

**Review of the
Health Act 1958
Discussion Paper**

**Submission by
City of Melbourne
November 2004**

List of issues for comment

	Issue	Section reference
1	Should the Act be renamed and, if so, what name would best reflect the role and purpose of the new Act?	3.1
<p>Comment: A holistic review of the Health Act should be made. Components that are dealt with by other legislation should be removed from the Act. This would be a more accurate reflection of the role and purpose of the Act, which aims to promote and protect public health. The Act should then be renamed and, the most appropriate name for the Act should be the Public Health Act.</p>		
2	Are there matters that are currently dealt with by other legislation that should be included in the new Act?	3.2
<p>Comment: There are a number of other Acts that deal with specific public health issues and interface with public health legislation; for example the Food Act 1984, Environment Protection Act 1970, Occupational Health and Safety Act 1985 etc. There should be no duplication between Acts and each Act should focus on core areas recognizing that there would be some overlap. A statement needs to be included in the new Act clarifying which statute (and agency) takes precedence in particular circumstances, and mechanisms to ensure clarity in particular situations.</p>		
3	Should the new Act recognise the importance of promoting public health, and, if so, how should the new Act aim to achieve this?	3.2

	Issue	Section reference
	<p>Comment: The new Act should reflect contemporary understandings of health. It should include a statement clarifying the different roles each layer of government has in recognizing and promoting public health. This could be achieved by acknowledging that physical, economic, social and cultural aspects of society all influence health status, and, including a clear set of objects which could include the promotion of good health and the prevention of disease and injury through the control and reduction of potential and emerging physical, biological, chemical and radiological hazards. The information needs to be communicated adequately across the community and not just made available. Furthermore, additional resourcing and financial implications for local government would need to be compensated for.</p>	
4	Should the new Act recognise the need to address inequalities in the health and wellbeing of disadvantaged communities and, if so, how should the Act aim to achieve this?	3.2
	<p>Comment: The need to address inequalities in the health and wellbeing of disadvantaged communities should be recognized by the new Act. Disadvantaged communities face adverse health outcomes, this is known. The Act could allow prioritisation of provision for disadvantaged communities within health planning processes (MPHP's and State processes) and service provision by the Minister, with a review of the impacts that such intervention has.</p> <p>A focus could be given on community capacity building in line with Growing Victoria Together and other policy frameworks recognising that community connection and cohesion has an impact on health outcomes.</p> <p>Many of these issues fall within the jurisdiction of federal, state and local government. This could be achieved by ensuring that roles and responsibilities of all levels of government are well defined and understood. Furthermore, additional resourcing and financial implications for local government would need to be compensated for.</p>	
5	What objects provisions would represent the public health objectives, values and outcomes that the new Act should be aiming to achieve?	3.3

	Issue	Section reference
	<p>Comment: The Act should have a clear set of objects, which place the legislation into context when being interpreted. The objects should include protecting public health and preventing disease and injury through the control and reduction of potential and emerging physical, biological, chemical and radiological hazards, promoting public health and wellbeing through built, social, economic and natural environments, providing evidence-based information to the public about the health of the population, and assisting in reducing the health inequalities of disadvantaged communities. The objects should be minimized where there are overlaps with other legislation.</p>	
6	Should the new Act contain a provision specifying guiding principles, and, if so, what principles should be included?	3.4
	<p>Comment: The new Act should contain guiding principles as they will assist in decision-making processes, and provide clarity and interpretation. The principles outlined in the discussion paper are welcomed.</p> <p>In relation to the precautionary principle we know that socio-economic disadvantage is a substantial indicator of health risk. Within the broader policy framework where something will increase or heighten the risk of disadvantage consideration should be given to the health impacts.</p>	
7	Should the new Act include a statement that the function of the Secretary is to implement policies and programs to achieve the objects of the Act?	4.1
	<p>Comment: The new Act should include a statement that the function of the Secretary is to implement policies and programs to achieve the objects of the Act.</p>	
8	Should the new Act include a power for the Secretary to conduct inquiries into matters of public health concern and, if so, who should have the power to direct that an inquiry be conducted?	4.1

	Issue	Section reference
	<p>Comment: The Secretary should have the power to conduct inquiries into matters of public health concern. The inquiries should relate to National/Statewide issues that need immediate action. The categories of issues need to be defined and protection of rights of natural justice should be included.</p>	
9	Should the new Act retain the functions for municipal councils as set out in the current Act?	4.2
	<p>Comment: The new Act should not only retain the current functions of councils as they relate to public health, but also to update them and broaden the focus recognizing issues like indigenous health etc.</p> <p>The current functions of Councils as outlined in the Act are residentially based and do not account for the increasing role of activity centres in service access and planning. Refocussing some of the functions under the Act to recognise the role of activity centres would be in line with Melbourne 2030. The City of Melbourne as a base for 500,000 visitors a day provides an example of a centre that could more usefully expand service and information provision to non-residents, due to proximity to work and recreational opportunity.</p> <p>Furthermore, resourcing and financial implications for local government would also need to be considered and additional costs to local government compensated for by other levels of government.</p>	
10	<p>Should the new Act recognise municipal councils' role in:</p> <p>Planning, advocating and providing organised public health programs?</p> <p>Developing and implementing strategies to promote and improve public health and promote community health and wellbeing?</p>	4.2

Issue	Section reference
<p>Comment: Council's role should be strengthened to ensure improvements are achieved in public health protection. The role should be planning oriented and as a purchaser of services for its local community.</p> <p>The role of municipal councils should include:</p> <ul style="list-style-type: none"> • Initiating, supporting and managing public health planning processes at the local level of government; • Facilitating, supporting and coordinating the efforts of other local public health organizations to improve public health status; • Ensuring National, State and Regional priorities inform and influence council's service planning activities and the services planning activities of local health service providers; • Ensuring the development of healthy public policies through the integration of the public health planning processes with other strategic planning processes of council; • Within a competitive business environment, promoting the sharing of local health information between health services and planners; • Advocating on behalf of local community for appropriate local, state and federal public health policy, increased public health resources, integrated and coordinated service delivery, and appropriate delivery of services; • Engaging with public health regional planning processes; • Regulating and controlling risks and potential risks to the health of the municipal community; and • Coordinating specific public health programs that utilize regulation and enforcement or require a local area/population focus. <p>Furthermore, it should be acknowledged that there are state responsibilities as much as there are local government responsibilities and resourcing and financial implications for local government should also need to be considered and additional costs to local government compensated for by other levels of government.</p>	
<p>11 Should the concept of partnership between state and local government, and between government and non-government, be addressed in the new Act?</p>	4.3

	Issue	Section reference
	<p>Comment: The new Act should address the concept of partnerships between state and local government, and between government and non-government. These arrangements should be included in the principles guiding the Act. If we recognize public health as a whole of community issue then it is essential that some mechanisms are included in the new Act to encourage and facilitate partnership arrangements. One mechanism is to ensure roles and responsibilities are well defined and understood. The role of the Secretary is pivotal to establishing public health partnerships, agreements and creating linkages at the national, state, regional and local level.</p>	
12	Should the new Act place greater emphasis on implementing the MPHP and achieving its outcomes, rather than just developing a document, and if so, how could this be achieved?	4.4
	<p>Comment: The new Act should place stronger emphasis on implementing the MPHP rather than just developing the document. This could be achieved by addressing public health issues via councils' integration with mainstream planning processes. Reporting arrangements should be developed and accountability mechanisms established to ensure review of MPHP effectiveness. Reporting processes should be integrated with the reporting of Council Plans.</p>	
13	Should the new Act require that municipal councils set out how they intend to fulfil their statutory functions in their MPHPs?	4.4
	<p>Comment: The new Act should not set out how they intend municipal councils to fulfil their statutory requirements in their MPHPs. MPHP's should be audited against compliance with implementation and there needs to be accountability in terms of implementation.</p>	
14	Should the new Act retain the requirement to prepare MPHPs at set intervals and to review MPHPs annually in consultation with the	4.4

	Issue	Section reference
	Department of Human Services?	
	<p>Comment: The new Act should retain the statutory requirement to prepare MPHPs at set intervals and to review MPHPs regularly. This should include a requirement for consultation with the Department of Human Services. The review should be a high level assessment to determine the long term view. In other words, a review of the progress and not a review of the issues should be made. A full review should occur every four years in line with the development of the Council Plan required under the Local Government Act.</p>	
15	What should be the local government reporting requirements, if any, under the new Act? For example, should the new Act retain the requirement to report annually, and at other times as directed by the Secretary? Should there be a requirement to submit MPHPs at set intervals? If so, what would be the expected value of such reporting requirements?	4.4
	<p>Comment: Local government should be required to report requirements to the Secretary only as required, provided the information will be used to address public health matters and reported back to councils. The requirement to report to DHS annually should be removed from the new Act.</p>	
16	Should the new Act link the requirement to prepare a MPHP to other planning processes within local government, such as the Council Plan? For example, should the requirement be to prepare MPHPs every four years?	4.4

Issue	Section reference
<p>Comment:</p> <p>A positive step would be to prepare a set of 'Municipal Health Plan' provisions to be <u>incorporated into</u> existing documents such as the Municipal Strategic Statement and the Council Plan rather than duplicating a new set of provisions in a new plan.</p> <p>The aim of Municipal Health planning, prescribed by the Public Health Act seems to be comprehensive and detailed- covering everything from public transport, to walking, to development, to noise. There is quite an overlap with existing Council strategies such as the Municipal Strategic Statement and City Plan 2010 as well as State Government strategy such as Melbourne 2030 and the Victorian Planning Provisions. The requirement of a new plan which at times overlaps with these strategies would contribute to greater complexity and confusion in local government strategic planning. The above approach seems to be the most logical and simple approach to resolving this issue.</p> <p>With respect to the proposed development of a new plan every four years, it is suggested that instead the Plan, or its provisions, be reviewed every four years. In some instances, the provisions may still be relevant and a new Plan may not be needed.</p> <p>Clarification of the relationship between MPHPs and Community Health Plans would be useful.</p>	
<p>17 Should the new Act remove the requirement that every council appoint a MOH, and instead rely on non-legislative mechanisms for ensuring municipal councils have access to medical expertise?</p>	4.5

	Issue	Section reference
	<p>Comment: The role of the Medical Officer of Health (MOH) is under utilized and the specialist expertise required is often unavailable within the MOH. Local government now access information and advice from a range of public health professionals and experts and regular reports concerning communicable diseases and health are now available via the Department of Human Services (these reporting arrangements were not available when the concept of a MOH was first created). One of the key roles could be in assisting and advising local schools and childcare centers in the face of local outbreaks of infectious disease. There is a view amongst some officers that it should not be mandatory for Councils to appoint a MOH and this should be the subject of further discussion. The Department could consider the appointment of Regional MOHs as a point of liaison with local practitioners and to act to provide advice to councils as required.</p>	
18	Should an EHO who is appointed by a council automatically be an authorised officer for the purposes of the Act?	4.6
	<p>Comment: An EHO who is appointed by a council should automatically be an authorised officer subject to any limitations placed by a council as they consider appropriate.</p>	
19	Should the new Act require specific qualifications and/or experience for appointment as an EHO?	4.6
	<p>Comment: The new Act should not impose specific qualifications for appointment as an EHO. Department Human Services should approve appropriate competencies and issue certificate of competencies. Competencies should not be restrictive.</p>	
20	Should the new Act require that authorised officers have qualifications and/or experience prescribed by the Secretary?	4.7

	Issue	Section reference
	<p>Comment: The Secretary should not prescribe qualifications for authorized officers. There needs to be a distinction between the role and functions an EHO as an 'authorized officer' and 'other authorized officers'. There is a need to expand the range of practitioners and specialists involved in public health work, noting that current day public health practice requires and calls upon a diverse range of skills and knowledge in developing effective interventions.</p>	
21	<p>Alternatively, should the Act provide that councils may only authorise persons appropriately competent?</p>	4.7
	<p>Comment: The determination of competency of authorized officers should not be the responsibility of councils. The appropriate competencies should be determined and issued by Department Human Services.</p>	
22	<p>Are the current powers of the Secretary under the Health Act with respect to the collection of health information adequate to ensure access to comprehensive and reliable data necessary to monitor and assist in the protection of public health?</p>	5.1
	<p>Comment: Health records should not be collected without the expressed consent of the individual. It is critical that health records are maintained as per the principles of the Health Records Act.</p>	
23	<p>Should the new Act make more explicit the forms which such collection of comprehensive data may take? For example, should the new Act provide for the Secretary to establish registers, databases and other collections of public health information and to state some of the uses of that information?</p>	5.1

	Issue	Section reference
Comment: No comment.		
24	<p>Should the provisions regarding consultative councils be consolidated in the new Act to provide:</p> <p>General provisions regarding establishment and functions of all consultative councils?</p> <p>Standard provisions regarding the establishment of sub-committees?</p> <p>A power to make recommendations in relation to investigations or inquiries?</p> <p>An obligation to produce an annual report?</p>	5.3
Comment: Allowance is required to ensure consumer participation in these processes.		
25	<p>What sort of information might each of the consultative councils need to ensure that they can carry out their functions effectively?</p>	5.3
Comment: No comment.		
26	<p>Should the new Act contain more specific provisions requiring:</p> <p>Reporting to consultative councils on specified incidents?</p> <p>Regular provision of specified information relevant to the statutory functions of consultative councils?</p> <p>Preparation, by medical practitioners, of a report</p>	5.3

	Issue	Section reference
	for the Council in relation to a matter that it is investigating?	
<p>Comment: No comment.</p>		
27	Should Victoria continue to rely on a legislative requirement for HIA in EIA legislation?	6.2
<p>Comment: Integrating health impact assessments into mainstream EIA legislation should not be relied upon because it may limit HIA to existing EIA processes in terms of scope and procedures, and may limit HIA profile and effectiveness as assessment will be conducted as only one element of the broader EIA process.</p>		
28	Alternatively, should a separate requirement for HIA be introduced in the new Act and, if so, in what circumstances should HIA be conducted and what should be the threshold for triggering it?	6.2
<p>Comment: Health Impact Assessments should be included as a separate requirement in the new Health Act. HIA could be conducted when there are anticipated significant public health related issues. The threshold for triggering a HIA could be based on the same principles as those required by the Environment Protection Act for Environmental Impact Assessments. However, there should not be a situation where both a HIA and a EIA are both required. They should be consolidated into a single process. Further research would need to be carried out to determine if the benefits of conducting a HIA outweigh the associated costs.</p>		
29	Should the new Act support and enhance the practice of risk management?	7.1
<p>Comment: The new Act should support and enhance the practice of risk management, as it is a recognized tool in approaching public health risk.</p>		

	Issue	Section reference
30	Should the new Act include a general statutory duty of care?	7.2
<p>Comment: The new Act should not include a general statutory duty of care. The principle of public health is now a very broad issue which relates more to lifestyle, environment, community support and questions of how to deal with an ageing population. The new Act needs to concentrate on these contemporary issues and the application of the duty to public health and its creation in statute needs to be considered carefully. The implications are of concern as it may create an environment of litigation.</p>		
31	If so, what should be the scope of the duty?	7.2
<p>Comment: The scope of the statutory duty should only be limited to specific situations to capture new and emerging public and environmental health issues. Should a duty of care be introduced it should be legislated to the extent where it is necessary; for example, if there is a specific risk to health such as SARS.</p>		
32	If adopted, should the duty be positive or only negative?	7.2
<p>Comment: The new Act should adopt a negative duty of care, ie., a duty to ensure that conduct is not injurious to public health.</p>		
33	What should follow from being in breach of the duty: criminal and/or civil liability or should the consequences of breach be limited to administrative powers?	7.2
<p>Comment: The consequences for breach of duty should be limited to administrative powers.</p>		

	Issue	Section reference
34	Should failure to comply with the duty be the basis on which costs are recovered?	7.2
<p>Comment: There should be provision for cost recovery for failing to comply with the duty. This would coincide with other legislation such as the Environment Protection Act.</p>		
35	Should compliance with the duty provide a defence against some offences under the Act?	7.2
<p>Comment: Compliance with the duty should provide a defence against some offences under the Act.</p>		
36	How might the duty of care work in practice?	7.2
<p>Comment: The duty of care should not only compliment other legislation where there has been a breach of duty but also act as a 'safety net' to respond to problems where there is no other obvious statutory remedy. Local councils should have the discretion and decide how risks within their municipality should be managed.</p>		
37	Should a general statutory duty of care, if adopted, replace the separate nuisance provisions and, if so, should municipal councils still retain responsibility for dealing with public health risks similar to nuisances in their municipalities?	7.3
<p>Comment: The nuisance provisions should not be retained as nuisances are picked up by other legislation. Legislation such as the Planning and Environment Act, Council local laws and the Environment Protection Act is now well established to cover off most issues currently defined as "nuisances" under the Health Act. Again, there should be no duplication between Acts and each Act should focus on core areas. An example is the issues around SEPP N1 and SEPP N2 regarding noise under the Environment Protection Act 1970 and the links with nuisances.</p>		

	Issue	Section reference
38	If separate nuisance provisions are retained, should nuisance be defined so as to focus on public health risks and, if so, does removing the term 'annoying' from the definition of 'offensive' achieve this?	7.3
Comment: Should separate nuisance provisions be retained, the definition should focus on matters involving public health risks, rather than annoying or irritating matters. Should the term 'annoying' be removed, non-health related problems that are currently caught under the broad nuisance definition could be dealt with by other Acts or local laws which would be supported by infringement notices.		
39	If the obligation on municipal councils to abate nuisance in their municipality is retained, should the abatement provisions be removed and municipal councils instead rely on general enforcement provisions under the new Act?	7.3
Comment: The issue of imposing an obligation on councils to remedy all public health risks is a contentious one. Determination needs to be made according to the degree of risk. A possible option may be to consider general enforcement provisions, such as issuing improvement notices and prohibition notices. Also, there should be an offence for failing to comply with a nuisance abatement notice with heavy penalties imposed.		
40	Should best practice standards continue to have a role in the regulation of public health risks?	7.4
Comment: Best practice standards should continue to have a role in the regulation of public health risks. Further, the expectation is that people would need to meet these standards of practice and would have to comply.		
41	Should RMPs have a role in the regulation of public health risks under the new Act?	7.5

	Issue	Section reference
	<p>Comment: RMPs could be introduced in the new Act as they provide a mechanism for proprietors of registered Health Act premises to identify and address potential risks associated with their activities before actual harm to an individual occurs. However, further research would need to be undertaken to demonstrate that a risk management system (similar to the risk management system incorporated under the Food Act 1984) is appropriate and effective as its success is reliant on the implementation process. Recent experience by this Council has shown that performance standards are very difficult to apply in practice particularly with groups which are linguistically challenged.</p>	
42	<p>Who should be required to prepare RMPs: persons undertaking a registrable or licensable activity by way of a condition of registration/licence? persons required to do so by an improvement notice?</p>	7.5
	<p>Comment: Registrable premises under the Health Act provide varying public health risks. It should not be compulsory for all registrable premises to have RMPs. RMPs would be appropriate for businesses that provide high risk activities, such as skin penetration as well as imposed on individuals who cause a public health risk.</p>	
43	<p>What criteria should be used in deciding which activities should be subject to the requirement of registration or licensing?</p>	7.6
	<p>Comment: The criteria to be used in deciding which activities should be subject to registration should be based on broad criteria but focused on activities that have an increased risk of transmission of disease. This way, new and emerging activities such as colonic irrigation can be captured without the need to constantly updating the Act. Lower risk activities such as hairdressers and some prescribed accommodation establishments (eg. 4 and 5 star hotels) could be exempt from registration.</p>	
44	<p>What regulatory parameters for</p>	7.6

	Issue	Section reference
	<p>registration/licensing would provide a more up-to-date, flexible, graduated and responsive approach to the level of public health risk?</p>	
	<p>Comment: Registration and licensing of any activity where there is a potential for a risk to public health that is not captured by other legislation should be registrable under the Act. The process should be a risk based approach and flexible enough to include other emerging and potential public health activities.</p> <p>The inspection frequency for activities covered under the present Infectious Disease regulations could be based on the level of risk a particular activity presents. Example: Skin penetration may be required more frequently than a beauty treatment premises and they could be classified according to high, medium and low risk.</p>	
45	<p>Are there any other public health risk activities that should be regulated under the new Act through the system of registration or licensing and, if so, what specific requirements should be imposed on those activities?</p>	7.6
	<p>Comment: There should be provisions for the Secretary to declare specific or classes of activities as registrable based on emerging and potential public health risks. For examples, colonic irrigation is an emerging area of concern with the possibility of infections and the spread of blood borne viruses. Further, public swimming pools and spas, solariums as well as self contained apartments should also be registrable.</p>	
46	<p>Should there be a positive obligation on persons conducting activities subject to registration/licensing to notify authorities in event of certain types of incidents occurring?</p>	7.6

	Issue	Section reference
	Comment: There should be an obligation for persons conducting activities subject to registration/licensing to be required to notify authorities in the event of defined incidents occurring.	
47	Should there be an obligation placed on proprietors of non-registered premises (for example, swimming pools and brothels) to notify authorities where there has been an incident that might present a risk to public health?	7.6
	Comment: Proprietors of non-registrable premises under the Act such as brothels and swimming pools should also be required to notify authorities where there has been an incident that might present a risk to public health. However, resourcing implications need to be considered should there be a requirement to notify authorities.	
48	Should all enforcement powers be brought together in one part of the Act?	7.7
	Comment: All enforcement powers should be brought together in one part of the Act.	
49	Should the enforcement provisions of the Health (Infectious Diseases) Regulations 2001 be broadened to cover other public health threats not involving infectious diseases?	7.7

	Issue	Section reference
	<p>Comment: Enforcement provisions under the regulations should not be broadened but instead, be broadened under the Act. The changes also need to consider the interrelationship with current and other emergency provisions. The changes should also consider provisions for emerging public health issues which may not currently be identified as a threat but may arise sometime in the future. There is presently an emerging issue around premises which have been used illegally as drug laboratory's given the toxic nature of the ingredients. Clarification is required around responsibility (and funding of that responsibility) to remediate environmental impacts on premises which may jeopardize the health of future users.</p>	
50	Are the enforcement powers in the Health Act appropriate to allow authorised officers and EHOs to carry out their duties?	7.7
	<p>Comment: The enforcement powers should be strengthened. There should also be provisions for on-the-spot fines and closure orders.</p>	
51	In addition to the power to take samples and make copies of seized documents, are there any other additional powers that should be included in the new Act?	7.7
	<p>Comment: The inclusion of the ability to copy seized documents and the power to take samples would be beneficial. Wider powers should also be given pertaining to searches and inspections similar to those provided to ASIC and the Federal Police.</p>	
52	Should the power to search for and seize goods without a warrant be widened to allow the Secretary to search for and seize things other than goods, such as records, biological agents or other items?	7.7

	Issue	Section reference
<p>Comment: The powers should be limited to enable the Secretary to achieve the objects of the Act.</p>		
53	Should the new Act contain a procedure for the issuing of improvement and prohibition notices by authorised officers?	7.7
<p>Comment: The new Act should contain a procedure for the issuing of improvement and prohibition notices by authorised officers.</p>		
54	Should notices cover: nuisance? licensable or registrable public health risk activities? where the activity may otherwise contravene the Act?	7.7
<p>Comment: The new Act should enable notices to be issued for nuisances, licensable or registrable health risk activities, and , where the activity may otherwise contravene the Act.</p>		
55	Should the new Act establish general criteria for issuing notices?	7.7
<p>Comment: The new Act should establish general criteria for issuing notices, with more specific information being provided in guidelines.</p>		
56	Should the new Act set out an inclusive list of the	7.7

	Issue	Section reference
	types of work a person subject to an improvement notice could be required to perform?	
	<p>Comment: The new Act should contain an inclusive list of the types of work a person subject to an improvement notice could be required to perform, the Act needs to clarify what other actions may also be required by a notice to allow for differing situations and solutions.</p>	
57	What method of review should apply to improvement and prohibition notices?	7.7
	<p>Comment: The method of review should be able to have the ability of a quick turnaround such as VCAT. The Act should also prescribe specific timeframes for appeals.</p>	
58	Should emergency powers be general for 'public health emergencies' or be specific to infectious diseases?	7.8
	<p>Comment: In order to ensure effective response to emergencies, the Secretary's powers should be general. If these powers are restrictive, the ability to act could be lost.</p>	
59	Should the proclamation of an emergency be extended to four weeks, with renewal periods not exceeding two weeks, to a maximum of six months?	7.8
	<p>Comment: The proclamation time needs to be flexible so as to adequately address a situation. There could be limitations in implementing action if prescribed times are imposed.</p>	

	Issue	Section reference
60	Should there be a fast-track mechanism for notifying a disease associated with a public health emergency?	7.8
Comment: There should be a fast track mechanism for disease notification associated with a public health emergency.		
61	Should the Secretary be given powers in a public health emergency to compel examination, testing, vaccination, treatment (including preventative treatment), isolation and quarantine?	7.8
Comment: Powers that compel examination, testing, vaccination, isolation and quarantine should be given to the Secretary. Consideration should also be given to civil liberties.		
62	Should the Secretary be given a 'catch all' power in a public health emergency such as 'any other order deemed necessary'?	7.8
Comment: To adequately address any new or emerging situation, a 'catch all' power should be included in the new Act. This is pivotal to public health management and administration.		
63	Should compliance with demands from the Secretary during an emergency or outbreak of an infectious disease be specifically exempted from confidentiality?	7.8
Comment: During an emergency or outbreak of an infectious disease compliance with demands from the Secretary should be exempted from confidentiality.		

	Issue	Section reference
64	Should the Secretary's power to act when local government is in default be limited in any way?	7.8
<p>Comment: The exercise of the power of the Secretary to perform the functions of a municipal council in an emergency should be limited to emergency situations where there is a serious risk to public health.</p>		
65	Should the new Act include a provision for cost recovery where a person: has been convicted of an offence? has contravened the Act, but there has been no conviction? has caused a risk to public health?	7.9
<p>Comment: The new Act should include provisions for cost recovery where a person has been convicted of an offence, has contravened the Act, but there has been no conviction, and has caused a risk to public health.</p>		
66	Should the new Act include a new offence of 'risk to health'?	7.10
<p>Comment: A new offence of 'risk to health' should be introduced for more serious offences, but the definition needs to be clearly defined. If the offence is criminal in nature it should be dealt with by criminal law. Again, there should be no duplication between Acts and each Act should focus on core areas.</p>		
67	If so, what should amount to a 'risk to health'?	7.10

	Issue	Section reference
	<p>Comment: The 'risk to health' should be sufficiently broad to include present and future changes to a person's health and well being. The definition of health needs to be articulated. The definition of health should be expanded to include social, emotional, mental, physical and environmental.</p>	
68	If adopted, what should be the defences, if any, to the offence of 'risk to health'	7.10
	<p>Comment: A possible defence to the offence of 'risk to health' should encompass the reasonableness test, that is, it could be a defence if a person can show that they could not, by taking all reasonable and practical precautions, have prevented those circumstances from occurring.</p>	
69	What should be the scope of the offence?	7.10
	<p>Comment: The scope of the offence should be broad enough to capture a wide range of scenarios as long the risk is dangerous to health. It may be appropriate for a risk matrix with levels of risk to be developed.</p>	
70	Should the 'risk to health' offence subsume the offence for knowingly and recklessly infecting another person with an infectious disease?	7.10
	<p>Comment: The 'risk to health' offence should subsume the offence for knowingly and recklessly infecting another person with an infectious disease. Police enforcement roles however should not be undermined.</p>	
71	Should the offence for knowingly or recklessly infecting another person with an infectious disease	7.10

	Issue	Section reference
	not be re-enacted due to the existence of the knowing and reckless offences in the <i>Crimes Act 1958</i> (that is, sections 22 and 23)?	
	Comment: The offence for knowingly or recklessly infecting another person with an infectious disease should not be re-enacted as it is already in the Crimes Act.	
72	Should the new Act introduce PERIN for suitable offences?	7.11
	Comment: The new Act should introduce PERIN for suitable offences.	
73	Should public health offences attract similar penalties to those attracted by offences under environment protection legislation?	7.12
	Comment: The penalties need to be stronger and in line with environmental law and offences.	
74	Should the new Act allow for greater penalties where the offender is a body corporate?	7.12
	Comment: The application of greater penalties for a body corporate versus individuals would be appropriate and in line with other relevant legislation. An increase in penalties would allow for issues with greater public health ramifications to be dealt with adequately. The penalties should reflect the nature of the offence and the impact upon public health.	
75	Should the new Act include a statutory defence of due diligence?	7.13

	Issue	Section reference
	<p>Comment: The opportunity to avail the defence of due diligence should become a statutory defence, however, the onus should be on the defence to prove due diligence, similarly to other relevant legislation such as the Food Act 1984.</p>	
76	What method of review should apply to administrative decisions made under the Act?	7.15
	<p>Comment: The method of review that should apply to administrative decisions under the Act should have the ability of a quick turnaround. Example could be VCAT.</p>	
77	Do the current provisions appropriately address the public health risk associated with hairdressing, beauty therapy and skin penetration?	8.1
	<p>Comment: The Health Guidelines for personal care and body art industries which have just been introduced are regarded as best practice for these industries. Used in conjunction with the Health (Infectious Disease) regulations, they provide a useful tool for ensuring public safety, but as noted above some people find a performance standard approach difficult to understand.</p>	
78	Should the brothels provisions be transferred to the Prostitution Control Regulations 1995, and Department of Human Services officers exercise their inspectorial powers in relation to infection control issues under the <i>Prostitution Control Act 1994</i> ?	8.1
	<p>Comment: No comment.</p>	
79	Do the current provisions appropriately address the	8.2

	Issue	Section reference
	public health risk associated with prescribed accommodation (for example, hotels, motels, hostels and holiday camps)?	
	<p>Comment: The regulations for prescribed accommodation appropriately address the public health risks.</p> <p>However, there is a growing industry around the provision of accommodation both in private residences and purpose designed premises for international students. There is little regulation around this industry and there are emerging issues around the welfare and health outcomes of some students where appropriate care is not provided. This should be considered within the context of this review.</p>	
80	Should an additional guiding principle for provisions in relation to the management and control of infectious diseases be that, wherever practicable, the least coercive power should be used first?	8.3
	<p>Comment: No comment.</p>	
81	Should the new Act clearly set out the action that may be taken when contact tracing is authorised and the protections provided to individuals that may be required to provide personal information under these provisions?	8.3
	<p>Comment: No comment.</p>	
82	Should the Secretary to the Department of Human Services have the power to authorise an autopsy where they believe there is a risk to public health and the Coroner does not have jurisdiction over the	8.3

	Issue	Section reference
	body?	
	Comment: No comment.	
83	Should the new Act continue to outline the procedures for non-consensual testing orders where consent for testing has been refused?	8.4
	Comment: No comment.	
84	Should the new Act introduce a system for the authorisation of non-consensual testing where consent cannot be given to testing?	8.4
	Comment: No comment.	
85	Should the provisions in the new Act be extended to beyond the care giver or custodian situation and, if so, to what situations?	8.4
	Comment: No comment.	
86	Should public health orders under the new Act apply to any infectious disease or condition where there is a serious risk to public health?	8.5
	Comment: No comment.	
87	Should the new Act provide a power for involuntary testing with reasonable use of force? If so, should it be exercised by 'an authorised officer', a delegate of the Secretary and/or the police?	8.5

	Issue	Section reference
	Comment: No comment.	
88	Should the Act contain a list of the types of restrictions that may be imposed by an order of the Secretary?	8.5
	Comment: No comment.	
89	Should the new Act introduce a power to order that a person undergo treatment where treatment is refused? If so, what limits should be placed on the use of the power?	8.5
	Comment: No comment.	
90	Should there be time limits imposed on orders and, if so, what time limits should apply?	8.5
	Comment: No comment.	
91	Should any or all public health orders require court/tribunal confirmation?	8.5
	Comment: No comment.	
92	Should there be a power for the police to apprehend a person who fails to comply with a public health order, rather than merely the ability to provide 'assistance' to the medical officer? If so, should there be a requirement to obtain a warrant to apprehend the person?	8.5

	Issue	Section reference
	Comment: No comment.	
93	Should the new Act continue to provide that it is an offence for a person to fail to comply with an order?	8.5
	Comment: No comment.	
94	What appeal and external review processes should be made available under the new Act?	8.5
	Comment: No comment.	
95	Should the new Act provide for introducing new notification requirements by an Order of the Governor in Council where it is necessary to respond quickly to new and emerging diseases?	8.6
	Comment: Yes. In light of SARS and the capacity for new viruses to rapidly spread internationally, this would be useful.	
96	Should the new Act require that hospitals have processes in place to ensure that notification requirements under the Act are met?	8.6
	Comment: Yes. The new Act should require that hospitals have processes in place to ensure that notification requirements under the Act are met.	
97	Should the term 'notifiable disease' be replaced with the term 'notifiable condition'?	8.6
	Comment: The term 'notifiable disease' should be replaced with the term 'notifiable condition' to reduce stigma for those diagnosed.	

	Issue	Section reference
98	Would alternative non-regulatory mechanisms (for example, best practice guidelines) be effective in ensuring pre-and post-test information and counselling for infectious diseases (other than HIV) is provided by appropriately qualified health care professionals?	8.7
Comment: Yes. Accreditation processes could be promoted to allow clinics to promote their capacity to manage particular diseases or groups of diseases. This should include identifying the importance of pre and post test counselling.		
99	Should the new Act rely on the privacy framework for all health records, rather than include specific privacy provisions?	8.7
Comment: Specific provisions should highlight particular notification processes to ensure protection of privacy.		
100	Should the new Act retain the provision specifying that the court may be closed when evidence is presented concerning any matter related to HIV?	8.7
Comment: The new Act should retain the provision specifying that the court may be closed when evidence is presented concerning any matters related to HIV.		
101	Should the new Act provide for a court to be closed when evidence is presented concerning other diseases?	8.7
Comment: With respect to Hepatitis C and other blood borne viruses that increase the risk of HIV infection, the new Act should provide for a court to be closed when evidence is presented concerning other diseases.		
102	Should the Act include a regulation-making power	8.7

	Issue	Section reference
	to ensure participation in current quality assurance programs and supply of data for epidemiological analyses by HIV testing laboratories?	
<p>Comment: The new Act should include a regulation-making power to ensure participation in current quality assurance programs and supply of data for epidemiological analyses by HIV testing laboratories.</p>		
103	Should the new Act state the role of municipal councils in relation to immunisation as 'co-ordinating and providing immunisation services to children living or being educated within the municipal district'?	8.8
<p>Comment: The new Act should state the role of municipal councils in relation to immunization services. This service could be provided by various types of health professionals including M&CH Nurses, GP's or contracted out to an external body.</p>		
104	Should provisions regarding recording the immunisation status of children at children's services be retained in the Children's Services Regulations 1998 (rather than included in the new Act)?	8.8
<p>Comment: Provisions regarding recording the immunization status of children at children's services should be retained in the Children's Services Regulations 1998.</p>		
105	Should the new Act require school principals of primary schools to make reasonable efforts to seek an ISC in respect of every child enrolled in the school, and an immunisation update on re-enrolment?	8.8

	Issue	Section reference
	<p>Comment: The new Act should require principals of primary schools to seek an ISC as part of school enrolment and an immunization update on re-enrolment. Further, this should be in addition to the obligation on parents to provide an ISC. If the child re-enrols at another school during this period, the principal should pass on the ISC to the next school either via the parent or guardian or through directly to the school. The Parent or Guardian should be allowed access to this if any other vaccines are administered during this period.</p>	
106	Should the new Act introduce an obligation on parents to supply evidence of immunisation on enrolment of their child into secondary school and an obligation on school principals to make reasonable efforts to seek immunisation records in respect of every child enrolled in the school?	8.8
	<p>Comment:</p> <ul style="list-style-type: none"> • The new Act should include that the parent or guardian receive back the child's ISC at the completion of primary school. • The ISC form should be then a requirement for secondary school enrolment and given to the secondary school principal at the commencement of this new period. • Even though there is no current scheduled vaccines administered during the primary school years, this card is currently necessary for recording scheduled vaccines (Hepatitis B and Boostrix) during the secondary school years. • It would be ideal for maintaining and updating the ISC with these schedule vaccines (or any other vaccines that may become scheduled or become a 'catch-up') that are administered during the secondary schools years. • Once again, this card should be allowed access by the parent or guardian if any other vaccines are given besides those given at the school session. • The ISC should be returned completed appropriately to the child at the cessation of his/her education at the school. • Provision is required to ensure that parents or guardians who are conscientious objectors to immunisation are not penalised in this process. 	
107	Should the new Act introduce an obligation on tertiary students to supply evidence of immunisation on enrolment and an obligation on	8.8

	Issue	Section reference
	<p>tertiary facilities to make reasonable efforts to seek immunisation records in respect of every student enrolled in the facility? If so, for which diseases should immunisation records be required?</p>	
	<p>Comment: Tertiary students should be obligated to supply evidence of immunization and there should be an obligation on tertiary facilities to seek records.</p> <p>Immunisation records should be provided against all diseases that are routinely protected against in the Australian schedule. This should also include international students with this process. As mentioned about measles in the Health Act review, Meningococcal C is another vaccination preventable disease that is becoming more prevalent in the 19-24 year old age group providing more evidence that vaccination is important for this group of students.</p> <p>Provision is required to ensure that children of parents or under the care of guardians who are conscientious objectors to immunisation are not penalised in this process.</p>	
108	<p>Should the new Act provide for different forms of evidence of immunisation? If so, what should they be?</p>	8.8
	<p>Comment: It would be 'ideal' for a standard form be developed and used for all school children which can transferred between schools when required (either primary to primary, or primary to secondary).</p> <p>ACIR is also another source where evidence of immunisation can be obtained especially for those coming from interstate schools.</p>	
109	<p>Should the new Act introduce a penalty for failure on behalf of a parent or guardian to produce immunisation records on secondary school entry?</p>	8.8

	Issue	Section reference
	<p>Comment: There should be no financial penalties imposed for failure to produce immunization records on secondary school entry. In these cases where the parent/guardian cannot demonstrate completion of the immunization schedule the child would be deemed to be incomplete and as such would be excluded in cases where a vaccine preventable disease outbreak occurs in a school setting. By creating an offence would not facilitate compliance as most parents would provide this information readily.</p> <p>Provision is required to ensure that parents or guardians who are conscientious objectors to immunization are not penalized in this process.</p>	
110	Should the new Act require the principal teacher or person in charge of the school to take reasonable steps to ensure that immunisation records are maintained, and to allow inter-school transfer of ISCs?	8.8
	<p>Comment: The principal teacher or person in charge of a school should be required to take reasonable steps to ensure that immunization records are maintained, and to allow inter-school transfer of ISCs.</p>	
111	Should the new Act facilitate consistency with the NHMRC schedule for immunisation?	8.8
	<p>Comment: The new Act should facilitate consistency with the NHMRC schedule for immunization and reflect the on-going changes to the schedule. This should apply to scheduled vaccinations and allow for flexibility in respect to new and emerging vaccines. This schedule is sourced by evidenced-based research from ATAGI (Australian Technical Advisory Group on Immunisation). ATAGI was developed to provide expert technical and scientific advice on the Immunise Australian Program.</p>	
112	Should school principals and persons in charge of children's services be required to seek advice from the Department of Human Services before excluding children during an actual or suspected outbreak of an infectious disease?	8.9

	Issue	Section reference
	<p>Comment: School principals and persons in charge of children's services should be required to seek advice from DHS before excluding children during an actual or suspected outbreak of an infectious disease.</p>	
113	Should there be a power in the new Act for the Secretary to waive or alter the prescribed periods in individual cases?	8.9
	<p>Comment: There should be a power in the new Act for the Secretary to waive or alter the prescribed periods in individual cases.</p>	
114	Should the requirement for a parent to inform the principal or a person in charge of a school or children's services centre be limited to where their child has a vaccine preventable or excludable disease?	8.9
	<p>Comment: The requirement for a parent to inform the principal or a person in charge of a school or children's services should not be limited to where their child has a vaccine preventable or excludable disease but instead extended.</p>	
115	Should the new Act facilitate consistency with the NHMRC <i>Guidelines on the Recommended Minimum Periods of Exclusion from School, Preschool and Child Care Centres of Infectious Disease Cases and Contacts</i> ?	8.9
	<p>Comment: The new Act should facilitate consistency with the NHMRC Guidelines on the Recommended Minimum Periods of Exclusion from School, Preschool and Child Care Centres of Infectious Disease Cases and Contacts.</p>	
116	Should provisions dealing with offensive waterways not be included in the new Act?	9.1

Issue	Section reference
<p>Comment: Provisions dealing with offensive waterways should not be included in the new Act as these provisions can be appropriately dealt with under the Environment Protection Act 1970.</p>	
<p>117 Should public health risks related to rats, mice, vermin, pests or other animals suspected of having a disease capable of transmission to humans be dealt with by the issue of an improvement notice?</p>	<p>9.1</p>
<p>Comment: Public health risks related to rats, mice, vermin, pests etc., suspected of having a disease capable of transmission to humans should be dealt with by the issue of an improvement notice provided that the current provisions in the regulations are still retained.</p> <p>If the existing provisions in the Health (Infectious Diseases) Regulations dealing with mosquitoes, rats and mice (Parts 4 & 8) are not retained, the proposed provision in the new Act should remove the reference to 'suspected of having a disease...'. The new provisions should primarily serve as a preventative tool for pest control (as the existing provisions do). Many pests do not carry diseases per se', yet due to their behaviours and living environments, they are likely to act as a transmitter of disease causing micro-organisms or otherwise promote unsanitary conditions.</p>	
<p>118 Should Parts 5A and 5B of the <i>Building Act 1993</i> be transferred to the new public health Act?</p>	
<p>Comment: Parts 5A and 5B of the Building Act 1993 should be transferred to the new Act as it would improve the effectiveness of the legislative scheme.</p>	
<p>119 Are there other amendments that should be made to provisions currently in Parts 5A and 5B of the Building Act that would improve the effectiveness of the legislative scheme?</p>	
<p>Comment: All the existing provisions under Parts 5A and 5B of the Building Act should be transferred across to the Health Act.</p>	

	Issue	Section reference
120	Should the new Act re-enact provisions relating to meat supervision?	9.3
Comment: The new Act should not re-enact provisions relating to meat supervision.		
121	Should the offence under the <i>Food Act 1984</i> in relation to the sale of 'unsafe food' be broadened to include food that cannot be sold for human consumption under section 34(1) of the <i>Meat Industry Act 1993</i> ?	9.3
Comment: The offence under the Food Act in relation to the sale of 'unsafe food' should be broadened to include food that cannot be sold for human consumption under 34(1) of the Meat Industry Act 1993.		
122	Who should be required to hold a licence to use pesticides under the new Act?	9.4
Comment: All pest control operators should be required to hold a licence to use pesticides under either the new Act or the other relevant legislation – not both.		
123	Does the new Act need to deal with the use of pesticides not associated with a commercial enterprise? If so, what non-commercial activities should be regulated and how should these be regulated?	9.4
Comment: See above.		
124	Are there any areas of overlap or duplication	9.4

Issue	Section reference
between the regulation of the use of pesticides under the Health Act and the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> ?	
Comment: See above.	

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