *Wrongs Act 1958* (Vic) s 37; and
- Legislative should be enacted to ensure volunteer ambulance officers are compensated on the same basis as employees if they are injured in the course of their volunteer duties.

I trust this submission is of assistance and thank the Department for the opportunity to contribute.

Yours sincerely



Dr Michael Eburn.

⁵³ 2 December 2016 to 3 January 2017.