

DEPARTMENT OF HUMAN SERVICES (PUBLIC HEALTH)

**GUIDELINES
ON DIVISION 2A, PART 6 OF THE
*HEALTH ACT 1958***

**THE COMPULSORY TESTING
PROVISIONS**

October 2005

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1 Purpose

This document (“the guidelines”) has been prepared by the Department of Human Services to assist:

- hospitals, public health services and multi-purpose services (“health services”); and
- care-givers and custodians, for example doctors, nurses, dentists, ambulance officers, prison officers and police

who may potentially be involved in an incident that could result in the transfer of HIV and/ or Hepatitis B, C, or D (“an incident”), in understanding Division 2A of Part 6 of the *Health Act 1958* (“the Act”) concerning examining and testing after incidents involving care-givers or custodians (“the compulsory testing provisions”).

These provisions:

- provide for the Secretary to the Department of Human Services (delegated to the Chief Health Officer) to order/authorise testing for specified infectious diseases;¹
- provide for specified health services to appoint a senior medical officer (“authorised senior medical officer”) to exercise certain powers under the Division;²
- provide for authorised senior medical officers to order/authorise testing for specified infectious diseases where the tested person lacks capacity to consent or has died;³
- provide for the test results to be provided to any of the persons to whom the disease(s) could have been transmitted (“the exposed person(s)”) and the person tested (“the source”)⁴
- require a registered medical practitioner to provide counselling regarding the tests;⁵ and
- empower the Secretary to issue directions to health services and authorised senior medical officers regarding the exercise of their powers under the Division.⁶

Relevant excerpts of the Act are attached at **Schedule 12**.

The application of these provisions to persons other than care-givers or custodians is currently being reviewed as part of the Department of Human Services’ broader review of the *Health Act 1958*.⁷

It is expected that health services and other relevant institutions/agencies will incorporate the guidelines into their own internal protocol and policy documents. However, the guidelines are for guidance purposes only and have no legal effect.

¹ *Health Act 1958*, sections 120A and 120B

² *Health Act 1958*, section 120AB(1)

³ *Health Act 1958*, section 120AB(2)

⁴ *Health Act 1958*, section 120C(4)

⁵ *Health Act 1958*, sections 120A and 120AC

⁶ *Health Act 1958*, section 120DA

⁷ See www.health.vic.gov.au/healthactreview

Attached to the guidelines, at **Schedule 10**, is a direction dated 4 October 2005 on:

- the expertise and qualifications required for a person appointed as the authorised senior medical officer; and
- the record keeping requirements for documents created under these provisions.

All health services must comply with this direction, and any others, made by the Chief Health Officer.

Any updates to the guidelines and all directions will be provided to all health services via the hospital circular system and will also be made available on the internet at: www.health.vic.gov.au/ideas/regulations/comptest

2 Infection control

All health services should have in place their own policies and protocols for the management of sharps injuries, such as needlestick, and other blood or body fluid exposures. Standard precautions are defined as standard operating procedures that apply to the care and treatment of all patients, regardless of their perceived infectious risk. These precautions include:

- hand washing;
- use of personal protective equipment;
- aseptic technique;
- appropriate reprocessing of instruments and equipment; and
- implementing environmental controls.

Standard precautions should incorporate safe systems for handling blood (including dried blood), other body fluids, secretions and excretions (excluding sweat), non-intact skin and mucous membranes.

Health services should ensure that these policies and protocols align with their own occupational health and safety policies and protocols. It is expected that the guidelines would be incorporated into these existing policies and protocols, as appropriate.

3 To whom do the compulsory testing provisions apply?

The compulsory testing provisions of the Act apply only to incidents involving persons acting as care-givers or custodians.⁸

An incident is an event involving a care-giver or custodian, which, if any of the people involved were infected by HIV and/or Hepatitis B, C or D, could have transmitted that disease to any of the other people involved in the incident ("an incident"). This may include a sharps injury, such as a needlestick, or other blood or body fluid exposure.

⁸ *Health Act 1958*, section 120A(1)(a)

The Act defines “care-givers and custodians” as:⁹

- a registered medical practitioner, registered dentist or registered nurse; or
- an ambulance officer; or
- the legal custodian of a person who is taken into legal or protective custody.

Legal custodians include police officers, other investigating officials whose duties include the prevention or investigation of offences, and prison officers, who are holding a person in legal custody, for example a person who has been arrested or is being questioned by police to determine their involvement in an offence, or a person who is being held in prison or a police gaol.

Legal custodians also include persons who are holding a person in protective custody, for example persons who are legally responsible for a person who is a security or forensic resident within the meaning of the *Intellectually Disabled Persons' Services Act 1986* or an involuntary or security patient within the meaning of the *Mental Health Act 1986*. In addition, any person, for example a police officer, psychologist, social worker or occupational therapist, transporting a person to an approved mental health service, pursuant to sections 9 to 9B of the *Mental Health Act 1986*, is also a legal custodian for the purpose of the compulsory testing provisions.

Except as noted above, the compulsory testing provisions do not apply to other workers in health care and custodial settings who may be involved in an incident, for example hospital orderlies, student nurses and medical students.¹⁰ This issue is currently being reviewed as part of the Department of Human Services' broader review of the *Health Act 1958*.¹¹

The compulsory testing provisions apply irrespective of where the incident occurs, so long as the incident involves a care-giver or custodian, acting in the course of their employment.

An incident may occur at a hospital, police station or prison, or in another location, for example at the home of a patient being attended by a registered nurse, ambulance officer or registered medical practitioner in the course of their employment.

Where there has been an incident at a health service involving a care-giver or custodian and a person involved in an incident is unable to consent to testing, an application may be made to the authorised senior medical officer for an order requiring the person to be tested for HIV and/or Hepatitis B, C or D.¹² Where, in this situation, blood has already been collected for another purpose, an application may be made to the authorised senior medical officer for authority to test the blood already collected.¹³

Where there has been an incident at a health service involving a care-giver or custodian and a person involved in an incident **refuses** to consent to testing, an application may be made to the Chief Health Officer for an order requiring the person

⁹ *Health Act 1958*, section 118. Paragraph (d) of the definition of care-giver or custodian contained in section 118 of the *Health Act 1958* also refers to “a person who works in a prescribed field of health welfare or custodial care.” However, at present no such fields have been prescribed by regulation.

¹⁰ Section 9A of the *Medical Practice Act 1994* requires that medical students be registered with the Medical Practice Board for the purpose of having direct patient contact. However such registered medical students are specifically excluded from the definition of “registered medical practitioner” contained in section 3 of that Act.

¹¹ See www.health.vic.gov.au/healthactreview

¹² *Health Act 1958*, section 120AB(2)(a)

¹³ *Health Act 1958*, section 120AB(2)(b)

to be tested for HIV and/or Hepatitis B, C or D.¹⁴ Where, in this situation, blood has already been collected for another purpose, an application may be made to the Chief Health Officer for authority to test the blood already collected.¹⁵ An authorised senior medical officer cannot order or authorise testing where a person involved in an incident refuses to consent to testing.

Before resorting to the powers of the Chief Health Officer, all reasonable effort should be made to obtain a person's consent to testing.

Where a health service **does not** have an authorised senior medical officer, and a person involved in an incident refuses, or is unable to consent to testing, an application may be made to the Chief Health Officer for an order requiring the person to be tested for HIV and/or Hepatitis B, C or D.¹⁶ Where, in this situation, blood has already been collected for another purpose, an application may be made to the Chief Health Officer for authority to test the blood already collected.¹⁷

Where an incident occurs at a prison, and a prisoner involved in an incident refuses, or is unable to consent to testing, in accordance with the *Corrections Act 1986* the prison's principal medical officer may direct the prisoner to undergo testing.¹⁸ Where the provisions of the *Corrections Act 1986* do not apply, for example a prison officer involved in an incident refuses or is unable to consent to testing, an application may be made to the Chief Health Officer for an order requiring that person to be tested for HIV and/or Hepatitis B, C or D.¹⁹

4 What if the care-giver or custodian may be the possible source?

In most cases, the care-giver or custodian will be the person to whom the disease(s) could have been transmitted ("the exposed person") but, in some cases, the care-giver or custodian may be the possible source ("the source").

If there has been an incident where the care-giver or custodian is the source and the care-giver or custodian refuses to consent to testing, an application may be made to Chief Health Officer for an order requiring the care-giver or custodian to undergo testing. Such incidents require that a health service or other relevant institution/agency has in place appropriate protocols which ensure that decisions about testing are made by a third party and not the care-giver or custodian who may have been the possible source.

5 Who may be appointed as an authorised senior medical officer?

An authorised senior medical officer is a person who is either:

- employed or engaged by, or performs work for a denominational hospital, public hospital, public health service or multi purpose service; and
- authorised in writing by that hospital/service or the chief executive officer of that hospital/service, to make orders or authorise testing;²⁰

or

¹⁴ *Health Act 1958*, section 120A(1)(c)(i)

¹⁵ *Health Act 1958*, section 120B

¹⁶ *Health Act 1958*, section 120A

¹⁷ *Health Act 1958*, section 120A, 120AB and 120B

¹⁸ *Corrections Act 1986*, section 29(2)

¹⁹ *Health Act 1958*, sections 120A and 120AB

²⁰ *Health Act 1958*, section 120AB(1)(a)

- employed, engaged by or performs work for the proprietor of a private hospital registered under Part 4 of the *Health Services Act 1988* approved by the Secretary for the purposes of the compulsory testing provisions; and
- authorised in writing by the proprietor or chief executive officer of that hospital to make orders or authorise testing.²¹

A list of approved private hospitals is attached at **Schedule 11** and will also be made available on the internet at www.health.vic.gov.au/ideas/regulations/comptest

Health services must ensure that a person appointed as an authorised senior medical officer:

- is a registered medical practitioner who is a senior medical officer of the hospital;
- has adequate knowledge and experience in relation to the management of exposures to blood and body fluids;
- understands the requirements of the compulsory testing provisions of the Act; and
- is familiar with these guidelines and internal protocols of the health service involved.²²

The authorised senior medical officer may only exercise powers in relation to the health service for which he or she has been appointed.²³

A visiting medical officer (VMO) may be appointed as an authorised senior medical officer, so long as the requirements listed above are met.

6 When can an authorised senior medical officer make an order under section 120A of the *Health Act 1958* requiring a person to undergo compulsory testing?

An authorised senior medical officer may only make an order under section 120A of the Act requiring a person to be tested for HIV or Hepatitis B, C and/or D where the authorised senior medical officer reasonably believes that:

- An incident involving a care-giver or custodian has occurred, while the care-giver or custodian was acting in that capacity, which, if any of the people involved were infected with HIV or Hepatitis B, C or D, the disease(s) could have been transmitted to any of the other people involved in the incident;²⁴

and

- Any of the people to whom the disease(s) could have been transmitted (the exposed person(s)) have:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s);²⁵

²¹ *Health Act 1958*, section 120AB(1)(b)

²² This paragraph incorporates the direction, which is attached at Schedule 10 to these Guidelines.

²³ *Health Act 1958*, section 120AB(2)

²⁴ *Health Act 1958*, section 120A(1)(a)

²⁵ *Health Act 1958*, section 120A(1)(b)

and

- has consented to be tested for that disease(s);²⁶

and

- The person who could have transmitted the disease(s) (the source) is dead, unconscious or otherwise does not have capacity to consent to be tested for the disease(s).²⁷ This would include both permanent and temporary causes and may be as a result of mental illness, coma or the influence of substances including anaesthetics or other drugs;

and

- The making of the order is necessary in the *interest of rapid diagnosis and treatment* for any of those involved.²⁸

The order must:

- be in writing;
- provide details of the incident which led to the making of the order;
- name the person who is to be tested and their date of birth (if known);
- name the disease(s) for which the person must be tested, which must be disease(s) which could be transmitted to the person who may have become infected, and for which the person who may have become infected has agreed to be tested;
- state where and when the tests must be undertaken and, in the case of a series of tests, the period within which they are to occur; and
- state the type of testing required.²⁹

The order may be subject to conditions and the authorised senior medical officer may vary or revoke the order.

An order for compulsory testing cannot be made if more than 3 months has elapsed since the incident occurred.³⁰

An authorised senior medical officer cannot order a person to undergo testing where that person has refused to consent to testing. In this situation, an application for an order for compulsory testing must be made to the Chief Health Officer. However, before resorting to the powers of the Chief Health Officer, all reasonable effort should be made to obtain a person's consent to testing.

Schedule 1 contains a flow chart of the steps to be followed where a hospital has an authorised senior medical officer. Where a hospital (or other institution) does not have an authorised senior medical officer appointed the steps set out in **Schedule 2** must be followed.

Schedules 3 and 5 to the guidelines contain proforma orders for authorised senior medical officers.

²⁶ *Health Act 1958*, section 120A(1)(b)

²⁷ *Health Act 1958*, section 120AB(2). See also sections 120A(1)(c)(ii), 120A(2A) and 120A(2B)

²⁸ *Health Act 1958*, section 120A(1)(d)

²⁹ *Health Act 1958*, section 120A(2)

³⁰ *Health Act 1958*, section 120A(3)

7 What does the requirement “in the interest of rapid diagnosis and treatment” mean?

If there is an incident where HIV or Hepatitis B, C or D could have been transmitted to any of the persons involved, the authorised senior medical officer or Chief Health Officer will need to be satisfied that a compulsory testing order or authorisation is “necessary in the interest of rapid diagnosis and treatment for any of those involved”.

If the potential source is unconscious or otherwise does not have capacity to consent to be tested for the disease(s), there needs to be an assessment regarding whether testing should be conducted straight away rather than waiting for the person to regain capacity. An order can only be made under these provisions if it is *necessary* to enable rapid diagnosis and treatment.

For instance, if the incident occurred during surgery, and the patient is expected to regain capacity after surgery within a reasonable period of time, and it is believed that waiting for this period of time would not prejudice the health of a care-giver, then it would be appropriate to wait until the patient regained capacity and ask them whether they consent to the removal and testing of their blood.

Health services need to ensure that clinical staff understand how to assess a person’s competency for the purpose of determining whether a person has the capacity to consent to testing.

In particular, health services need to ensure that clinical staff understand section 120A(2B) of the Act, which provides that a person is to be treated as not having the capacity to consent to be tested even if-

- (a) the lack of capacity is due to a temporary cause; or
- (b) there is another person who has the capacity to consent to testing on that person’s behalf, for example a parent, guardian or “person responsible” as defined in section 37 the *Guardianship and Administration Act 1986*.

However, the process outlined in the *Guardianship and Administration Act 1986* will, generally, not apply to these situations, as the “person responsible” only has the power to consent to testing, if the test is in the best interests of the person being tested (ie. the source). Generally, the test will be conducted because of concerns regarding the exposed person. Section 120A(2B) does not affect the power of a parent or responsible person to consent to testing (eg. if the test is in the best interest of the tested person).³¹

“Treatment” may include:

- The use of post exposure prophylaxis.
- Suitable counselling of the exposed person regarding the risks of infection and the medical and social consequences of the disease(s) if that person was infected from the incident. For example, there would be a need for this person to practice safe sex and not to donate blood while waiting for definitive clearance that they were not infected.
- Attempts to minimise the mental health consequences such an incident may generate.

8 When can the Chief Health Officer make an order under section 120A of the *Health Act 1958* requiring a person to undergo compulsory testing?

³¹ Health (Compulsory Testing) Explanatory Memorandum (February 2005) pages 1-2

The Chief Health Officer may make an order under section 120A of the Act requiring a person to be tested for HIV and/or Hepatitis B, C or D where the Chief Health Officer reasonably believes that:

- An incident involving a care-giver or custodian has occurred, while the care-giver or custodian was acting in that capacity, which, if any of the people involved were infected with HIV or Hepatitis B, C or D, the disease(s) could have been transmitted to any of the other people involved in the incident;³²

and

- Any of the people to whom the disease(s) could have been transmitted (the exposed person(s)) have:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s);³³

and

- has consented to be tested for that disease(s);³⁴

and

- The person who could have transmitted the disease(s) (the source) either:
 - has been offered counselling, irrespective of whether the offer was accepted, and has *refused* to be tested for the disease(s);³⁵ or
 - is dead, unconscious or otherwise does not have capacity to consent to be tested for the disease(s).³⁶ This would include both permanent and temporary causes and may be as a result of mental illness, coma or the influence of substances including anaesthetics or other drugs;

and

- The making of the order is necessary *in the interest of rapid diagnosis and treatment* for any of those involved.³⁷

The order must:

- be in writing;
- provide details of the incident which led to the making of the order;
- name the person who is to be tested and their date of birth;
- name the disease(s) for which the person must be tested, which must be disease(s) which could be transmitted to the person who may have become infected, and for which the person who may have become infected has agreed to be tested;
- state where and when the test(s) must be undertaken and, in the case of a series of tests, the period within which they are to occur; and
- state the type of testing required.³⁸

³² *Health Act 1958*, section 120A(1)(a)

³³ *Health Act 1958*, section 120A(1)(b)

³⁴ *Health Act 1958*, section 120A(1)(b)

³⁵ *Health Act 1958*, section 120(1)(c)(i)

³⁶ *Health Act 1958*, sections 120A(1)(c)(ii), 120A(2A) and 120A(2B)

³⁷ *Health Act 1958*, section 120A(1)(d)

It is an offence for a person to fail to comply with a compulsory testing order of the Chief Health Officer under section 120A of the Act.³⁹

The order may be subject to conditions and the Chief Health Officer may vary or revoke the order.⁴⁰

An order for compulsory testing cannot be made if more than 3 months has elapsed since the incident occurred.⁴¹

Schedule 8 to the guidelines contains a proforma order for the Chief Health Officer.

9 When can blood, previously collected for another purpose, be authorised for testing under section 120B of the *Health Act 1958*?

Under section 120B of the Act, authorised senior medical officers/the Chief Health Officer may authorise the testing of blood samples previously collected from an individual for another purpose, for the presence of HIV or Hepatitis B, C or D if:

- All the conditions have been met that would enable the authorised senior medical officer/Chief Health Officer to order compulsory testing on that individual under section 120A of the Act;

and

- The authorised senior medical officer/Chief Health Officer considers that because of the individual's state of health or for any other reason is inappropriate to make such a compulsory testing order;

and

- The authorised senior medical officer/Chief Health Officer is satisfied that the sample of blood to be authorised for testing:
 - is suitable for such testing; and
 - if authorised for testing, can still be used for the purpose it was originally stored.

Schedules 4, 6 and 9 to these guidelines contain proforma orders of authorised senior medical officer and the Chief Health Officer under section 120B of the Act.

10 What is the process for requesting an order or authorisation for testing?

In the event of a sharps injury, such as needlestick, or other blood or body fluid exposure, a risk assessment based on the nature and extent of the injury or incident should rapidly be undertaken to determine if the exposure has the potential to transmit a blood-borne virus.

The risk assessment should be undertaken by the treating medical practitioner managing the case, who may seek advice from an expert in the management of sharps injuries, such as needlestick, and other blood or body fluid exposures. A request for an order or authorisation for testing should only be sought where it is determined by the treating medical practitioner, taking all factors into consideration,

³⁸ *Health Act 1958*, section 120A(2)

³⁹ The maximum penalty is 50 penalty units, which for the 2005-2006 financial year is \$5,240.50 (ie. \$104.81 per penalty unit).

⁴⁰ *Health Act 1958*, section 120A(4), see also sections 121(7) and (10)

⁴¹ *Health Act 1958*, section 120A(3)

that appropriate management of the incident requires assessment of the source's status in terms of HIV and/or Hepatitis B, C or D infection.

Expert advice can be obtained from:

The Alfred Hospital Infectious Diseases Unit	(03) 9276 2000
Austin Health Infectious Diseases Unit	(03) 9496 6679
After hours (ask for the ID registrar to be paged)	(03) 9496 5000
Barwon Health – Department of Infectious Diseases	(03) 5226 7111
Southern Health Infectious Diseases Unit	(03) 9594 6666
Victorian Infectious Diseases Service (VIDS), Royal Melbourne Hospital	(03) 9342-7000

If it is determined that the status of the source should be assessed and the source consents to be tested, the registered medical practitioner undertaking the risk assessment of the exposed person should test the source.

Where the source:

- does not have the capacity to consent to testing, and is not expected to regain capacity within a reasonable period of time, and the incident occurs at a health service that has an authorised senior medical officer, it is expected that the matter be referred to that authorised senior medical officer for rapid internal management.
- does not have the capacity to consent to testing, and is not expected to regain capacity within a reasonable period of time, and the incident occurs at a health service that does not have an authorised senior medical officer, an application may be made to the Chief Health Officer requesting an order or authorisation for testing.
- refuses to consent to testing, an application may be made to the Chief Health Officer requesting an order or authorisation for testing. An authorised senior medical officer cannot order or authorise testing where a person involved in an incident refuses to consent to testing.

Where a sharps injury, such as a needlestick, or other blood or body fluid exposure occurs at a prison and a prisoner involved in the incident refuses, or is unable to consent to testing, in accordance with the *Corrections Act 1986* the prison's principal medical officer may direct the prisoner to undergo testing.⁴² Where the provisions of the *Corrections Act 1986* do not apply, for example a prison officer involved in a sharps injury, such as needlestick, or other blood or body fluid exposure refuses or is unable to consent to testing, an application may be made to the Chief Health Officer for an order requiring that person to be tested for HIV and/or Hepatitis B, C or D.⁴³

The Chief Health Officer can be contacted as follows:

Business hours: (03) 9637 4182
(03) 9637 4136

⁴² *Corrections Act 1986*, section 29(2)

⁴³ *Health Act 1958*, section 120A

(03) 9637 4204

After hours: 1300 790 733

(DHS after hours incident reporting line – callers **must** ask for infectious diseases. You will then be put through to the on-call Public Health medical officer, who will liaise with the Chief Health Officer)

11 What information is required by the Chief Health Officer to determine whether an order or authorisation for testing should be made?

To determine whether to make an order under section 120A or an authorisation under section 120B of the Health Act, the Chief Health Officer must be provided with the following information in writing:

- a description of the incident, including details of:
 - what happened, including the names (and date of birth if known) of the people involved in the incident;
 - where the incident occurred;
 - whether the incident occurred while a care-giver or custodian was acting in that capacity – including a description of the person who would be classified in the Act as a care-giver or custodian (ie a registered medical practitioner, registered dentist, registered nurse, an ambulance officer, or the legal custodian of a person who is taken into legal or protective custody).
- the circumstances of the sharps injury, such as needlestick, or other blood or body fluid exposure, including direct comment on the incident in terms of whether, if any of those involved were infected with HIV or Hepatitis B, C or D, the disease(s) could have been transmitted to any of the other people involved.
- the grounds on which it was determined who was the potential source of the exposure and who was the potentially exposed person. It may be that all involved were potential sources as well as potentially exposed persons.
- the disease(s) for which the source is to be tested, ie. HIV or Hepatitis B, C and/or D).
- a statement as to whether the person to whom the disease(s) could have been transmitted has:
 - been counselled by a registered medical practitioner about the risk of transmission of the disease(s) in the particular circumstances and about the medical and social consequences of being infected with the diseases; and
 - has consented to be tested for that diseases.
- a statement as to whether the source:
 - has been offered counselling, by whom and when, irrespective of whether the offer was accepted and has refused to be tested for the disease(s); or
 - is dead, unconscious or otherwise does not have the capacity to consent to be tested for the disease(s).
- if the request is for an authorisation for testing of a blood sample under section 120B, a statement as to whether a specimen of the source's blood has been stored at any place for any purpose and, if there is such a sample, whether:
 - because of the person's state of health or for any other reason, it may be inappropriate to make the order under section 120A; and

- if the blood was authorised to be tested and was tested under section 120B, it could still be used for the purpose for which it was originally stored; and
- that sample is suitable for the testing required.
- a statement as to when and where the institution making the request will be able to provide appropriate staff to carry out a testing order; or the date and location when a previously collected blood sample will be tested under a testing authorisation.

The requirements for a request to the Chief Health Officer for an order or authorisation is attached at **Schedule 7** to these guidelines.

A similar form should be developed for the authorised senior medical officer to assist in the gathering of information required as well as to serve as a checklist of requirements and obligations to ensure the process complies with the Act.

The written order of the Chief Health Officer will be provided, via facsimile, to the person requesting the order so that timely testing of the source can be undertaken to inform management of the exposed person and, where necessary, management of the source.

12 What procedures are required after a test has been conducted - Is counselling required?

A pathologist or registered medical practitioner who conducts a test pursuant to a section 120A order or a section 120B authorisation must, without delay, report the test results to the requesting authorised senior medical officer or the Chief Health Officer.⁴⁴

On receiving the test results, the authorised senior medical officer/Chief Health Officer must:

- Without delay, give notice of the test result to the exposed person and the source.⁴⁵ In practice, this information would normally be provided to the person's doctor and the person would receive post-test counselling at the time of being advised of the test result. If there was a positive HIV test result, the post-test counselling should be provided by a registered medical practitioner or an approved pre & post-test counsellor.
- When advising the exposed person of the results of a test under section 120A or 120B, the authorised senior medical officer/Chief Health Officer must not include information that would identify the source.⁴⁶

A person who receives notice of the results of a test on another person under section 120A or 120B (the exposed person) must not disclose, communicate, or make a record of, anything in those results that would identify that other person (the source).⁴⁷ The exposed person must be informed of this legal obligation during their post-test counselling.

⁴⁴ *Health Act 1958*, section 120C(3)

⁴⁵ *Health Act 1958*, section 120C(4)

⁴⁶ Due to the nature of the incident, the identity of the source may already be known to the exposed person. However, in accordance with section 120D of the *Health Act 1958* further identifying information cannot be provided to the exposed person.

⁴⁷ *Health Act 1958*, section 120D(2). The maximum penalty is 50 penalty units, which for the 2005-2006 financial year is \$5,240.50 (ie. \$104.81 per penalty unit).

If the tested person is unconscious or otherwise does not have the capacity to consent to be tested for the disease(s), the person who ordered/ authorised the test (ie the authorised senior medical officer/Chief Health Officer) must ensure that counselling is offered by a registered medical practitioner to the tested individual (the source) as soon as the person has or regains the capacity to consent.⁴⁸

If the person to be tested under the order is dead or does not have or does not regain the capacity to consent to testing within a reasonable period of time (the source), the following person must be counselled:

- in the case of a person under 18 years of age, a parent or any other person who has all the duties, powers and responsibilities and authority which parents have in relation to children;
- in the case of a person who has died, the person who, but for the death, would have been the person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*); or
- in any other case, any person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*) for the person tested.⁴⁹

The counselling must include:

- details of the test(s) conducted;
- reasons why the test(s) were conducted;
- results of the test(s); and
- if the test(s) indicated the presence of an infectious disease(s), the effects of those disease(s) on an infected person and the risk to public health of the disease(s).

Clear records should be kept to enable the authorised senior medical officer to verify that they have complied with the requirements of section 120AC(1) of the Act which provides that the person who made an order or authorised testing must ensure that where a person is dead or does not have or does not regain the capacity, the relevant person (eg. the person themselves, once capacity is regained, or the person responsible) is counselled by a registered medical practitioner. In a similar manner, where the Chief Health Officer is involved in making the order or authorisation, there is a legislative requirement for the Chief Health Officer to ensure that the relevant person is counselled. In practice, this requirement can be satisfied by the Chief Health Officer being advised in writing (via facsimile) that the relevant person(s) has been counselled.

13 What if the source's medical records already indicate the person has HIV or Hepatitis B, C or D?

In some situations, the institution may already have records indicating whether the individual involved in the incident has HIV or Hepatitis B, C and/or D.

For instance, there could be an incident involving a patient and a registered nurse at a hospital, where the patient is the potential source. If the hospital records about the

⁴⁸ *Health Act 1958*, section 120AC(2). If the source is expected to regain capacity within a reasonable period of time, the registered medical practitioner should wait for that person to regain capacity unless there is a medical reason to disclose the information to the person responsible under the *Guardianship and Administration Act 1986* or parent (as per section 120AC(3) of the *Health Act 1958*).

⁴⁹ *Health Act 1958*, 120AC(3)

patient contain the results of HIV or Hepatitis B, C and/or D tests, this would involve the *use* of those records by the hospital.⁵⁰ Such use would need to be accord with the hospital's:

- obligations under the *Health Records Act 2001*;⁵¹ and
- any other relevant laws or guidelines.

14 What record keeping is required?

In accordance with the direction attached at **Schedule 10** a hospital, public health service, multi purpose service, or proprietor of an approved private hospital where an authorised senior medical officer(s) has been appointed must ensure that all orders and authorisations made by the authorised senior medical officer(s) are kept in a central file, and that the file is able to be readily located and retrieved.

Where a notation of the incident is required to be made on other files, for example a patient's clinical file or as part of a critical incident report, the identity of the source must not be disclosed, communicated or recorded in any way that would identify the person tested.⁵² In this way, the privacy of the care-giver or custodian involved in the incident is protected.

It is also important that the clinical file of the person tested (the source) notes that an order was made. This file should include the test results and any notes made about counselling, as this information may be relevant to current or future clinical or other services provided by the hospital to the source.

15 Directions about testing orders or authorisations

Under section 120DA of the Act, the Secretary may give directions in relation to:

- the requirements for persons suitable to become an authorised senior medical officer for the purposes of making orders or authorisations;
- the process for authorising a person to be an authorised senior medical officer;
- the information to be provided by the hospital, public health service, multi purpose service or proprietor to the authorised senior medical officer;
- the matters that an authorised senior medical officer must take into account in deciding whether to make an order or authorisation under this Division;
- the procedures to be followed by an authorised senior medical officer before or after making an order or authorisation under this Division;

⁵⁰ For instance, Health Privacy Principle 2.2(h) of the *Health Records Act 2001* permits the use (or disclosure) of health information if it "is necessary to lessen or prevent ... a serious and imminent threat to an individual's life, health, safety or welfare". Hospitals, public health services and multipurpose services would also need to comply with section 141 of the *Health Services Act 1988* in the case of a disclosure by staff or the hospital to another organisation. In the latter case s.141(3)(eb) permits the disclosure if the terms of Health Privacy Principle 2.2(h) referred to above are met.

⁵¹ For instance, Health Privacy Principle 2.2(h) refers to disclosing health information if it "is necessary to lessen or prevent ... a serious and imminent threat to an individual's life, health, safety or welfare".

⁵² *Health Act 1958*, section 120D(1)

- the requirements to be complied with by an authorised senior medical officer about the keeping of records and reporting to the hospital, public health service, multi purpose service, proprietor or Secretary;
- the provision of counselling or information required by section 120AC of the Act.

The hospital, public health service, multi purpose service, proprietor or authorised senior medical officer must comply with any direction given by the Secretary under this section.

A copy of the direction dated 4 October 2005 is attached at **Schedule 10**.

The Department of Human Services (Public Health) will advise health services of any other directions that are made under section 120DA of the Act. Such directions are also available on the internet at www.health.vic.gov.au/ideas/regulations/comptest

16 Governance and compliance

Health services that have authorised senior medical officers should have governance processes to ensure staff abide by and comply with the legal requirements relating to compulsory testing under Division 2A, Part 6 of the Act.

An internal audit and an annual review, with suitable reporting processes, should be built into the framework developed to implement these guidelines. During such a review, considerations may include:

- Ensuring that there is always a current authorisation in place;
- Succession planning for the authorised senior medical officer as well as arranging back up during leave;
- Review of cases, documentation in hospital files and processes with an view to quality improvement;
- Ensuring complaints or concerns raised during the application of the processes involved, are evaluated through the usual internal processes (possibly including the organisation's patient advocate) and any recommendations have been acted upon and suitable remedies put into place; and
- Updating any forms/contact numbers and including any new Directions from the Secretary.

17 Review & comments

It is proposed that a review of these guidelines will commence in 2007.

Any comments or queries regarding these guidelines may be directed to Legislation Review (Public Health):

Telephone: (03) 9637 5509

Email: lrph@dhs.vic.gov.au

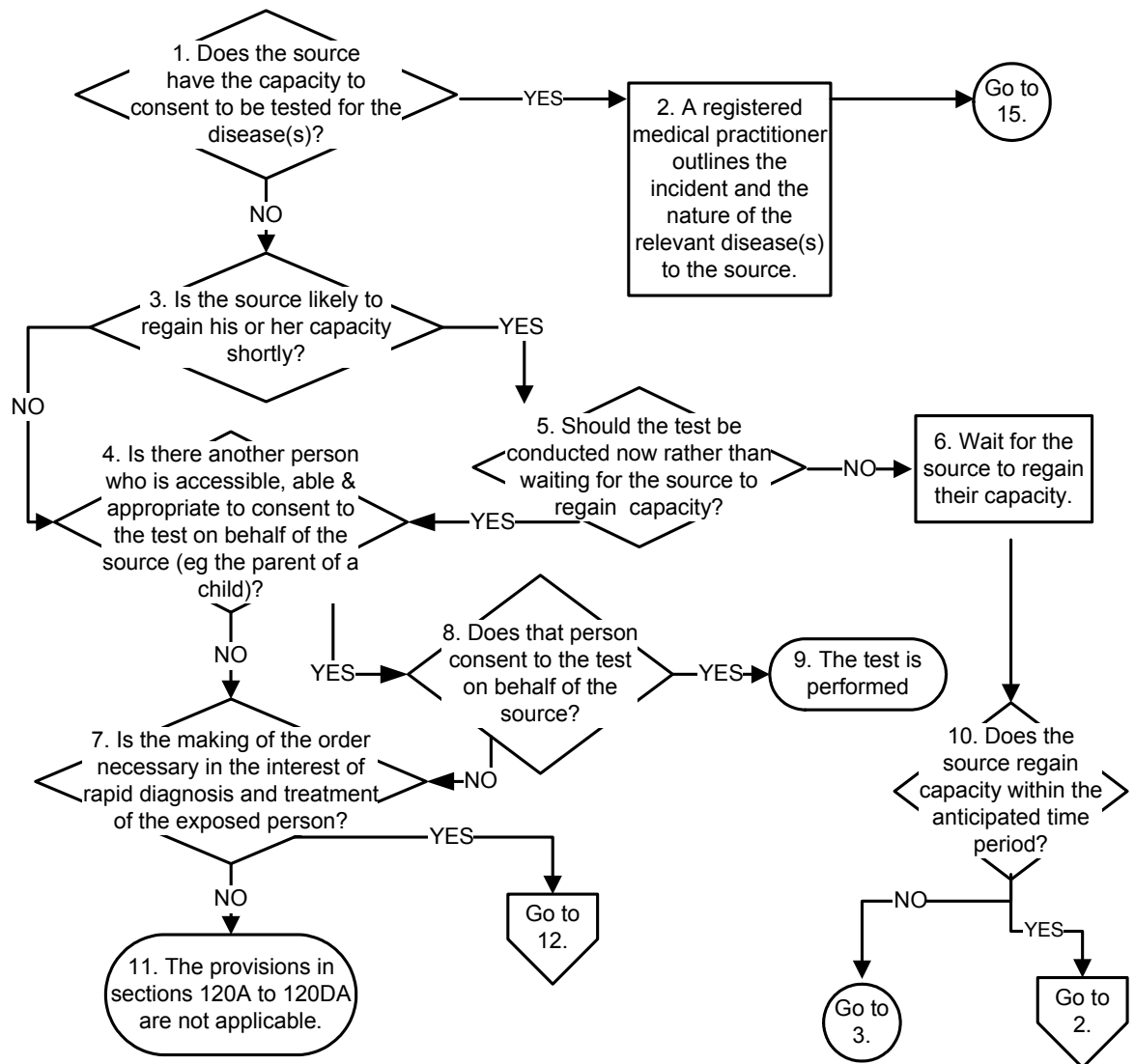
18 References

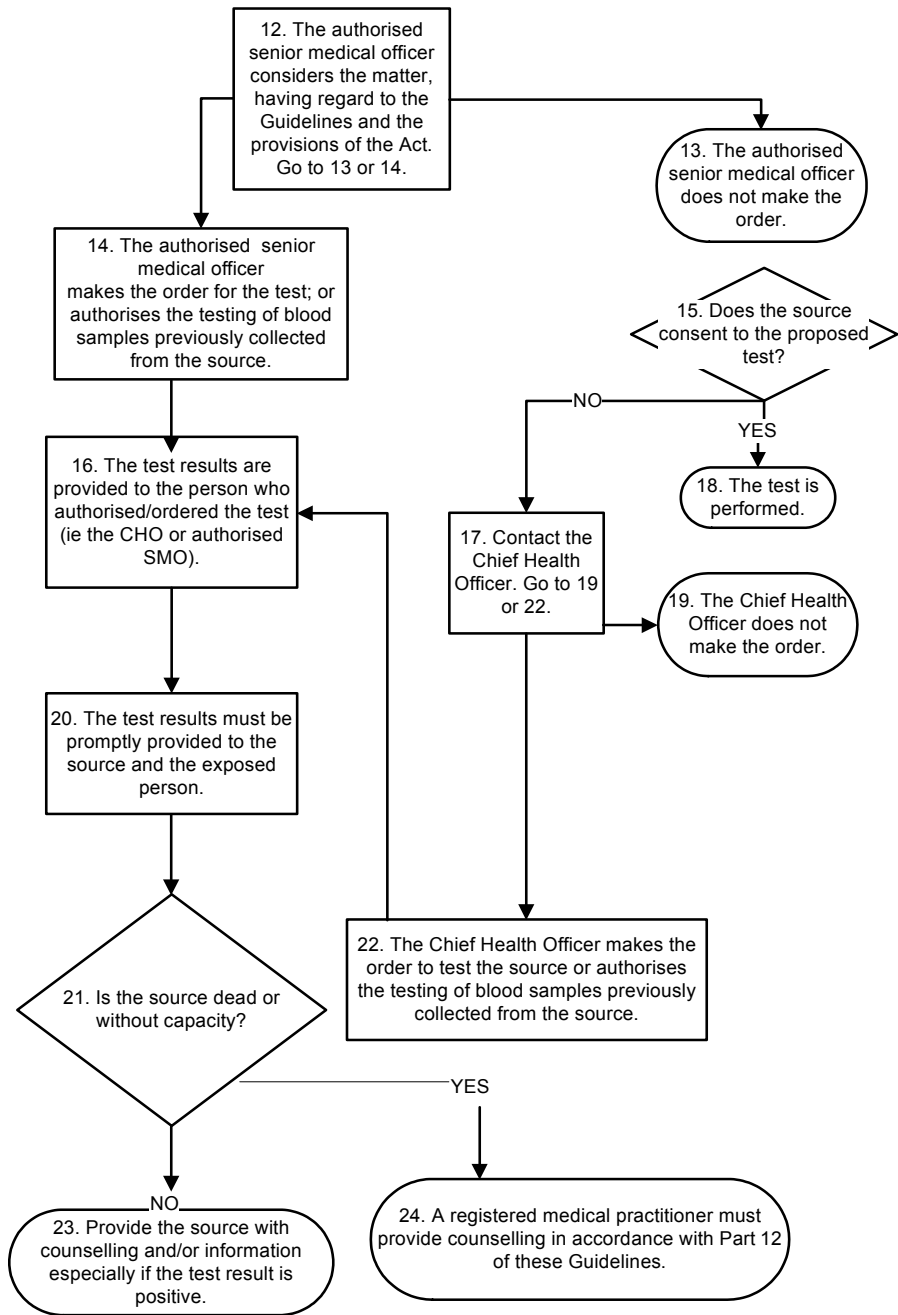
Department of Health and Ageing *Infection Control Guidelines for the prevention of transmission of infectious diseases in the health care setting*, (2004) Australian Government Publishing Service, Canberra. Available at: www.icg.health.gov.au

FLOWCHART FOR HOSPITALS WITH AUTHORISED SENIOR MEDICAL OFFICERS

This flowchart applies where an incident occurs at a hospital with an authorised senior medical officer in which all of the following apply:

- if any of those involved were infected with HIV or Hepatitis B, C or D (the source), the disease(s) could have been transmitted to any of the other people involved;
- the incident occurred while a care-giver or custodian was acting in that capacity;
- those people to whom the disease(s) could have been transmitted have:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s); and
 - consented to be tested for that disease(s)

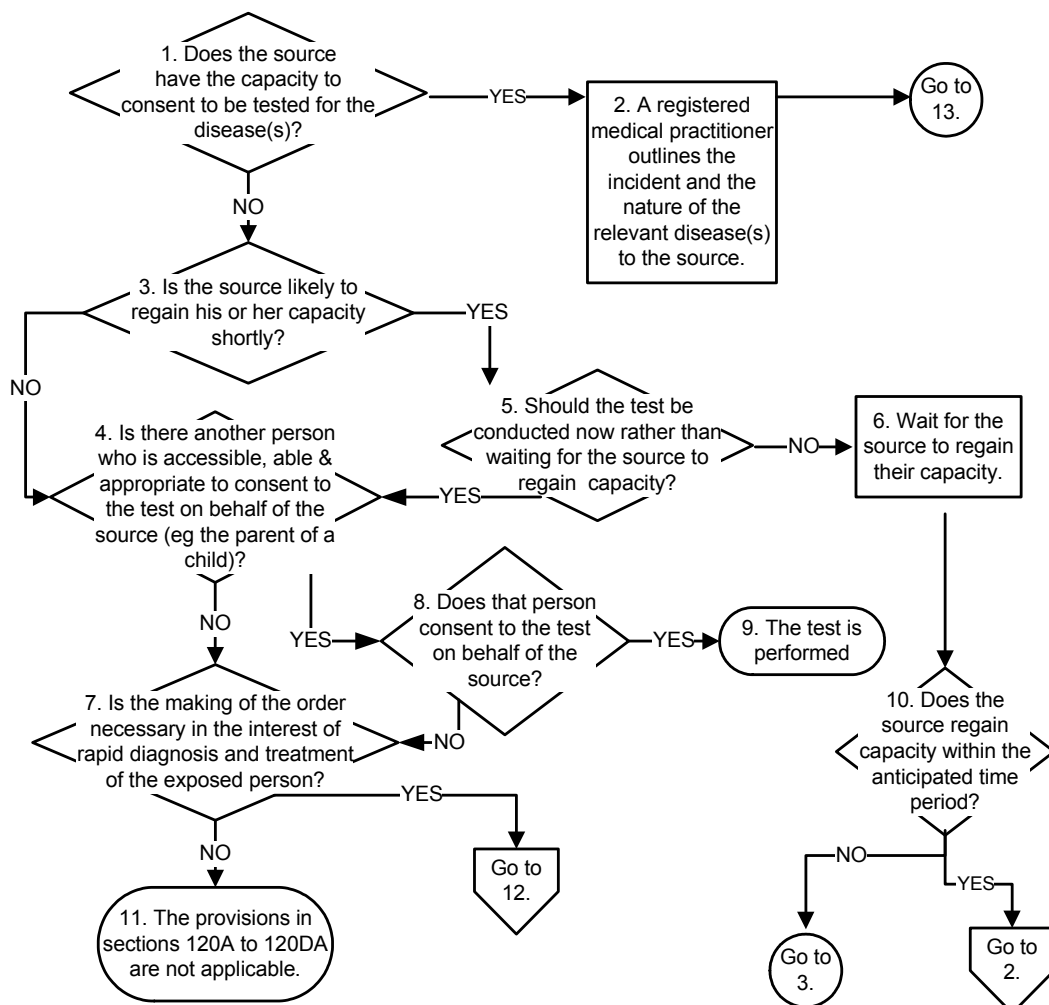


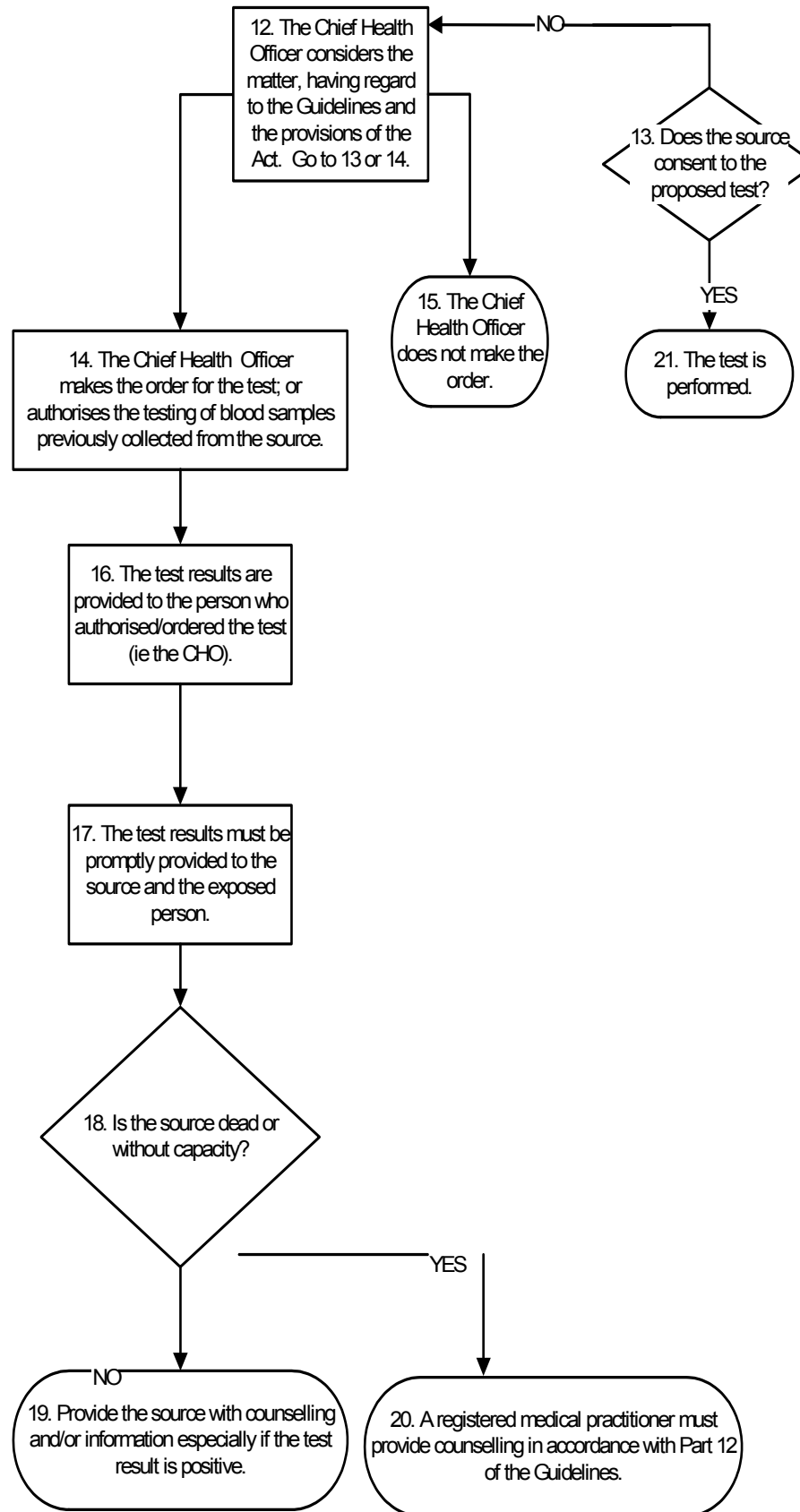


FLOWCHART FOR HOSPITALS OR OTHER INSTITUTIONS WITHOUT AN AUTHORISED SENIOR MEDICAL OFFICER

This flowchart applies where an incident occurs at a hospital, or other institution without an authorised senior medical officer in which all of the following apply:

- if any of those involved were infected with HIV or Hepatitis B, C or D (the source), the disease(s) could have been transmitted to any of the other people involved;
- the incident occurred while a care-giver or custodian was acting in that capacity;
- those people to whom the disease(s) could have been transmitted (the exposed person(s)) have:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s); and
 - consented to be tested for that disease(s).





ORDER OF AN AUTHORISED SENIOR MEDICAL OFFICER
UNDER SECTION 120A OF THE HEALTH ACT 1958

(FORM NOT FOR USE BY APPROVED PRIVATE HOSPITALS)

I, *{insert name and position}*, of
..... *{insert the name of the hospital or health service}*, am authorised in writing by
{insert name and position of person legally able to make the appointment eg the CEO or delegate of the hospital} to exercise the powers of an authorised senior medical officer under section 120A of the *Health Act 1958* (the Act).

Based on the information I have received, I am satisfied that:

- An incident has occurred at *{insert details of incident – eg when, where & what happened}* (“**Incident**”):

.....
.....
.....
.....

- The Incident occurred while a care-giver or custodian was acting in that capacity.

- The care-giver/custodian is *{tick as applicable}*:

- a registered medical practitioner;
- a registered dentist;
- a registered nurse;
- an ambulance officer;
- the legal custodian of a person who at the time of the incident was in legal or protective custody *{please specify}*

.....
.....

- The nature of the Incident was that, if any of those involved were infected with *{tick as appropriate}* (“**Source**”):

- HIV,
- HBV,
- HCV
- HDV

the disease(s) could have been transmitted to any of the other people involved (“**Exposed Person(s)**”).

- The Source (ie the person who is to be tested) is *{insert full name and DOB, if known}*:

.....
.....

- The Exposed Person(s) (ie the person to whom the disease(s) could have been transmitted is **{insert full name(s) and DOB(s) if known}**.
.....
.....
- The Exposed Person(s) has:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s); and
 - consented to be tested for that disease(s).
- The Source **{tick as applicable}**:
 - is dead.**
 - does not have the capacity to consent to be tested for the disease(s) and is not expected to regain capacity within a reasonable period of time.**
- The making of this order is necessary in the interest of rapid diagnosis and treatment for the exposed person.
- Not more than 3 months has passed since the Incident occurred.

I make the following order:

1.
{insert full name (and DOB if known) of the person to be tested}
is to be tested for **{tick disease(s) as appropriate – nb the diseases listed must be disease(s) for which the Exposed Person(s) has agreed to be tested}**:
 - HIV,
 - HBV,
 - HCV
 - HDV
2. The test(s) must be undertaken **{specify when & where the testing must take place – nb this can be either general or specific}**:
.....
.....
3. The type of tests required are **{insert the test(s) required}**:
.....
.....

Signed:

Dated:

=====

** In accordance with section 120AC of the Act, a registered medical practitioner must provide counselling in the manner noted below.

- The person tested under the order must be counselled as soon as is practicable if the person has regained capacity. If the person is expected to regain capacity within a reasonable period of time, the registered medical practitioner should wait for the person to regain capacity unless there is a medical reason to disclose the information in accordance with the next paragraph.
- If the person tested under the order is dead or does not have or regain capacity to consent to testing within a reasonable period of time, the following person must be counselled:
 - in the case of a person under 18 years of age, a parent or any other person who has all the duties, powers and responsibilities and authority which parents have in relation to children;
 - in the case of a person who has died, the person who, but for the death, would have been the person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*); or
 - in any other case, any person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*) for the person tested.
- The counselling must include:
 - details of the test conducted;
 - the reasons why the test was conducted;
 - the results of the test: and
 - if the test indicates the presence of an infectious disease, the effects of that disease on an infected person and the risk to public health of the disease.

AUTHORISATION OF AN AUTHORISED SENIOR MEDICAL OFFICER
UNDER SECTION 120B OF THE HEALTH ACT 1958

(FORM NOT FOR USE BY APPROVED PRIVATE HOSPITALS)

I, *{insert name and position}*, of
..... *{insert the name of the hospital or health service}*, am authorised in writing by
{insert name and position of person legally able to make the appointment eg the CEO or delegate of the hospital} to exercise the powers of an authorised senior medical officer under section 120B of the *Health Act 1958* (the Act).

Based on the information I have received, I am satisfied that:

- An incident has occurred at *{insert details of incident – eg when, where & what happened}* (“**Incident**”):

.....
.....
.....
.....

- The Incident occurred while a care-giver or custodian was acting in that capacity.

- The care-giver/custodian is *{tick as appropriate}*:

- a registered medical practitioner;
- a registered dentist;
- a registered nurse;
- an ambulance officer;
- the legal custodian of a person who at the time of the incident was in legal or protective custody
{please specify}

.....
.....

- The nature of the Incident was that, if any of those involved were infected with *{tick as appropriate}* (“**Source**”):

- HIV,
- HBV,
- HCV
- HDV

the disease(s) could have been transmitted to any of the other people involved (“**Exposed Person(s)**”).

- The Source (ie the person who is to be tested) is *{insert full name and DOB, if known}*:

-
-
- The Exposed Person(s) (ie the person to whom the disease(s) could have been transmitted is **{insert full name(s) and DOB(s) if known}**):
-
-
- The Exposed Person(s) has:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s); and
 - consented to be tested for that disease(s).
- The Source is **{tick as appropriate}**:
 - is dead**
 - does not have the capacity to consent to be tested for the disease(s) and is not expected to regain capacity within a reasonable period of time.**
- There is a specimen of the Source’s blood that:
 - is suitable for such testing; and
 - if authorised for testing, can still be used for the purpose it was originally stored.
- Because of the person's state of health or for any other reason, it would be inappropriate to make an order under section 120A of the Act;
- The making of this order is necessary in the interest of rapid diagnosis and treatment for the exposed person; and
- Not more than 3 months has passed since the Incident occurred.

I make the following order:

1. The specimen of blood from
{insert full name (and DOB if known) of the person to be tested}
 is to be tested for **{tick disease(s) as appropriate – nb the diseases listed must be disease(s) for which the Exposed Person(s) has agreed to be tested}**:
 - HIV,
 - HBV,
 - HCV
 - HDV
2. The test(s) must be undertaken **{specify when & where the testing must take place – nb this can be either general or specific}**:

3. The type of tests required are **{insert the test(s) required}**:

.....
.....

Signed:

Dated:

=====

** In accordance with section 120AC of the Act, a registered medical practitioner must provide counselling in the manner noted below.

- The person tested under the order must be counselled as soon as is practicable if the person has regained capacity. If the person is expected to regain capacity within a reasonable period of time, the registered medical practitioner should wait for the person to regain capacity unless there is a medical reason to disclose the information in accordance with the next paragraph.
- If the person tested under the order is dead or does not have or regain capacity to consent to testing within a reasonable period of time, the following person must be counselled:
 - in the case of a person under 18 years of age, a parent or any other person who has all the duties, powers and responsibilities and authority which parents have in relation to children;
 - in the case of a person who has died, the person who, but for the death, would have been the person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*); or
 - in any other case, any person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*) for the person tested.
- The counselling must include:
 - details of the test conducted;
 - the reasons why the test was conducted;
 - the results of the test: and
 - if the test indicates the presence of an infectious disease, the effects of that disease on an infected person and the risk to public health of the disease.

ORDER OF AN AUTHORISED SENIOR MEDICAL OFFICER
UNDER SECTION 120A OF THE HEALTH ACT 1958

(FORM FOR USE BY APPROVED PRIVATE HOSPITALS)

I, *{insert name and position}*, of
..... *{insert name of the approved private hospital}* am authorised in writing by
{insert name and position of person legally able to make the appointment ie. the proprietor of the approved private hospital} to exercise the powers of an authorised senior medical officer under section 120A of the *Health Act 1958* (the Act).

..... *{insert name of the approved private hospital}* is registered under Part 4 of the *Health Services Act 1988* and has been approved by the Secretary to the Department of Human Services under section 120AB(1)(b)(ii) of the Act.

Based on the information I have received, I am satisfied that:

- An incident has occurred at *{insert details of incident – eg when, where & what happened}* (“**Incident**”)

.....
.....
.....

- The Incident occurred while a care-giver or custodian was acting in that capacity.

- The care-giver/custodian is *{tick as appropriate}*:

- a registered medical practitioner;
- a registered dentist;
- a registered nurse;
- an ambulance officer;
- the legal custodian of a person who at the time of the incident was in legal or protective custody *{please specify}*

.....
.....

- The nature of the Incident was that, if any of those involved were infected with *{tick as appropriate}* (“**Source**”):

- HIV,
- HBV,
- HCV
- HDV

the disease(s) could have been transmitted to any of the other people involved (“**Exposed Person(s)**”).

- The Source (ie the person who is to be tested) is **{insert full name and DOB, if known}**:

- The Exposed Person(s) (ie the person to whom the disease(s) could have been transmitted is **{insert full name(s) and DOB(s) if known}**:

- The Exposed Person(s) has:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s); and
 - consented to be tested for that disease(s).
- The Source **{tick as appropriate}**:
 - is dead.**
 - does not have the capacity to consent to be tested for the disease(s) and is not expected to regain capacity within a reasonable period of time.**
- The making of this order is necessary in the interest of rapid diagnosis and treatment for the exposed person; and
- Not more than 3 months has passed since the Incident occurred.

I make the following order:

1.
{insert full name (and DOB if known) of the person to be tested}
 is to be tested for **{tick disease(s) as appropriate – nb the diseases listed must be disease(s) for which the Exposed Person(s) has agreed to be tested}**:
 - HIV,
 - HBV,
 - HCV
 - HDV
2. The test(s) must be undertaken **{specify when & where the testing must take place – nb this can be either general or specific}**:

3. The type of tests required are **{insert the test(s) required}**:

Signed:

Dated:

=====

** In accordance with section 120AC of the Act, a registered medical practitioner must provide counselling in the manner noted below.

- The person tested under the order must be counselled as soon as is practicable if the person has regained capacity. If the person is expected to regain capacity within a reasonable period of time, the registered medical practitioner should wait for the person to regain capacity unless there is a medical reason to disclose the information in accordance with the next paragraph.
- If the person tested under the order is dead or does not have or regain capacity to consent to testing within a reasonable period of time, the following person must be counselled:
 - in the case of a person under 18 years of age, a parent or any other person who has all the duties, powers and responsibilities and authority which parents have in relation to children;
 - in the case of a person who has died, the person who, but for the death, would have been the person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*); or
 - in any other case, any person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*) for the person tested.
- The counselling must include:
 - details of the test conducted;
 - the reasons why the test was conducted;
 - the results of the test: and
 - if the test indicates the presence of an infectious disease, the effects of that disease on an infected person and the risk to public health of the disease.

AUTHORISATION OF AN AUTHORISED SENIOR MEDICAL OFFICER
UNDER SECTION 120B OF THE HEALTH ACT 1958

(FORM FOR USE BY APPROVED PRIVATE HOSPITALS)

I, *{insert name and position}*, of
..... *{insert name of the approved private hospital}* am authorised in writing by
{insert name of person legally able to make the appointment ie. the proprietor of the approved private hospital} to exercise the powers of an authorised senior medical officer under section 120B of the *Health Act 1958*.

..... *{insert name of the approved private hospital}* is registered under Part 4 of the *Health Services Act 1988* and has been approved by the Secretary to the Department of Human Services under section 120AB(1)(b)(ii) of the *Health Act 1958*.

Based on the information I have received, I am satisfied that:

- An incident has occurred at *{insert details of incident – eg when, where & what happened}* (“**Incident**”):

.....
.....
.....
.....

- The Incident occurred while a care-giver or custodian was acting in that capacity.

- The care-giver/custodian is: *{tick as appropriate}*

- a registered medical practitioner;
- a registered dentist;
- a registered nurse;
- an ambulance officer;
- the legal custodian of a person who at the time of the incident was in legal or protective custody *{please specify}*

.....
.....

- The nature of the Incident was that, if any of those involved were infected with *{tick as appropriate}* (“**Source**”):

- HIV,
- HBV,
- HCV
- HDV

the disease(s) could have been transmitted to any of the other people involved (“**Exposed Person(s)**”).

- The Source (ie the person who is to be tested) is **{insert full name and DOB, if known}**:

- The Exposed Person(s) (ie the person to whom the disease(s) could have been transmitted is **{insert full name(s) and DOB(s) if known}**.

- The Exposed Person(s) has:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s); and
 - consented to be tested for that disease(s).
- The Source is **{tick as appropriate}**:
 - Dead.**
 - does not have the capacity to consent to be tested for the disease(s) and is not expected to regain capacity within a reasonable period of time.** {Delete as appropriate}
- There is a specimen of the Source’s blood that:
 - is suitable for such testing; and
 - if authorised for testing, can still be used for the purpose it was originally stored.
- Because of the person's state of health or for any other reason, it would be inappropriate to make an order under section 120A;
- The making of this order is necessary in the interest of rapid diagnosis and treatment for the exposed person; and
- Not more than 3 months has passed since the Incident occurred.

I make the following order:

1. The specimen of blood from
{insert full name (and DOB if known) of the person to be tested}
 is to be tested for **{tick disease(s) as appropriate – nb the diseases listed must be disease(s) for which the Exposed Person(s) has agreed to be tested}**:
 - HIV,
 - HBV,
 - HCV
 - HDV
2. The test(s) must be undertaken **{specify when & where the testing must take place – nb this can be either general or specific}**:

3. The type of tests required are *{insert the test(s) required}*:

.....
.....

Signed:

Dated:

=====

** In accordance with section 120AC of the Act, a registered medical practitioner must provide counselling in the manner noted below.

- The person tested under the order must be counselled as soon as is practicable if the person has regained capacity. If the person is expected to regain capacity within a reasonable period of time, the registered medical practitioner should wait for the person to regain capacity unless there is a medical reason to disclose the information in accordance with the next paragraph.
- If the person tested under the order is dead or does not have or regain capacity to consent to testing within a reasonable period of time, the following person must be counselled:
 - in the case of a person under 18 years of age, a parent or any other person who has all the duties, powers and responsibilities and authority which parents have in relation to children;
 - in the case of a person who has died, the person who, but for the death, would have been the person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*); or
 - in any other case, any person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*) for the person tested.
- The counselling must include:
 - details of the test conducted;
 - the reasons why the test was conducted;
 - the results of the test: and
 - if the test indicates the presence of an infectious disease, the effects of that disease on an infected person and the risk to public health of the disease.

REQUIREMENTS FOR A REQUEST TO THE CHIEF HEALTH OFFICER
FOR
AN ORDER OR AUTHORISATION UNDER
SECTION 120A OR 120B OF THE HEALTH ACT 1958

A request to the Chief Health Officer for an order or authorisation under section 120A or 120B of the *Health Act 1958* must be made in writing and must:

1. Describe the incident, including details of:
 - what happened, including the names (and DOB if known) of the people involved;
 - where the incident occurred;
 - whether the incident occurred while a care-giver or custodian was acting in that capacity – including a description of the person who would be classified in the Act as a care-giver or custodian (ie a registered medical practitioner, a registered dentist, a registered nurse, an ambulance officer, or the legal custodian of a person who is taken into legal or protective custody).
2. Describe the circumstances of the exposure, including direct comment on the incident in terms of, whether, if any of those involved were infected with HIV or Hepatitis B, C or D, the disease(s) could have been transmitted to any of the other people involved.
3. State the grounds on which it was determined who was the potential source of the exposure and who was the potentially exposed person. It may be that all involved were potential sources as well as potentially exposed persons.
4. State the disease(s) for which the source is to be tested (ie. HIV or Hepatitis B, C and/or D).
5. State whether the person to whom the disease(s) could have been transmitted has:
 - been counselled by a registered medical practitioner about the risk of transmission of the disease(s) in the particular circumstances and about the medical and social consequences of being infected with the disease(s); and
 - consented to be tested for that disease(s).
6. State whether the source:
 - has been offered counselling, by whom and when, (irrespective of whether the offer was accepted) and has refused to be tested for the disease(s); or
 - is dead, unconscious or otherwise does not have the capacity to consent to be tested for the disease(s).
7. State whether a specimen of the source's blood has been stored at any place for any purpose and, if there is such a sample:

- whether, because of the person's state of health or for any other reason, it may be inappropriate to make the order under section 120A; and
 - whether, if the blood was authorised to be tested and was tested under section 120B, it could still be used for the purpose for which it was originally stored; and
 - whether that sample is suitable for the testing required.
8. State where and when the tests are to be conducted, and the type of testing required.

ORDER OF THE CHIEF HEALTH OFFICER
UNDER SECTION 120A OF THE HEALTH ACT 1958

I,{insert name}, Chief Health Officer, am delegated to exercise Secretarial powers under section 120A of the *Health Act 1958* (the Act).

Based on the information I have received, I am satisfied that:

- An incident has occurred at: {insert details of incident – eg when, where & what happened} (“**Incident**”)

.....
.....
.....
.....

- The Incident occurred while a care-giver or custodian was acting in that capacity.

- The care-giver/custodian is {tick as applicable}:

- a registered medical practitioner;
- a registered dentist;
- a registered nurse;
- an ambulance officer;
- the legal custodian of a person who at the time of the incident was in legal or protective custody {please specify}:

.....
.....

- The nature of the Incident was that, if any of those involved were infected with {tick as appropriate} (“**Source**”):

- HIV,
- HBV,
- HCV
- HDV

the disease(s) could have been transmitted to any of the other people involved (“**Exposed Person(s)**”).

- The Source (ie the person who is to be tested) is {insert full name and DOB, if known}:

.....
.....

- The Exposed Person(s) (ie the person to whom the disease(s) could have been transmitted) is {insert full name(s) and DOB(s) if known}:

.....
.....

- The Exposed Person(s) has:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s); and
 - consented to be tested for that disease(s).
- The Source *{tick as applicable}*:
 - Has been offered counselling, by.....*{insert name & position}* on.....*{insert date}* (irrespective of whether the offer was accepted); and has refused to be tested for the disease(s).
 - is dead.**
 - does not have the capacity to consent to be tested for the disease(s) and is not expected to regain capacity within a reasonable period of time.**
- The making of this order is necessary in the interest of rapid diagnosis and treatment for the exposed person.
- Not more than 3 months has passed since the Incident occurred.

I make the following order:

1.
{insert full name and DOB if known of the person to be tested}
is to be tested for *{tick disease(s) as applicable – nb the diseases listed must be disease(s) for which the Exposed Person(s) has agreed to be tested}*:
 - HIV,
 - HBV,
 - HCV
 - HDV
2. The test(s) must be undertaken *{specify when & where the testing must take place – nb this can be either general or specific}*:
.....
.....
3. The type of tests required are *{insert the test(s) required}*:
.....
.....

Signed:

Dated:

=====

** In accordance with section 120AC of the Act, a registered medical practitioner must provide counselling in the manner noted below.

- The person tested under the order must be counselled as soon as is practicable if the person has regained capacity. If the person is expected to regain capacity within a reasonable period of time, the registered medical practitioner should wait for the person to regain capacity unless there is a medical reason to disclose the information in accordance with the next paragraph.
- If the person tested under the order is dead or does not have or regain capacity to consent to testing within a reasonable period of time, the following person must be counselled:
 - in the case of a person under 18 years of age, a parent or any other person who has all the duties, powers and responsibilities and authority which parents have in relation to children;
 - in the case of a person who has died, the person who, but for the death, would have been the person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*); or
 - in any other case, any person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*) for the person tested.
- The counselling must include:
 - details of the test conducted;
 - the reasons why the test was conducted;
 - the results of the test: and
 - if the test indicates the presence of an infectious disease, the effects of that disease on an infected person and the risk to public health of the disease.

AUTHORISATION OF THE CHIEF HEALTH OFFICER
UNDER SECTION 120B OF THE HEALTH ACT 1958

I, **{insert name}**, Chief Health Officer, am delegated to exercise Secretarial powers under section 120B of the *Health Act 1958* (the Act).

Based on the information I have received, I am satisfied that:

- An incident has occurred at **{insert details of incident – eg when, where & what happened}** (“**Incident**”):

-
-
-

- The Incident occurred while a care-giver or custodian was acting in that capacity.

- The care-giver/custodian is: **{tick as applicable}**
 - a registered medical practitioner;
 - a registered dentist;
 - a registered nurse;
 - an ambulance officer;
 - the legal custodian of a person who at the time of the incident was in legal or protective custody **{please specify}**:

.....

.....

- The nature of the Incident was that, if any of those involved were infected with **{tick as appropriate}** (“**Source**”):

- HIV,
- HBV,
- HCV
- HDV

the disease(s) could have been transmitted to any of the other people involved (“**Exposed Person(s)**”).

- The Source (ie the person who is to be tested) is **{insert full name and DOB if known}**:

.....

.....

- The Exposed Person(s) (ie the person to whom the disease(s) could have been transmitted) is **{insert full name(s) and DOB(s) if known}**:

.....

.....

- The Exposed Person(s) has:
 - been counselled by a registered medical practitioner in relation to the risk of transmission of the disease(s) in the particular circumstances and the medical and social consequences of being infected with the disease(s); and
 - consented to be tested for that disease(s).
- The Source **{tick as applicable}**:
 - Has been offered counselling, by.....**{insert name & position}** on.....**{insert date}** (irrespective of whether the offer was accepted); and has refused to be tested for the disease(s).
 - is dead.**
 - does not have the capacity to consent to be tested for the disease(s) and is not expected to regain capacity within a reasonable period of time.**
- There is a specimen of the Source’s blood that:
 - is suitable for such testing; and
 - if authorised for testing, can still be used for the purpose it was originally stored.
- Because of the person's state of health or for any other reason, it would be inappropriate to make an order under section 120A;
- The making of this order is necessary in the interest of rapid diagnosis and treatment for the exposed person; and
- Not more than 3 months has passed since the Incident occurred.

I make the following order:

1. The specimen of blood from
{insert full name (and DOB if known) of the person to be tested}
 is to be tested for **{tick disease(s) as appropriate – nb the diseases listed must be disease(s) for which the Exposed Person(s) has agreed to be tested}**:
 - HIV,
 - HBV,
 - HCV
 - HDV
2. The test(s) must be undertaken **{specify when & where the testing must take place – nb this can be either general or specific}**:

3. The type of tests required are **{insert the test(s) required}**:

Signed:

Dated:

=====

** In accordance with section 120AC of the Act, a registered medical practitioner must provide counselling in the manner noted below.

- The person tested under the order must be counselled as soon as is practicable if the person has regained capacity. If the person is expected to regain capacity within a reasonable period of time, the registered medical practitioner should wait for the person to regain capacity unless there is a medical reason to disclose the information in accordance with the next paragraph.
- If the person tested under the order is dead or does not have or regain capacity to consent to testing within a reasonable period of time, the following person must be counselled:
 - in the case of a person under 18 years of age, a parent or any other person who has all the duties, powers and responsibilities and authority which parents have in relation to children;
 - in the case of a person who has died, the person who, but for the death, would have been the person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*); or
 - in any other case, any person responsible (as defined in section 37 the *Guardianship and Administration Act 1986*) for the person tested.
- The counselling must include:
 - details of the test conducted;
 - the reasons why the test was conducted;
 - the results of the test: and
 - if the test indicates the presence of an infectious disease, the effects of that disease on an infected person and the risk to public health of the disease.

HEALTH ACT 1958**DIRECTIONS ABOUT ORDERS OR AUTHORISATIONS**

I, **DR ROBERT HALL**, Chief Health Officer, as delegate of the Secretary to the Department of Human Services for the purposes of section 120DA of the *Health Act 1958* (the Act) make the following directions under that section:

1. A hospital, public health service, multi purpose service or proprietor of an approved private hospital must ensure that a person who is authorised by that hospital or service or the chief executive or proprietor of that hospital or service to make orders or authorise testing for the purposes of section 120AB of the Act:
 - (a) is a registered medical practitioner who is a senior medical officer of the hospital;
 - (b) has adequate knowledge and experience in relation to the management of sharps injuries, such as needlestick, and other blood or body fluid exposures;
 - (c) understands the requirements of sections 120A to 120DA of the Act;
 - (d) is familiar with the Department of Human Services (Public Health) *Guidelines on Division 2A, Part 6 of the Health Act 1958 – The Compulsory Testing Provisions*, as amended from time to time; and
 - (e) is familiar with internal protocols of the health service involved.
2. A hospital, public health service, multi purpose service, or proprietor of an approved private hospital where an authorised senior medical officer(s) has been appointed must ensure that all orders and authorisations made by the authorised senior medical officer(s) are kept in a central file, and that the file is able to be readily located and retrieved.

Signed: [\[signed by Robert Hall on 4 October 2005\]](#)

Dated: [\[4 October 2005\]](#)

NOTES

- The words “hospital”, “public health service”, “multi purpose service”, “proprietor” and “authorised senior medical officer” in this direction have the same meaning as in section 120DA of the *Health Act 1958*.
- Pursuant to section 120DA(2) of the *Health Act 1958*, hospitals, public health services, multi purpose services, proprietors and authorised senior medical officers must comply with this direction.
- This direction, and any others made pursuant to section 120DA of the Act, is available on the internet at www.health.vic.gov.au/ideas/regulations/comptest

HEALTH ACT 1958**APPROVED PRIVATE HOSPITALS**

I, **DR ROBERT HALL**, Chief Health Officer, as delegate of the Secretary to the Department of Human Services for the purposes of section 120AB(1)(b)(ii) of the Health Act 1958 approve the following private hospitals for the purposes of that section:

Beleura Private Hospital
Bellbird Private Hospital
Cabrini, Brighton
Cedar Court Health South Rehabilitation Hospital
Cliveden Hill Private Hospital
Como Private Hospital
Cotham Private Hospital
Donvale Rehabilitation Hospital
Elsternwick Private Hospital
Epworth Hospital
Epworth Eastern Hospital
Epworth Rehabilitation Brighton
Essendon Private Hospital Victoria
Frances Perry Private Hospital (Royal Women's Hospital)
Freemasons Hospital
Geelong Private Hospital
Glenferrie Private Hospital
Hopetoun Rehabilitation Hospital
Ivanhoe Private Rehabilitation Hospital
Jessie McPherson Private Hospital
John Fawkner Private Hospital
Knox Private Hospital
La Trobe University Medical Centre
Lilydale Private Hospital
Linacre Private Hospital
Malvern Private Hospital
Maryvale Private Hospital
Masada Private Hospital
Mildura Private Hospital
Mitcham Private Hospital
Mountain District Private Hospital
Murray Valley Private Hospital
New Mildura Base Hospital
Northpark Private Hospital
Olympia Private Rehabilitation Hospital

Peninsula Private Hospital
Ringwood Private Hospital
Saint Frances Xavier Cabrini Hospital
Shepparton Private Hospital
South Eastern Private Hospital
St John of God Health Care (Ballarat)
St John of God Health Care (Berwick)
St John of God Health Care (Bendigo)
St John of God Health Care (Geelong)
St John of God Health Care Nepean Rehabilitation Hospital
St John of God Health Care Pinelodge Clinic
St John of God Health Care (Warrnambool)
St Vincents & Mercy Private Hospital, Mercy Campus
St Vincent's Private Hospital
The Albert Road Clinic
The Avenue Private Hospital
The Geelong Clinic
The Melbourne Clinic Private Hospital
The Melbourne Private Hospital
The Valley Private Hospital
The Victoria Clinic
Vaucluse Private Hospital
Victorian Rehabilitation Centre - Eastern Melbourne
Vimy House Private Hospital
Wangaratta Private Hospital
Warringal Private Hospital
Waverley Private Hospital
Western Private Hospital

Signed: [\[signed by Robert Hall on 4 October 2005\]](#)

Dated: [\[4 October 2005\]](#)

HEALTH ACT 1958**RELEVANT EXCERPTS****3. Definitions**

(1) In this Act unless inconsistent with the context or subject-matter—

"HIV" means the human immuno-deficiency virus which is a causative agent of the acquired immune deficiency syndrome and other related conditions;

"registered medical practitioner" means a registered medical practitioner within the meaning of the *Medical Practice Act 1994*;

"specified infectious disease" means—

- (a) HIV; or
- (b) any form of hepatitis which may be transmitted by blood or body fluid; or
- (c) an infectious disease declared by the regulations to be a specified infectious disease for the purposes of this Act;

PART VI—MANAGEMENT AND CONTROL OF INFECTIOUS DISEASES**Division 1—Preliminary****118. Definitions**

In this Part—

"care-giver or custodian" means—

- (a) a registered medical practitioner or registered dentist or registered nurse; or
- (b) an ambulance officer; or
- (c) in relation to a person taken into legal or protective custody, any legal custodian of that person; or
- (d) a person who works in a prescribed field of health, welfare or custodial care;

"test" means diagnostic procedure.

Division 2A—Examining and testing after incidents involving care-givers or custodians**120A. Orders for tests**

- (1) If the Secretary reasonably believes that—
- (a) an incident has occurred, while a care-giver or custodian is acting in that capacity, in which, if any of those involved were infected by a specified infectious disease, the disease could have been transmitted to any of the other people involved; and
 - (b) any of those people to whom the disease could have been transmitted has been counselled by a registered medical practitioner about the risk of transmission of the disease in the particular circumstances and about the medical and social consequences of being infected with the disease and has consented to be tested for that disease; and
 - (c) any of those persons who, if he or she had the disease, could have transmitted it—
 - (i) has been offered counselling, irrespective of whether the offer was accepted and has refused to be tested for the disease; or
 - (ii) is unconscious or otherwise does not have the capacity to consent to be tested for the disease; and
 - (d) the making of the order is necessary in the interest of rapid diagnosis and treatment for any of those involved—
- the Secretary may make an order under sub-section (2).
- (2) An order referred to in sub-section (1) must—
- (a) be in writing;
 - (b) give details of the incident which led to its making;
 - (c) name the person to whom it applies;
 - (d) name the disease for which the person must be tested, which must be a disease for which another person has agreed to be tested under sub-section (1)(b);
 - (e) require that the person named in the order be tested for that disease;
 - (f) state where and when (or, in the case of a series of tests, the period within which) the tests must be undertaken;
 - (g) state the type of testing required.
- (2A) The Secretary may also make an order under sub-section (2) in respect of a person who has died if the Secretary reasonably believes that sub-section (1)(a), (b) and (d) applies.
- (2B) For the purposes of this section a person is to be treated as not having the capacity to consent to be tested even if-
- (a) the lack of capacity is due to a temporary cause; or
 - (b) there is another person who has the capacity to consent to testing on that person's behalf.

- (3) An order must not be made under this section if more than 3 months has passed since the happening of the incident which would enable it to be made.
- (4) Section 121(7) and (10) apply to an order under this section.

120AB. Further orders or authorisations for tests

- (1) This section only applies to a senior medical officer who is—
 - (a) employed or engaged by, or performs work for—
 - (i) a denominational hospital listed in Schedule 2 to the **Health Services Act 1988**; or
 - (ii) a public hospital listed in Schedule 1 to that Act; or
 - (iii) a public health service listed in Schedule 5 to that Act; or
 - (iv) a multi purpose service within the meaning of that Act—
and is authorised by that hospital or service or the chief executive officer of that hospital or service to make orders or authorise testing for the purposes of this section; or
 - (b) employed or engaged by or performs work for, the proprietor of a private hospital that is—
 - (i) registered under Part 4 of the **Health Services Act 1988**; and
 - (ii) approved by the Secretary for the purposes of this section—
and is authorised by the proprietor or chief executive officer of that hospital to make orders or authorise testing for the purposes of this section.
- (2) A senior medical officer has all the powers that the Secretary has to—
 - (a) make an order in the circumstances specified in section 120A(1)(c)(ii) or 120A(2A); or
 - (b) authorise testing under section 120B in the circumstances specified in section 120A(1)(c)(ii) or 120A(2A)—
in relation to the hospital or health service where that medical officer is employed or engaged or performs work.
- (3) This Division applies to—
 - (a) an order made by a senior medical officer and a test made under such an order as if the order were an order made by the Secretary under section 120A; and
 - (b) an authorisation made by a senior medical officer and a test made under such an authorisation as if the authorisation were an authorisation made by the Secretary under section 120B.
- (4) Despite sub-section (3) and section 120A(4), section 121(10) does not apply to an order or authorisation made by a senior medical officer.
- (5) Sections 120C(3) and (4) and 120D apply in relation to an order or authorisation made by an authorised senior medical officer as if a reference to the Secretary were a reference to the authorised senior medical officer.
- (6) Section 137 applies to a pathologist who gives information to an authorised senior medical officer in relation to a test made under an order or

authorisation given under this section as if the information were given to the Secretary.

120AC. Post test or authorisation counselling

- (1) A person who made an order in the circumstances specified in section 120A(1)(c)(ii) or 120A (2A) or authorised the testing of a person's blood under section 120B in the circumstances specified in section 120A(1)(c)(ii) or 120A (2A) must ensure that the relevant person is counselled by a registered medical practitioner in accordance with this section.
- (2) The person tested or whose blood was tested must be counselled as soon as is practicable if the person has regained capacity to consent to testing after the testing.
- (3) If the person tested under the order or whose blood was tested under an authorisation died before the testing or does not have or regain capacity to consent to testing, the person who made the order or gave the authorisation must ensure that—
 - (a) in the case of a minor, a parent or any other person who has all the duties, powers and responsibilities and authority (whether conferred by a court or otherwise) which, by law, parents have in relation to children; and
 - (b) in any other case, any person responsible under the **Guardianship and Administration Act** 1986 for the person tested—is counselled by a registered medical practitioner.
- (4) The person counselled must be provided with details of the test conducted, the reasons why the test was conducted, the results of the test and if the test indicated the presence of an infectious disease, the effects of that disease on an infected person and the risk to public health of the disease.

120B. Authorisation for tests

- (1) If—
 - (a) the Secretary could make an order in respect of a person under section 120A; and
 - (b) a specimen of the person's blood has been stored at any place for any purpose; and
 - (c) the Secretary considers that because of the person's state of health or for any other reason it would be inappropriate to make the order; and
 - (d) the Secretary is satisfied that, if the blood was authorised to be tested and was tested under this section, it could still be used for the purpose for which it was originally stored—the Secretary may authorise the testing of the specimen for any disease for which he or she could order the person to be tested under that section.
- (2) Sections 120A(2) and (3) and 121(7) apply to an authorisation as if it were an order.

120C. Tests and test results

- (1) No action lies against a pathologist or registered medical practitioner who conducts a test authorised under this Division.
- (2) Section 137 applies to a test conducted by a pathologist or registered medical practitioner under an order or authorisation under this Division.
- (3) A pathologist or registered medical practitioner who conducts a test under an order or authorisation under this Division must without delay report the test results to the Secretary.
- (4) On receiving the test results, the Secretary must without delay give notice of them to the appropriate person mentioned in section 120A(1)(b) and to the person tested.

120D. No identification to be given

- (1) When advising a person mentioned in section 120A(1)(b) of the results of a test under this Division, the Secretary must not include information that would identify the person tested.
- (2) A person mentioned in section 120A(1)(b) who receives notice under this Division of the results of a test on another person must not disclose, communicate, or make a record of, anything in those results that would identify that other person.

Penalty applying to this sub-section: 50 penalty units.

120DA. Directions about orders or authorisations

- (1) The Secretary may give directions to a hospital, public health service, multi purpose service, proprietor or authorised senior medical officer referred to in section 120AB(1) about the following—
 - (a) the requirements for persons suitable to be authorised as a senior medical officer for the purposes of making orders or authorisations under this Division;
 - (b) the process for authorising a person to be a senior medical officer for the purposes of making orders or authorisations under this Division;
 - (c) the information to be provided by the hospital, public health service, multi purpose service or proprietor to the authorised senior medical officer;
 - (d) the matters that an authorised senior medical officer must take into account in deciding whether to make an order or authorisation under this Division;
 - (e) the procedures to be followed by an authorised senior medical officer before or after making an order or authorisation under this Division;
 - (f) the requirements to be complied with by an authorised senior medical officer about the keeping of records and reporting to the hospital, public health service, multi purpose service, proprietor or Secretary;
 - (g) the provision of counselling or information required by section 120AC.
- (2) The hospital, public health service, multi purpose service, proprietor or authorised senior medical officer must comply with any direction given by the Secretary under this section.

121.Orders

- (7) The Secretary may make an order subject to conditions and may vary or revoke the order.

....

- (10) A person to whom an order relates must comply with it.

Penalty: 50 penalty units.