

Chapter 7

Statutory duties, powers, offences and defences

Section 7.8

Emergency Powers

61. *Should the Secretary be given powers in a public health emergency to compel examination, testing vaccination, treatment (including preventative treatment), isolation and quarantine?*

Powers that compel examination, vaccination, isolation and quarantine should be given to the Secretary; however consideration must be given to civil liberties. These powers if not abused, should be in the best interests of the community and reducing or preventing the spread of infectious diseases.

62. *Should the secretary be given a "catch all" power in a public health emergency such as 'any other order deemed necessary'?*

To adequately address any new or emerging situations, a 'catch all' power should be included. It is vital to public health that this flexibility be available.

63. *Should compliance with demands from the Secretary during an emergency or outbreak of an infectious disease be specifically exempted from confidentiality?*

The AIEH endorses the overseement of civil liabilities and the need for confidentiality of personal information. During an emergency, the demanding nature may deem confidentiality a lower priority in the best interests of the community, however even in such circumstances the AIEH believes that confidentiality still needs to be retained.

64. *Should the Secretary's power to act when local government is in default be limited in any way?*

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. A "serious risk to public health" should be defined and included within the legislative framework.

Chapter 7

Statutory duties, powers, offences and defences

Section 7.10

A new offence of "risk to health"

66. *Should the new Act include a new offence of 'risk to health'? Should the new Act include a new offence of 'risk to health'?*

The AIEH supports the view that a new offence of "risk to health" should be introduced for more serious offences, but this needs to have a more specific definition. It should have the scope to somehow measure / quantify the risk to health.

67. *If so, what should amount to a 'risk to health'?*

The AIEH believes that a "risk to health" should be sufficiently broad to encompass present or likely future change to a person's health and well being. This needs to be explored and developed. What is a risk to health – environmental? Physical? Mental? Social? Is there a degree of health, or health impact? How should "health" be defined in this context? Social, emotional/mental, physical, environment (wide interpretation)? What should be the level of risk? If it is to include infectious disease, this could be defined / expanded in the regulations (Infectious Disease Regulations). "Risk to health" should support the broader definition of health, and may also be complementary to any definition related to a health impact assessment.

68. *If adopted, what should be the defences, if any, to the offence of 'risk to health'?*

The AIEH believes that there should be two possible defences to the offence of 'risk to health'. One would be that the alleged offender is complying with known "best practice" at the time; in the absence of other knowledge or standard(s). The other possible defence would encompass the reasonable test – is it practical, reasonable, knowingly/intentional, not feasible, beyond control.

69. *What should be the scope of the offence?*

The AIEH believes that the scope of the offence should be similar to that stated in the response to question 67, i.e. anything that is dangerous to health. Dangerous to health may require further qualification or test such as a "reasonable person" who should have knowledge of the impact or reasonably have enquired about the activity. The scope may also need to include knowledge etc from professional people employed in industries registered under the Act in relation to practice standards, competencies that ought to be known, and in this way apply to Health Act registered premises. It may be appropriate for the Department to develop a risk matrix with levels of risk.

Chapter 7

Statutory duties, powers, offences and defences	
Section 7.10 A new offence of "risk to health"	<p>70. <i>Should the 'risk to health' offence subsume the offence for knowingly and recklessly infecting another person with an infectious disease?</i></p> <p>The AIEH supports this view providing that there is an ability to respond to "reckless behaviour", in addition to "confirmed infection". Such changes should not be seen as undermining police enforcement roles, but consolidating the management of infectious disease issues. It may also be of benefit to develop a risk matrix for defining the risks.</p> <p>71. <i>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 Crimes Act 1958 (that is, sections 22 and 23)?</i></p> <p>A similar offence is already contained in Crimes Act and may create an issue of duplicity. Any changes should not be seen as undermining police enforcement roles. The AIEH believes that matters relating to public health should be consolidated into the Health Act. DHS is in a position to use / develop tools to address issues.</p>
7.11 'On the spot fines'	<p>72. <i>Should the new Act introduce PERIN for suitable offences?</i></p> <p>The AIEH supports this proposal, but it must clearly define breaches / offences. It is viewed as a useful tool to assist with compliance and continuous improvement, however it may be considered by some councils as a revenue raiser.</p>
7.12 Greater penalties to reflect the seriousness of offences	<p>73. <i>Should public health offences attract similar penalties to those attracted by offences under environment protection legislation?</i></p> <p>The AIEH supports this proposal, however the penalty must be relative to the offence and consistent with other Acts e.g. E P Act 1970.</p> <p>74. <i>Should the new Act allow for greater penalties where the offender is a body corporate?</i></p> <p>This is in keeping with other Victorian and national legislation, in comparison to the individual, and the AIEH supports this proposal.</p>
Section 7.13 Defence of due diligence in relation to alleged offences	<p>75. <i>Should the new Act include a statutory defence of due diligence?</i></p> <p>The AIEH believes that 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 legislation such as the Food Act 1984.</p>
Chapter 7	

Statutory duties, powers, offences and defences	
<p>Section 7.15 Appeal rights from administrative decisions</p>	<p>76. <i>What method of review should apply to administrative decisions made under the Act?</i></p> <p>There have been identified time deficiencies in the current VCAT system with backlogs of several months, which is totally inappropriate for health related issues. One possibility is that the review/appeal position be similar to that in the Food Act where the review is retained by the Magistrates Court. Other options could be the local government ombudsman or VCAT.</p> <p>An alternative would be the establishment of a separate tribunal to address public health issues.</p> <p>The Act should prescribe the specific timeframes for appeal. In addition the issue of the status of an improvement or prohibition notice pending an appeal should be considered and defined in the review of the Health Act, as these would have been implemented due to some immediate public health risk. If the notice still stood, this would be different to other legislation generally where decisions are set aside or not formalised pending appeal outcomes.</p>

Chapter 8**Control of infectious diseases**

Section 8.1
Registration of
premises

77 *Do the current provisions appropriately address the public health risk associated with hairdressing, beauty therapy and skin penetration?*

The Health Guidelines for personal care and body art industries have just been introduced and are seen as best practice for these industries. Used in conjunction with the Infectious Diseases Regulations, they provide an important tool for Environmental Health Officers to use to ensure that public safety is not compromised, but as the guidelines are voluntary the current provisions do not appropriately address these public health risks.

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 Prostitution Control Act 1994?*

The AIEH is of the view that all infectious diseases requirements should be included in the new Health Act or Regulations made there under including the brothels provisions. DHS should consider as part of this review whether brothels or premises covered by the Prostitution Control Regulations 1995, should be a local government responsibility.

Section 8.2
Prescribed
Accommodation

79 *Do the current provisions appropriately address the public health risk associated with prescribed accommodation (for example, hotels, motels, hostels and holiday camps)?*

The regulations for prescribed accommodation are based on a historical risk. As the risks for most prescribed accommodation now is low, and mainly self regulated, the current provisions appropriately address the public health risk associated with prescribed accommodation (for example, hotels, motels, hostels and holiday camps) with the exception of the omission of caravan parks. The shared ablution facilities and other facilities that may create a risk to public health of caravan parks are not appropriately addressed in the Residential Tenancies Act.

The AIEH believes that ablution and other facilities in these accommodation premises can pose a risk to health. Caravan parks are also broadening their services to include dormitory style rooms, permanent tents and cabin accommodation, with a high turnover of backpacker accommodation. The inclusion of caravan parks as a prescribed accommodation in the regulations should be addressed in particular as they fall into the rationale of registration in that without certain standards of hygiene and cleanliness being observed there is an increased risk of disease transmission.

Chapter 8
Control of infectious diseases

Section 8.4

Incident involving care giver

83. *Should the new Act continue to outline the procedures for non-consensual testing orders where consent for testing has been refused?*

The AIEH supports this, however where testing has been refused the Institute also believes that exclusion should also be a possibility.

84. *Should the new Act introduce a system for the authorisation of non-consensual testing where consent cannot be given to testing?*

The AIEH supports this position.

85. *Should the provisions in the new Act be extended to beyond the care giver or custodian situation and, if so, to what situations?*

The AIEH supports this however the criteria should be defined within the Act, and established as a "risk to health".

Section 8.5

Public health orders and management of infected persons

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?*

The AIEH supports this position.

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?*

The AIEH supports this position, including who is able to exercise the powers.

Chapter 8
Control of infectious diseases

Section 8.5
Public health orders
and management of
infected persons

88. *Should the Act contain a list of the types of restrictions that may be imposed by an order of the Secretary?*

The AIEH supports this position.

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?*

The AIEH supports this position.

91. *Should any or all public health orders require court/tribunal confirmation?*

The AIEH membership believes that public health orders should not require third party confirmation as this may cause delays in the making of such an order when dealing with public health risks.

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?*

The AIEH supports this position.

93. *Should the new Act continue to provide that it is an offence for a person to fail to comply with an order?*

The AIEH supports this position.

Chapter 8 Control of infectious diseases	
<p>Section 8.5 Public health orders and management of infected persons</p>	<p><i>94. What appeal and external review processes should be made available under the new Act?</i></p> <p>The AIEH is of the view that the review method would need to be somewhere that has an ability of a quick turnaround and that it is a forum that is independent or seen to be independent. There have been identified time deficiencies in the current VCAT system with backlogs of several months, which is totally inappropriate for health related issues.</p> <p>One possibility is that the review/appeal position be similar to that in the Food Act where the review is retained by the Magistrates Court. Other options could be the local government ombudsman or VCAT.</p> <p>An alternative would be the establishment of a separate tribunal to address public health issues.</p> <p>The Act should prescribe the specific timeframes for appeal. In addition the issue of the status of an improvement or prohibition notice pending an appeal should be considered and defined in the review of the Health Act, as these would have been implemented due to some immediate public health risk. If the notice still stood, this would be different to other legislation generally where decisions are set aside or not formalised pending appeal outcomes.</p>
<p>Section 8.8.1 Role of municipal councils in providing immunisation</p>	<p><i>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'?</i></p> <p>The AIEH strongly supports the role of municipal councils in relation to immunisation service delivery and to be reflected in the Act as 'co-ordinating and providing immunisation services'.</p> <p>The institute believes that formal partnership agreements with DHS would strengthen this role, provide for greater accountability and address funding inequities.</p>
<p>Section 8.8.2 Immunisation records and children's services</p>	<p><i>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)?</i></p> <p>As a result of ACIR now providing a Child History Statement this information is readily available and more accurate. The AIEH believes that this requirement creates unnecessary duplication and would not improve compliance. Therefore to allow for consistency regarding the provision of immunisation services this requirement should be included in the Health Act and deleted within the Children's Services Regulations 1998. The recording of the immunisation status by operators of children services can be referenced within the Children's Services Regulations 1998 so operators are aware of this requirement under the Health Act.</p>

Chapter 8 Control of infectious diseases	
Section 8.8.3 Immunisation status certificates and primary schools	<p><i>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?</i></p> <p>The AIEH supports the view that the new Act require principals of primary schools to seek an ISC as part of school enrolment and an immunisation update on re-enrolment. Furthermore the Institute agrees that this should be in addition to the obligation on parents to provide an ISC. All children who have their immunisations recorded on ACIR will receive a history statement once they have completed their 4 year old immunisation. In cases where immunisation status has not been recorded on ACIR parents can then obtain ISC through Council.</p> <p>The Institute believes that ISC should only be issued for new enrolments but not for re-enrolment and supports the position that when a child re-enrols that the principal must request a statement as to any change in immunisation status.</p>
Section 8.8.4 Immunisation records and secondary schools	<p><i>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?</i></p> <p>The AIEH supports the introduction to obligate parents to supply evidence of immunisation and an obligation on school principals to seek records. Furthermore immunisation records should be transferred from primary school to secondary school. Any parents who have not obtained an ISC in primary school should be directed to their local council or other service provider authorised by ACIR. As ACIR records all immunisation for children up to 7 years of age, all necessary information should be easily accessible.</p>
Section 8.8.5 Immunisation records and tertiary facilities	<p><i>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?</i></p> <p>The AIEH does not support the introduction to obligate tertiary students to supply evidence of immunisation and an obligation on tertiary facilities to seek records. This would be too difficult to implement, particularly for international, interstate and country students who may not have ready access to their records. This would also be difficult for tertiary educational institutions to administer and to maintain.</p>

Chapter 8 Control of infectious diseases	
<p>Section 8.8.6 Issuing of immunisation status certificates</p> <p>Section 8.8.7 Forms of evidence of immunisation</p>	<p><i>108 Should the new Act provide for different forms of evidence of immunisation? If so, what should they be?</i></p> <p>The AIEH believes that the ACIR history statement or the ISC is easily understood by school staff, which clarifies whether that child is “complete” or “not complete”, and are currently recognised as approved forms of evidence. Other forms of evidence may create confusion and would require school staff to be adequately competent to make a determination on the status of immunisation.</p> <p>The institute supports the allowance of various forms of evidence of immunisation, however the determination issuing of ISC should only be provided by an authorised officer of a municipal council or other service provider authorised by ACIR.</p>
<p>Section 8.8.8 Offences</p> <p>Section 8.8.9 Immunisation status certificates and school entry</p>	<p><i>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?</i></p> <p>The AIEH does not support the introduction of penalties for failure to produce records. In these cases where the parent/guardian cannot demonstrate completion of the immunisation 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. The institute believes that creating an offence would not facilitate compliance, as most parents would do this information readily.</p>
<p>Section 8.8.10 Record keeping</p>	<p><i>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?</i></p> <p>The AIEH does support the requirement for the principal teacher to ensure that immunisation records are maintained and to allow inter-school transfer of ISCs. It is current practice of primary schools to record the child’s immunisation status on their school history. The transfer of immunisation records makes practical sense for parents who have already obtained an ISC or ACIR history statement. This would eliminate the need for parents to provide records, however in cases where these are not maintained they would have the option of obtaining records directly through Council or ACIR.</p> <p>Privacy Laws may need to be considered with these arrangements.</p>

Chapter 8 Control of infectious diseases	
Section 8.8.11 Diseases covered by immunisation status certificates	<p><i>111 Should the new Act facilitate consistency with the NHMRC schedule for immunisation?</i></p> <p>The AIEH believes that the new Act should facilitate consistency with the NHMRC schedule for immunisation and reflect the on-going changes to the schedule. This should only apply to scheduled vaccinations and allow for flexibility in respect to new and emerging vaccines.</p>
Section 8.9 Outbreaks of infectious diseases at schools and children's services	<p><i>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?</i></p> <p>The AIEH membership believes that this would not be necessary, however the principal/person in charge should be able to discuss this issue with the Department and reverse the decision.</p> <p><i>113 Should there be a power in the new Act for the Secretary to waive or alter the prescribed periods in individual cases?</i></p> <p>The AIEH supports this power in the new Act.</p> <p><i>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?</i></p> <p>The AIEH believes that this requirement should be extended to where the child has also been in contact with a person that has a vaccine preventable or excludable disease. All such diseases should be defined in legislation. The AIEH also endorses the overseement of civil liabilities and the need for confidentiality of personal information.</p> <p><i>115 Should the new Act 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?</i></p> <p>The AIEH supports this issue to be consistent with the national approach.</p>

Chapter 9

Environmental health

Section 9.1
General sanitary
provisions

116 Should provisions dealing with offensive waterways not be included in the new Act?

The AIEH believes that these provisions should be retained within the new Act.

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?

The AIEH supports this position.