

# SUBMISSION OF CAROLINE CHISHOLM CENTRE FOR

HEALTH ETHICS, 7/166 GIPPS ST EAST MELBOURNE 3002 on  
5 November 2004

## Review of the Health Act 1958

### List of issues for comment from Discussion Paper

1	Rename as <i>Public Health Act</i>
2	Should have provision for safety of water not intended for drinking, such as water used for recreational and agricultural purposes. Consider public health impact of gambling/ gambling venues. Consider public health impact of genetic engineering.
4	Yes. Addressing inequalities should be core business for the Act. How this is achieved may entail considerable reform of the way health service is funded and serviced.
6	Yes, using guiding principles as per the <i>Environment Act</i> but amend the philosophy of the 'Polluter Pays' principle.
7	Yes.
8	Retain the conditions that the current Act has.
9	Yes
10	Yes
11	Yes to avoid duplication or gaps in coverage.
12	Yes but in addition show evidence that outcomes are being achieved.
13	Yes
14	Yes but have a mandatory (minimum) list of matters that an MPHP must cover.
17	Retain the MOH role.
18-21	Only an appropriately qualified EHO (credentials as prescribed by the Secretary) should be appointed by a council to be an authorised officer for the purposes of the Act. 'Appropriately competent' is too ambiguous.
22	Yes – as per various personal and information privacy laws.
23	Yes. All current registers, databases and intended uses of any information must be explicit. Awareness of such data collection and their current and intended usage must be public knowledge.
24-26	The statistical information gleaned by consultative councils may be useful but a broader over-arching consultative council with specialty sub-committees would allow valuable cross-referencing of information to occur. Using the discussion papers example of a child dying during an anaesthetic, it would be useful to review the case as a child mortality and death related to an anaesthetic case issue. This would be applicable if risk management philosophy is to have any useful outcomes.
27	Yes but combine them into one since it seems difficult to separate one from the other. For example, call it an 'environmental and health impact assessment' (EHIA).
28	No

29	Yes but consider adverse event and near-miss registers at a state level for all public health risk events (private, public, man-made and natural). Also include provision for open-disclosure reporting.
30-36	Retain the <i>Duty of Care</i> in respect to the areas specifically covered by the Act.
37	Yes.
38	Given that the term 'nuisance' is ambiguous, this issue would be irrelevant if not retained by the Act.
39	Yes.
40	Yes.
41	Yes. Should be mandatory.
42	Yes to both questions with statutory power to monitor compliance.
45	Perhaps extend registration and licensing to public swimming pools, spas, massage parlours, brothels, gyms and sporting clubs, etc, that have public bathing and changing facilities.
46	Yes.
48	Yes. It may be easier to interpret and apply.
49	Yes. For example, toxic exposures in eg rivers from natural and man-made phenomena.
50	Yes.
50-52	Yes but only in certain situations and with reasonable cause. Reasonable causes must be explicit.
53-55	Yes but only if Act establishes general criteria for issuing notices.
56	But allow flexibility for unforeseen eventualities.
57	Compliance inspection by a relevant authority prior to re-accreditation or licensing.
58	Emergency powers should be general for public health emergencies.
60	Yes.
61-62	Yes.
63	In general Yes if needed,, but there should be explicit criteria for breaching confidentiality as per those found in the <i>Privacy Act 1988 (Comm)</i> and more generally in the <i>Health Services Act 1988 (Vic)</i> , <i>Information Privacy Act 2000 (Vic)</i> and <i>Health Records Act 2001 (Vic)</i> .
65	Only if professionally negligent or recklessly intended. Too broad a provision for cost recovery may be burdensome and lead to 'scapegoat' situations.
66-70	'Risk to health' is too broad. This issue would be contentious. The criteria of what constitutes 'risk to health' would have to be specific and explicit, perhaps with immediate serious threat to health implied. However, not all threats to health would have immediate or serious effects, eg. HIV exposure. 'Risk to health' should not be limited to infectious disease.
71	Placing this issue within the <i>Crimes Act</i> may be logical but specify the inclusion of diseases, conditions and substances that threaten public health.
72	PERIN seems a suitable strategy but may be problematic if it allows scope for such offences to become a means to raise revenue.
73	Yes.
74	Yes.
75	Yes.

77	No, as statutory powers are lacking.
78	Yes.
79	Probably need updating.
80	Yes.
81	Yes.
82	Yes.
83-85	If there is a public health emergency then only the Secretary to the Act or Chief Medical Officer can authorise non-consensual testing.
86	Yes.
87	Yes but the Act would need to clarify the difference between non-consensual and involuntary testing.
88-94	There is agreement in principle to all these issues but there should be the right to have representation and appeal, such as occurs with involuntary admission and detention of patients in the <i>Mental Health Act 1986</i> (Vic). Representation using a nominated or court appointed Guardian is supported.
95-97	Yes.
98	Regulated according to best practice standards.
99	Yes, should be inclusive.
100-101	No closed courts.
102	Not to be developed or trafficked for commercial purposes.
103-104	Yes.
105-106	Yes.
107	Recommended but not obligatory.
108	Support various forms of evidence.
109	No penalty but reasonable efforts to obtain information from parents or seek consent to obtain on behalf of parents.
110	Yes.
111	Yes.
112	Yes.
113	Yes.
114	Yes but encourage parents to also disclose non-vaccine preventable infectious conditions.
115	Yes.
116	Should be retained in the Act.
117	Should be retained in the Act. Issue of notice of improvement not sufficient. Would need inspection and evidence of control or eradication of the pests plus a risk management plan.
118	Yes.
120-121	Yes.
122	Someone with appropriate education and qualifications.
123	Make it a statutory requirement that details of purchasers of certain pesticides be recorded on a register maintained for this purpose.. This could facilitate eventual tracking of person who purchase toxic substances that could be used for bio-terrorism or other criminal acts.