

## Review of the *Health Act 1958*

### A new legislative framework for public health in Victoria

A discussion paper - August 2004

#### **SUBMISSION BY HEALTH SERVICES COMMISSIONER DATED 10 FEBRUARY 2005**

The Health Services Commissioner welcomes this review of the Health Act and acknowledges the importance of a public health approach. HSC also agrees the principles guiding the review have been well thought out. The Review focuses on giving a clear statement about public health objectives, values and outcome to the community. The other aims are also worth supporting. I shall address the questions, which are relevant to HSC below:

#### 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
<b>Comment:</b> I would have no objection to the legislation being called the ' <i>Public Health Act</i> '.		
2	Are there matters that are currently dealt with by other legislation that should be included in the new Act?	3.2
<b>Comment:</b> There is no reason why the new Act could not sit along side more specific Acts such as the <i>Drugs, Poisons and Controlled Substances Act 1981</i> , <i>Tobacco Act 1987</i> , <i>Food Act 1987</i> and <i>Cancer Act 1958</i> . It is a principle of statutory interpretation that the specific overrides the general and that applies here. HSC agrees there would be little to gain from consolidating public health legislation dealing with food, drugs or tobacco as these are separately administered and enforced.		
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><b>Comment:</b> Clear statements in the objects clause would give an indication of the purpose of the Act, which should be to promote public health. HSC agrees that adequate information on factors affecting social, physical and cultural environments for health must be made available, and the new Act has to be flexible particularly concerning regulation making powers.</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><b>Comment:</b> HSC strongly supports this, and agrees with Loff's conclusion that denials of human rights can in themselves be a health risk whereas observance of human rights can improve health outcomes. We know people living in rural Victoria have a poorer health status than those in the metropolitan areas. We know also from work being conducted by the Health Services Commissioner in conjunction with Professor John Humphries, supported by the Department of Human Services, that rural health users make proportionately fewer complaints and on different topics than metropolitan users. Rural users tend to complain more about access and rights issues than do their metropolitan counterparts. We also know they probably have more to complain about. This research is still in progress supported by an ARCG grant.</p> <p>Similarly, the health of the Aboriginal population is something that needs to be addressed urgently. The HSC supports the need of the new Act to address inequalities in the health and wellbeing of disadvantaged communities. It could do so by guaranteeing certain services to specific communities and promoting public health and wellbeing by recognizing in its objects clause strategies to address these issues. HSC also supports the objective of facilitating the collection and dissemination of relevant information and to focus on preventative strategies such as immunization.</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><b>Comment:</b> The objects provision of any piece of legislation is extremely important in conveying a clear message and also in statutory interpretation. HSC supports all of the suggestions made on page 12 at section 3.3 of the Discussion Paper.</p>	
6	Should the new Act contain a provision specifying guiding principles, and, if so, what principles should be included?	3.4
	<p><b>Comment:</b> The <i>Health Services (Conciliation and Review) Act 1987</i> has a useful set of guiding principles which are really aspirations as to what a good health system should look like. While we don't always meet those aspirations, the principles are nonetheless useful in promoting good health service delivery and quality health services. They also form a basis upon which persons aggrieved can make complaints. A similar set of principles in a new public health Act is strongly supported. HSC supports the idea of including the principle recognizing that an evidence based decision-making model should be used. However HSC also acknowledges that more and more Australians are choosing complementary health services and very few complaints are received about these compared with traditional medicine. The complexities as to exactly what scientific evidence would be sufficient are well documented in the discussion paper and the HSC supports these. The idea of a precautionary principle could be useful. The principle of accountability is also supported and its importance recognized by HSC.</p> <p>Community interest is strongly supported by HSC as is the principle of preventing unnecessary encroachment on individual rights. Sometimes when the state does things for a person's own good there is tension between this and civil rights issues. Immunization is a good case in point. It is therefore important that education and communication occur and consent is always sought. Obviously any infringements on individual liberties and privacy should be kept to an absolute minimum. HSC also support the "polluter pays" principle as noted, which is used in other legislation particularly in the environmental area and is relevant to public health issues. HSC also acknowledges the sensitive issue of victim blaming which could have the effect of 'punishing' people who may be unwell and could have the undesired effect of stopping people accessing needed health services. This would need to be drafted very carefully. The principle recognizing the promotion and protection of public health as a collaborative and intersectoral effort is very much supported.</p>	

	Issue	Section reference
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
<b>Comment:</b> HSC supports the inclusion of this statement.		
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
<b>Comment:</b> HSC supports the current section 384 powers in relation to inquiries into matters of public health concern however there should continue to be a discretion rather than a duty. The Minister for Health also has powers under the <i>Health Services (Conciliation and Review) Act 1987</i> to instruct the Health Services Commissioner to conduct enquiries. These types of inquiries are usually into alleged misconduct rather than public health issues. Clearly the Secretary has a wider responsibility than the Health Services Commissioner, particularly in relation to food matters etc.		
9	Should the new Act retain the functions for municipal councils as set out in the current Act?	4.2
<b>Comment:</b> HSC agrees municipal councils have an important role as planners, advocates and providers of organized public health programs and this role should be recognized and promoted in the new legislation.		
10	Should the new Act recognise municipal councils' role in: <ul style="list-style-type: none"> <li>➤ Planning, advocating and providing organised public health programs?</li> <li>➤ Developing and implementing strategies to promote and improve public health and promote community health and wellbeing?</li> </ul>	4.2
<b>Comment:</b> HSC responds in the affirmative. See comments at 9 above.		
11	Should the concept of partnership between state and local government, and between government and non-government, be addressed in the new Act?	4.3

	Issue	Section reference
	<p><b>Comment:</b> HSC supports the concept of partnership and acknowledges that public health issues are dealt with by a number of government and non-government organisations. This is a very important part of community involvement and should be addressed in the new Act.</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><b>Comment:</b> HSC agrees it is important to have MPHPs, however often these types of documents are enthusiastically endorsed but there is little evaluation carried out to find out whether they are in fact implemented. HSC therefore supports greater emphasis on implementation and this should be included in the Act. HSC agrees that councils should indicate how they intend to fulfil their statutory requirements and MPHPs should be submitted to DHS. Random audits could be carried out in a non-punitive way.</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><b>Comment:</b> HSC responds in the affirmative.</p>	
14	Should the new Act retain the requirement to prepare MPHPs at set intervals and to review MPHPs annually in consultation with the Department of Human Services?	4.4
	<p><b>Comment:</b> HSC responds in the affirmative.</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

	Issue	Section reference
	<p><b>Comment:</b> HSC considers annual reporting (or any other time as directed) is sufficient and should be included. MPHPs should be submitted to DHS to ensure accountability.</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
	<p><b>Comment:</b> The new Act should not be so onerous as to make it impracticable for local councils to comply. The reporting requirement of four years does seem adequate.</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?	4.5
	<p><b>Comment:</b> HSC considers it unnecessary to have authorized MOHs. Whilst these people have carried out their positions well local councils should have some flexibility in accessing a range of medical expertise. The way they will go about this should be stated in their MPHPs.</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><b>Comment:</b> HSC has concerns that making EHOs automatically authorised officers might mean councils lose some control, therefore this is not supported.</p>	
19	Should the new Act require specific qualifications and/or experience for appointment as an EHO?	4.6
	<p><b>Comment:</b> HSC does support the inclusion in the Act of specific qualifications and expertise for EHOs.</p>	
20	Should the new Act require that authorised officers have qualifications and/or experience prescribed by the Secretary?	4.7

	Issue	Section reference
	<b>Comment:</b> HSC supports this proposal.	
21	Alternatively, should the Act provide that councils may only authorise persons appropriately competent?	4.7
	<b>Comment:</b> HSC supports the proposal in Question 20, rather than the alternative.	
22	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?	5.1
	<b>Comment:</b> Public Health workers are strongly dependant on accurate data. However a huge amount of data is collected and sometimes not used or disseminated as well as it might be. Data for the sake of collecting data is a waste of time and money. We therefore need to be sure that where the Secretary has a duty to collect health data, that data is relevant, useful and used. HSC supports the new Act retaining an obligation on the secretary to establish and maintain a comprehensive information system, and that this is made more explicit. Privacy issues need to be taken into account in disseminating information, as well as consent issues.	
23	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?	5.1
	<b>Comment:</b> HSC supports this.	
24	Should the provisions regarding consultative councils be consolidated in the new Act to provide: <ul style="list-style-type: none"> <li>➤ General provisions regarding establishment and functions of all consultative councils?</li> <li>➤ Standard provisions regarding the</li> </ul>	5.3

	Issue	Section reference
	<p>establishment of sub-committees?</p> <ul style="list-style-type: none"> <li>➤ A power to make recommendations in relation to investigations or inquiries?</li> <li>➤ An obligation to produce an annual report?</li> </ul>	
	<p><b>Comment:</b>            Consultative councils have carried out an important role in promoting quality improvements, however much of their work is unknown outside a small circle of people. They have the potential to play an even more important role in promoting quality and improving standards of service. HSC has been invited to attend at some meetings of the councils following my expression of an opinion that there should be some consumer or lay representation on the councils. I was told this would be inappropriate because the meetings were clinical in nature and a lay person would be unable to understand them. I do not agree with this. I found the meeting to be most interesting, despite the fact that clinical information was presented. I think intelligent, well-informed lay people have an important role to play and can make useful suggestions to the councils on what they do with the information they receive. The new Act should contain provisions to establish and set out the functions of the councils.</p> <p>HSC supports all four dot points under 24.</p>	
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
	<p><b>Comment:</b>            HSC is not qualified to respond.</p>	
26	<p>Should the new Act contain more specific provisions requiring:</p> <ul style="list-style-type: none"> <li>➤ Reporting to consultative councils on specified incidents?</li> <li>➤ Regular provision of specified information relevant to the statutory functions of consultative councils?</li> <li>➤ Preparation, by medical practitioners, of a report for the Council in relation to a matter that it is investigating?</li> </ul>	5.3

	Issue	Section reference
	<b>Comment:</b> The new Act should be very specific in what should be reported to the councils and time intervals this should be done. All 3 points under 26 are supported.	
27	Should Victoria continue to rely on a legislative requirement for HIA in EIA legislation?	6.2
	<b>Comment:</b> HSC supports the proposal to incorporate HIA guidelines into existing environmental and planning impact assessment.	
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
	<b>Comment:</b> Risk management strategies are extremely important in promoting quality health care and public health principles. It has to be recognized however that health issues can be unpredictable and health services risky. While we must recognize the importance of risk management, we need also to understand there is no such thing as a risk free society and from time to time mistakes will be made. Accordingly, it is what we do with the information from these mistakes that becomes important. Often health policies and health services use the term risk management without really defining what they mean by it, or understanding the principles underlying modern public health law.	
29	Should the new Act support and enhance the practice of risk management?	7.1
	<b>Comment:</b> HSC strongly supports the new Act including and enhancing the practice of risk management.	
30	Should the new Act include a general statutory duty of care?	7.2

	Issue	Section reference
	<p><b>Comment:</b> The discussion paper sets out well some of the pitfalls in having a general statutory duty of care if it was too all encompassing. One only has to look out of the window of the office, to see the smog sitting above the sea to realize how many people could be in breach of a duty of care despite the current protections in environmental legislation. While HSC supports the general statutory duty of care it needs to be workable and practical.</p>	
31	If so, what should be the scope of the duty?	7.2
	<p><b>Comment:</b> The scope of the duty has to be such that it has to be complied with and has positive public health outcomes.</p>	
32	If adopted, should the duty be positive or only negative?	7.2
	<p><b>Comment:</b> For the reasons given in the paper HSC agrees that the approach taken in environmental protection legislation is most practicable.</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><b>Comment:</b> All of the approaches set out in 7.2.4 would be helpful. Criminal liabilities are most likely to be inappropriate except where there is willful recklessness.</p>	
34	Should failure to comply with the duty be the basis on which costs are recovered?	7.2
	<p><b>Comment:</b> Agreed.</p>	
35	Should compliance with the duty provide a defence against some offences under the Act?	7.2
	<p><b>Comment:</b> Yes.</p>	
36	How might the duty of care work in practice?	7.2

	Issue	Section reference
	<b>Comment:</b> HSC agrees with the consideration set out in 7.2.5	
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
	<b>Comment:</b> HSC supports this.	
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
	<b>Comment:</b> HSC prefers the approach set out in 37. If however this is not achieved then separate nuisance provisions would need clearer definition to include public health risks. This could be achieved as suggested by removing the term 'annoying'.	
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
	<b>Comment:</b> General enforcement provision under the new Act should be sufficient for councils.	
40	Should best practice standards continue to have a role in the regulation of public health risks?	7.4
	<b>Comment:</b> This is strongly supported by HSC.	
41	Should RMPs have a role in the regulation of public health risks under the new Act?	7.5
	<b>Comment:</b> HSC supports RMPs having a role in the regulation of public health risks under the new Act.	

	Issue	Section reference
42	Who should be required to prepare RMPs: <ul style="list-style-type: none"> <li>➤ persons undertaking a registrable or licensable activity by way of a condition of registration/licence?</li> <li>➤ persons required to do so by an improvement notice?</li> </ul>	7.5
<b>Comment:</b> Yes to both.		
43	What criteria should be used in deciding which activities should be subject to the requirement of registration or licensing?	7.6
<b>Comment:</b> The most obvious criterion is that the business or person conducting an activity which may have public health implications should be registered. There will be a need for registering the activity itself as well as the owners of the business.		
44	What regulatory parameters for registration/licensing would provide a more up-to-date, flexible, graduated and responsive approach to the level of public health risk?	7.6
<b>Comment:</b> HSC supports the continuation of licensing both individuals and business conducting public health risk activities. There may need to be specific provisions depending on the nature of the business and the level of risk. HSC supports all of the criteria set out under 7.6.1 General Provisions.		
45	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?	7.6
<b>Comment:</b> There is little in the Discussion Paper about "Sex on Premises Venues" except under section 8.1.3. Discussion is needed on the issue of whether SOPVs should be regulated. Refer to my comments at Issue 78.		
46	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?	7.6

	Issue	Section reference
	<b>Comment:</b> This would depend on the level of risk and the likelihood of harm to the public. Obviously the greater the risk the more one would support a positive obligation on persons to notify.	
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
	<b>Comment:</b> Yes.	
48	Should all enforcement powers be brought together in one part of the Act?	7.7
	<b>Comment:</b> Bringing the enforcement powers together in one part of the Act could help with clarity.	
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
	<b>Comment:</b> Yes.	
50	Are the enforcement powers in the Health Act appropriate to allow authorised officers and EHOs to carry out their duties?	7.7
	<b>Comment:</b> See Comment at 64 below for comment on Issues 50 to 64.	
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
	<b>Comment:</b> See Comment at 64.	

	Issue	Section reference
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
<b>Comment:</b> See Comment at 64.		
53	Should the new Act contain a procedure for the issuing of improvement and prohibition notices by authorised officers?	7.7
<b>Comment:</b> See Comment at 64.		
54	Should notices cover: <ul style="list-style-type: none"> <li>➤ nuisance?</li> <li>➤ licensable or registrable public health risk activities?</li> <li>➤ where the activity may otherwise contravene the Act?</li> </ul>	7.7
<b>Comment:</b> See Comment at 64.		
55	Should the new Act establish general criteria for issuing notices?	7.7
<b>Comment:</b> See Comment at 64.		
56	Should the new Act set out an inclusive list of the types of work a person subject to an improvement notice could be required to perform?	7.7
<b>Comment:</b> See Comment at 64.		
57	What method of review should apply to improvement and prohibition notices?	7.7

	Issue	Section reference
	<b>Comment:</b> See Comment at 64.	
58	Should emergency powers be general for 'public health emergencies' or be specific to infectious diseases?	7.8
	<b>Comment:</b> See Comment at 64.	
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
	<b>Comment:</b> See Comment at 64.	
60	Should there be a fast-track mechanism for notifying a disease associated with a public health emergency?	7.8
	<b>Comment:</b> See Comment at 64.	
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
	<b>Comment:</b> See Comment in 64.	
62	Should the Secretary be given a 'catch all' power in a public health emergency such as 'any other order deemed necessary'?	7.8
	<b>Comment:</b> See Comment at 64.	
63	Should compliance with demands from the Secretary during an emergency or outbreak of an infectious disease be specifically exempted from confidentiality?	7.8

	Issue	Section reference
	<p><b>Comment:</b> See Comment at 64.</p>	
64	Should the Secretary's power to act when local government is in default be limited in any way?	7.8
	<p><b>Comment:</b> Powers to deal with emergencies should not be arbitrary or unnecessarily restrictive of people's human rights. There must always be sufficient external review, as some of the proposed powers have the potential to seriously restrict people's right of movement etc. In general the proposed changes are supported.</p> <p>If a public health risk is imminent and serious in cases such as disease outbreaks, then certain compulsory powers are necessary, but there must be a balancing of individual rights.</p>	
65	<p>Should the new Act include a provision for cost recovery where a person:</p> <ul style="list-style-type: none"> <li>➤ has been convicted of an offence?</li> <li>➤ has contravened the Act, but there has been no conviction?</li> <li>➤ has caused a risk to public health?</li> </ul>	7.9
	<p><b>Comment:</b></p> <ul style="list-style-type: none"> <li>• In general yes, however the practical reality has to be taken into account. There is a lot of inequity in our society and some people's ability to pay will be less than others.</li> <li>• It is difficult to envisage situations where a person has contravened the Health Act in a serious way where costs are incurred but no prosecution is brought. If a prosecution is brought and the offence is proven without recording a conviction, cost recovery orders should be permitted. Any costs order would be in the discretion of the sentencing judge or magistrate.</li> <li>• Again this would have to be practical, and the contravener must have had an intention to put public health at risk rather than it being accidental.</li> </ul>	
66	Should the new Act include a new offence of 'risk to	7.10

	Issue	Section reference
	health'?	
	<b>Comment:</b> Yes, this is supported. The HSC believes only serious risk to health should be the subject of an offence, although this may be a matter of definition. See comments in 69 below. The HSC agrees with the comment at 7.10.5 that public health risks should be dealt with within the framework of public health law rather than through general criminal law.	
67	If so, what should amount to a 'risk to health'?	7.10
	<b>Comment:</b> The definition in 7.10.2 is supported.	
68	If adopted, what should be the defences, if any, to the offence of 'risk to health'?	7.10
	<b>Comment:</b> The defences in 7.10.3 are supported.	
69	What should be the scope of the offence?	7.10
	<b>Comment:</b> Only serious risk to health should be the subject of a criminal offence. For example, the risk of transmission of an infectious disease is a serious risk, even though infectious diseases vary in their seriousness. If a large number of people are potentially affected by a less serious infection such as diarrhoea, this should be considered a serious risk to health. It may be a matter for defining such actions as a serious risk to health. Graded penalties are appropriate, depending on whether actual harm occurred and whether the offence was intentional or reckless.	
70	Should the 'risk to health' offence subsume the offence for knowingly and recklessly infecting another person with an infectious disease?	7.10
	<b>Comment:</b> Yes. The Discussion Paper states there has never been a successful prosecution under section 120 because it requires actual infection. Section 120 may be appropriate for intentional or reckless transmission of diseases in ways other than through unprotected sex, even though such situations will be rare. A risk-based offence is more appropriate.	
71	Should the offence for knowingly or recklessly infecting another person with an infectious disease not be re-enacted due to the existence of the knowing and reckless offences in the <i>Crimes Act</i> ?	7.10

	Issue	Section reference
	1958 (that is, sections 22 and 23)?	
	<b>Comment:</b> It is more appropriate for offences involving the risk of transmission of infectious diseases to be contained in public health legislation rather than the Crimes Act. The Courts have had difficulty applying sections 22 and 23 of the Crimes Act to offences involving the risk of transmission of an infectious disease through unprotected sex, as the offences were not designed for those situations. See comments in 70 above.	
72	Should the new Act introduce PERIN for suitable offences?	7.11
	<b>Comment:</b> Yes, but it may be difficult to set a penalty because the factual situations that make up these offences will vary greatly. Offences involving a risk to public health are not the same as driving offences.	
73	Should public health offences attract similar penalties to those attracted by offences under environment protection legislation?	7.12
	<b>Comment:</b> Yes. The same principles should apply.	
74	Should the new Act allow for greater penalties where the offender is a body corporate?	7.12
	<b>Comment:</b> Yes, if the behaviour comes within the above principles in Issue 69.	
75	Should the new Act include a statutory defence of due diligence?	7.13
	<b>Comment:</b> Yes.	
76	What method of review should apply to administrative decisions made under the Act?	7.15
	<b>Comment:</b> Merits review to VCAT for appropriate decisions	
77	Do the current provisions appropriately address the public health risk associated with hairdressing, beauty therapy and skin penetration?	8.1

	Issue	Section reference
	<p><b>Comment:</b> Yes, although these are not areas that HSC deals with. The Discussion Paper states that the current provisions and the voluntary standards of practice are working.</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><b>Comment:</b> Yes. It is appropriate to consolidate the provisions regarding the regulation of brothels into the <i>Prostitution Control Act</i>.</p> <p>There is little discussion about 'sex on premises venues' apart from the paragraph in 8.1.3. It is my understanding that SOPVs are likely to be important in the transmission of STI's, including HIV. [Refer to the paper by Read T, Hocking J, Hellard M et al "Incident HIV in MSM: Victorian Case Control Study 2003" Australasian Society for HIV Medicine Conference Cairns :<a href="http://www.ashm.org.au">www.ashm.org.au</a> ].</p> <p>There is no discussion as to whether the current voluntary arrangements with proprietors of SOPVs are working. There is no discussion as to whether it would be appropriate for the Department to be given the power to regulate SOPVs, but such power only needs to be used if voluntary arrangements are not successful. Areas that could be regulated are minimum lighting requirements, distribution of condoms and lubricant, STI screening and provision of educational material.</p>	
79	Do the current provisions appropriately address the public health risk associated with prescribed accommodation (for example, hotels, motels, hostels and holiday camps)?	8.2
	<p><b>Comment:</b> No comment</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><b>Comment:</b> Yes</p>	
81	Should the new Act clearly set out the action that	8.3

	Issue	Section reference
	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?	
	<b>Comment:</b> Yes	
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 body?	8.3
	<b>Comment:</b> Yes	
83	Should the new Act continue to outline the procedures for non-consensual testing orders where consent for testing has been refused?	8.4
	<b>Comment:</b> Yes	
84	Should the new Act introduce a system for the authorisation of non-consensual testing where consent cannot be given to testing?	8.4
	<b>Comment:</b> Yes. The HSC has already provided comment to DHS on this issue in November 2004. Refer to email to Stephen Lodge dated 10.11.04.	
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
	<b>Comment:</b> It may be appropriate to extend the provisions in situations where there is a serious risk of transmission of a disease, such as a child accidentally being given the wrong breast milk in a child care centre.	
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
	<b>Comment:</b> Yes. Serious risk to public health needs to be defined.	
87	Should the new Act provide a power for involuntary testing with reasonable use of force? If so, should it	8.5

	Issue	Section reference
	be exercised by 'an authorised officer', a delegate of the Secretary and/or the police?	
	<b>Comment:</b> Yes to the first part, as the use of reasonable force is consistent with the powers in the existing section 121(1) of the Act. Reasonable force should only be used if the individual does not co-operate, and this should be explained to them prior to testing. As to the second part, the power should be exercised by an authorized officer or a delegate, as testing is always performed by a health professional. Police may assist if required.	
88	Should the Act contain a list of the types of restrictions that may be imposed by an order of the Secretary?	8.5
	<b>Comment:</b> Yes.	
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
	<b>Comment:</b> There are few cases where compulsory treatment is likely to be practical in preventing the spread of an infectious disease. Syphilis can be cured with one dose, but is it practical to treat someone compulsorily for, say, TB which I understand requires treatment for 3 to 6 months? This would probably require detention for the purposes of treatment. Compulsory treatment should be restricted to situations where there is a serious risk of transmission, where it is practical for treatment to be given, where the treatment is not overly invasive and where treatment will eliminate the risk of transmission. Treatment should be given in a manner that is least restrictive of the individual's liberty.	
90	Should there be time limits imposed on orders and, if so, what time limits should apply?	8.5
	<b>Comment:</b> Yes, but I am unable to comment on what those time limits should be.	
91	Should any or all public health orders require court/tribunal confirmation?	8.5

	Issue	Section reference
	<p><b>Comment:</b> Compulsory treatment should require a court order. Other orders should have appeal rights, and orders for isolation and detention should have an automatic review period to determine whether the continued isolation or detention is still justified, such as in the Mental Health Act in relation to involuntary detention. The least restrictive principle should also apply with compulsory treatment used only where there is no other less restrictive alternative.</p>	
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
	<p><b>Comment:</b> Yes to both.</p>	
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
	<p><b>Comment:</b> Yes, as such a provision already exists, although it would be expected that such an offence would act largely as an encouragement for people to comply.</p>	
94	What appeal and external review processes should be made available under the new Act?	8.5
	<p><b>Comment:</b> The right to seek a review by the Secretary for isolation and restriction orders in section 122(1) should be retained, but any appeal should be to VCAT rather than the Supreme Court. See comments in 91 above re automatic review period. An appeal to the Secretary and/or VCAT would be appropriate in other cases</p>	
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
	<p><b>Comment:</b> Yes</p>	
96	Should the new Act require that hospitals have processes in place to ensure that notification	8.6

	Issue	Section reference
	requirements under the Act are met?	
	<b>Comment:</b> It is not explained in the Discussion Paper why this is necessary. It would be assumed that the requirement for medical practitioners to notify covers hospitals. If there is a problem which needs to be rectified by requiring hospitals to notify, then it is supported.	
97	Should the term 'notifiable disease' be replaced with the term 'notifiable condition'?	8.6
	<b>Comment:</b> No. Although the term 'disease' may carry negative connotations, the phrase "notifiable disease" is well understood by pathology laboratories and medical practitioners, and changing the term may cause confusion.	
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
	<b>Comment:</b> Yes. I understand that a number of patients do not return to their doctor to obtain their HIV results, and therefore post test counselling cannot take place, which is technically in breach of the Act. In most cases, the results will be negative. If the results are positive, the patients will be followed up. In the case of negative results where the risk of transmission of HIV is low, it is an inappropriate use of health resources to insist on post-test counselling. An alternative means of giving these low risk persons their negative HIV result without requiring an appointment is necessary. Best practice guidelines would more appropriately deal with these complexities.	
99	Should the new Act rely on the privacy framework for all health records, rather than include specific privacy provisions?	8.7
	<b>Comment:</b> Yes. Section 128 of the <i>Health Act</i> is redundant in light of the <i>Health Records Act</i> , which my office administers. The <i>Health Records Act</i> provides a comprehensive framework for the handling of health information in Victoria and for maintaining a person's right to confidentiality.	
100	Should the new Act retain the provision specifying	8.7

	Issue	Section reference
	that the court may be closed when evidence is presented concerning any matter related to HIV?	
	<p><b>Comment:</b> Yes. This is not covered by the <i>Health Records Act</i>, which exempts Courts from its operation in relation to their judicial functions.</p>	
101	Should the new Act provide for a court to be closed when evidence is presented concerning other diseases?	8.7
	<p><b>Comment:</b> While this could be considered in cases other than HIV, it may be difficult to decide for which diseases it would be appropriate to close a court. HIV carries a particular stigma, and of all the transmissible diseases, closure of a court would certainly be justified with HIV. It is a basic premise of our judicial system that court hearings take place in public, and courts should only be closed as a last resort. Legal practitioners have methods to avoid having to announce in open court the medical conditions their clients may be suffering from which are particularly sensitive or embarrassing, and they do this by handing up a medical or psychiatric report.</p>	
102	Should the Act include a regulation-making power to ensure participation in current quality assurance programs and supply of data for epidemiological analyses by HIV testing laboratories?	8.7
	<p><b>Comment:</b> The current arrangements appear to be that the Secretary imposes conditions when she/he authorizes an HIV testing laboratory, and these conditions include participation in quality assurance programs and supplying data for epidemiological purposes. The Discussion Paper does not state if these arrangements are working. If there is a problem with the arrangements or there are other benefits to be achieved, then regulations may be appropriate.</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><b>Comment:</b> Yes. The additional wording presumably does not mean that only councils can provide immunisation services, and that general practitioners can still provide immunisation services.</p>	

	Issue	Section reference
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
<b>Comment:</b> The provisions should be retained in the Children's Services Regulations.		
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
<b>Comment:</b> Yes		
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
<b>Comment:</b> The Discussion Paper does not say why this is proposed. If there is no evidence that such a proposal is likely to increase the rate of immunisation, then the HSC's response is no.		
107	Should the new Act introduce an obligation on tertiary students to supply evidence of immunisation on enrolment and an obligation on 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?	8.8
<b>Comment:</b> No. It is impractical to impose this obligation in relation to tertiary students, and there is no discussion of what benefits there are in universities knowing the students' immunisation status. Many overseas student would be unable to provide evidence of immunisation.		
108	Should the new Act provide for different forms of evidence of immunisation? If so, what should they be?	8.8
<b>Comment:</b> Yes		

	Issue	Section reference
109	Should the new Act introduce a penalty for failure on behalf of a parent or guardian to produce immunisation records on secondary school entry?	8.8
<b>Comment:</b> No, because it is the view of the HSC that the obligation to supply evidence of immunisation should not apply to secondary schools, in the absence of evidence as to what benefit it would provide. See comments in 106.		
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
<b>Comment:</b> Yes		
111	Should the new Act facilitate consistency with the NHMRC schedule for immunisation?	8.8
<b>Comment:</b> Yes		
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
<b>Comment:</b> Yes		
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
<b>Comment:</b> Yes		
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
<b>Comment:</b> Yes. HIV and other blood borne viruses should not be diseases that parents have to notify to schools.		

	Issue	Section reference
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
<b>Comment:</b> Yes.		
116	Should provisions dealing with offensive waterways not be included in the new Act?	9.1
<b>Comment:</b> The HSC does not comment on Issues 116 to 124.		
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?	9.1
<b>Comment:</b>		
118	Should Parts 5A and 5B of the <i>Building Act 1993</i> be transferred to the new public health Act?	
<b>Comment:</b>		
119	Are there other amendments that should be made to provisions currently in Parts 5A and 5B of the <i>Building Act</i> that would improve the effectiveness of the legislative scheme?	
<b>Comment:</b>		
120	Should the new Act re-enact provisions relating to meat supervision?	9.3
<b>Comment:</b>		
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
<b>Comment:</b>		

	Issue	Section reference
122	Who should be required to hold a licence to use pesticides under the new Act?	9.4
<b>Comment:</b>		
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
<b>Comment:</b>		
124	Are there any areas of overlap or duplication 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> ?	9.4
<b>Comment:</b>		