

VICTORIAN AIDS COUNCIL SUBMISSION  
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER

**Recommendations**

	<b>Issue</b>	<b>Section reference</b>
1	That the new Act be named the <i>Public Health Act</i> .	1.1
<b>Comment:</b> We support this recommendation.		
2	That non-legislative mechanisms, such as a Memorandum of Understanding, be entered into with agencies administering legislation that interface with public health legislation, as required in the particular circumstance.	1.2
<b>Comment:</b> We support this recommendation.		
3	That the public health Act recognise the importance of promoting public health.	1.2
<b>Comment:</b> We support this recommendation. See also our comments on recommendation 4 below.		
4	That the public health Act recognise the need to address inequalities in the health and wellbeing of disadvantaged communities.	1.2
<p><b>Comment:</b> We support this recommendation. In relation to recommendations 3 and 4, consideration should be given, during the drafting of the Bill, to mechanisms for implementing the 2005 <i>Bangkok Charter for Health Promotion in a Globalised World</i>, which has a particular focus on the actions required to address the determinants of health through health promotion. We have also been following, with interest, the work that WHO is doing through their Commission on the Social Determinants of Health. We note the Commission's quoting (on their web site <a href="http://www.who.int/social_determinants/en/">http://www.who.int/social_determinants/en/</a>) the finding from the Canadian Institute for Advanced Research that less than two percent of governments globally have a coherent, structured approach to addressing the social determinants of health. We would support any inclusion in the new Bill that would support health promotion and address the root causes of health inequalities. We also note, in relation to our client base, that the Commission has identified "exclusion from mainstream society" as one of the factors which may contribute to inequalities which may cause illnesses. Later in this submission, we will set out our reasons in more detail for not supporting recommendations that, we believe, will contribute to greater social exclusion for people living with HIV/AIDS.</p>		

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	Issue	Section reference
5	That the initial print of the public health Act include the explanatory memorandum at the front of the Act (subject to the approval of Parliamentary Counsel).	1.3
<b>Comment:</b> We support this recommendation. It has been our experience, from using the <i>Health Records Act 2001</i> (Vic) and from training our staff on the Act, that this is an aid to understanding the Act and the obligations it imposes.		
6	That the term “health and wellbeing” be defined in the public health Act to include health as a positive condition, not merely the absence of disease, and be inclusive of physical, social and mental wellbeing (both individual and collective) and apply to the provisions in the public health act relating to the following: (a) objects (see 1.6) (b) guiding principles (see 1.7) (c) functions of Secretary, Chief Health Officer and municipal councils (see 1.8 to 1.10) (d) public health inquiries (see 2.1)(e) (e) municipal public health plans (see 3.1)(f) (f) health information management (see 3.6).	1.4
<b>Comment:</b> We support this recommendation.		
7	That the term “health” apply to all other provisions and be defined narrowly, to exclude concepts of social and mental wellbeing.	1.4
<b>Comment:</b> We support this recommendation.		
8	That the public Health Act provide that it applies throughout Victoria (including areas that do not form part of a municipal district).	1.5
<b>Comment:</b> We support this recommendation. The current approach, which requires a declaration by the Governor in Council, seems unnecessarily cumbersome.		
9	That the Governor in Council may declare that a municipal council has specified powers and functions under the public health Act in relation to an area that is outside a municipal district, as if the	1.5

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	<p>area was within that municipal council's municipal district. (The Minister for Health would be required to consult with the Minister administering the <i>Local Government Act 1989</i> (Vic), before making a recommendation to the Governor in Council in relation to this issue.)</p>	
	<p><b>Comment:</b> We support this recommendation.</p>	
10	That the public health Act bind the Crown.	1.5
	<p><b>Comment:</b> We support this recommendation. One of the contentious issues with this Act is whether it gets the balance right between the coercive powers of the State and the rights enjoyed by citizens. It would make no sense to us for the Crown not to be bound by the Act. We also note that in <i>Rights, Responsibilities and Respect: The Report of the Human Rights Consultation Committee</i> (Department of Justice, 2005), the committee recommends that the Charter should bind "public authorities" (Recommendation 10).</p>	
11	<p>That the public health Act include the following statement of objects:</p> <p><i>Whereas</i></p> <p>The State of Victoria has a significant role in promoting and protecting the health of all Victorians; and</p> <p>It is accepted that health is a state of individual and collective wellbeing, not merely the absence of disease; and</p> <p>One of the ways it is possible to improve the population's health status and reduce health inequalities is through public health interventions —</p> <p>The objects of the Act are:</p> <ul style="list-style-type: none"> <li>(a) to protect public health and prevent disease, illness, injury, disability and premature death;</li> <li>(b) to promote conditions in which the people of Victoria can be healthy; and</li> <li>(c) to reduce social and health inequalities and enable all Victorians to achieve the best</li> </ul>	1.6

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	Issue	Section reference
	possible state of health and wellbeing.	
	<p><b>Comment:</b> We support the recommendation. We are unclear about the intent of the final paragraph before this recommendation at p.8 of the <i>Draft Policy Paper</i>: "It is important that objects set the context . . . exercising powers and functions under the Act." Our concerns are less a matter of weight, and more a matter of balance. The clause should be drafted in a way that would require administrators, when exercising powers and functions under the Act, to make decisions that considered all three objects rather than privileging the first object listed at (a).</p>	
12	That the provision of evidence-based information to the public about the health of the population be incorporated into the functions of the Chief Health Officer under the new Act, rather than as an object provision.	1.6
	<p><b>Comment:</b> We support this recommendation, on the assumption that Recommendations 17 and 18 will be accepted.</p>	
13	<p>That the public health Act include the following guiding principles:</p> <p>(a) Principle of evidence-based decision making</p> <p>Decisions as to the most effective and efficacious public health interventions and efficient use of resources to protect and promote public health are informed by reliable and relevant evidence (where available in the circumstances).</p> <p>(b) Precautionary principle</p> <p>If there are threats of a serious public health risk, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk (based on section 1C of the <i>Environmental Protection Act 1970</i> (Vic)).</p> <p>(c) Principle of the primacy of prevention</p> <p>Preventing harm or damage is preferable to repairing it later. Promoting resilience and building capacity is preferable to allowing</p>	1.7

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<p>deficits or problems to otherwise undermine health or autonomy.</p> <p>(d) Principle of accountability</p> <p>Public health officials should ensure, as far as is practicable, that decisions made under the Act are transparent, systematic and appropriate. The community should therefore be given:</p> <ul style="list-style-type: none"><li>(i) access to reliable information in appropriate forms to facilitate a good understanding of public health issues; and</li><li>(ii) opportunities to participate in policy and program development (based on section 1L of the <i>Environmental Protection Act 1970</i> (Vic)).</li></ul> <p>(e) Principle of proportionality</p> <p>Acts taken and decisions made by officials under the public health Act should be proportionate to the harm to be prevented, minimised or controlled. Where action is necessary to protect public health, the action chosen must be the least intrusive means available to achieve that goal and must not be imposed in an arbitrary way.</p> <p>(f) Principle of collaboration</p> <p>Public health is enhanced by collaborative approaches between national, state and local government, the community sector, industry and individuals.</p>	

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	<p><b>Comment:</b> We support this recommendation. Indeed, in terms of principles, it would be obstructive to oppose any of these. However, we remain concerned that in areas where it is proposed to give officials significantly intrusive or coercive powers, reliance solely on these principles is insufficient to protect citizens from misuse or inappropriate use of these powers. For example, in relation to the principle of accountability, the inclusion of “as far as is practicable” might be reasonable if it is designed to deal with unusual or emergent situations where a prompt decision might be required with incomplete information. Even in these situations, we would expect decision making to be systematic and appropriate. However, for the vast mass of day to day decisions made by officials exercising their powers under the Act, we would expect that all three attributes would apply. We recommend that the words “as far as is practicable” be removed from the principle of accountability or, if that recommendation is not accepted, that it not apply to the requirement that decisions are systematic and appropriate. Similarly, we support the sentiments expressed in the principle of proportionality. However, we are also concerned that the further down the administrative hierarchy coercive and intrusive powers are delegated, the harder it will be to have consistent application of the principle. We will address this issue further in the relevant sections of this submission.</p>	
14	<p>That the public health Act continue to have provisions for the Minister for Health and the Department of Human Services:</p> <ul style="list-style-type: none"> <li>(a) creation of Secretary (based on section 6 of the Health Act)</li> <li>(b) Secretary subject to direction of Minister in relation to the Secretary’s exercise of powers and functions under the public health Act, or any other Act (based on section 8 of Health Act)</li> <li>(c) delegation by the Secretary under the public health Act or any other Act (based on section 8A of the Health Act)</li> <li>(d) delegation by the Minister under the public health Act or any other Act (based on section 8B of the Health Act).</li> </ul>	1.8
	<p><b>Comment:</b> We support this recommendation.</p>	
15	<p>That the public health Act include the following statement of function of the Secretary under the Act:</p>	1.8

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	Issue	Section reference
	<ul style="list-style-type: none"> <li>(a) to develop and implement policies and programs to achieve the objects of the Act</li> <li>(b) to assist other agencies which have an impact on public health to enhance opportunities for public health</li> <li>(c) to support, equip and empower communities to address their health needs</li> <li>(d) to establish and maintain a comprehensive information system which includes information on:               <ul style="list-style-type: none"> <li>(i) the health status of Victorians and groups of Victorians including the extent and effects of illness, injury and premature death</li> <li>(ii) the determinants of health(iii) health system performance in Victoria.</li> </ul> </li> </ul>	
	<p><b>Comment:</b> We support this recommendation (see our comments on recommendation 4 above).</p>	
16	<p>That, if a statutory position of Chief Health Officer is established, the public health Act require the Chief Health Officer to ensure that a comprehensive report on the health and wellbeing of Victorians is made available to the public on a biennial basis.</p>	1.8
	<p><b>Comment:</b> We support this recommendation. In the unlikely event that recommendations 17 and 18 are not supported by government, the Secretary should be required to ensure that this report is made available, on similar terms to those proposed here for the Chief Health Officer.</p>	
17	<p>That the public health Act establish the position of the Chief Health Officer, who is a registered medical practitioner appointed by the Minister and can delegate his or her powers to an employee or officer of the Department of Human Services, who is a registered medical practitioner.</p>	1.9
	<p><b>Comment:</b> We support this recommendation. However, in line with the framework at s.105 in the <i>Mental Health Act 1986</i>, we would support drafting that provided a power for the CHO to delegate any power, duty or function other than the CHO's power of delegation.</p>	
18	<p>That the public health Act include the following</p>	1.9

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	Issue	Section reference
	<p>statement of functions of the Chief Health Officer:</p> <ul style="list-style-type: none"> <li>(a) to develop and implement strategies to promote and protect public health</li> <li>(b) to advise the Minister about public health issues</li> <li>(c) to carry out any other functions granted to the Chief Health Officer under the public health Act or any other Act</li> <li>(d) to ensure that a comprehensive report on the health and wellbeing of Victorians is made available to the public on a biennial basis.</li> </ul>	
	<p><b>Comment:</b> We support this recommendation.</p>	
26	<p>That an environmental health officer who is appointed by a council automatically be an authorised officer for the purposes of the public health Act (see paragraph (b) of the definition of “authorised officer” in section 4(1) of the <i>Food Act 1984</i> (Vic)).</p>	1.12
	<p><b>Comment:</b> We do not support this recommendation. While we are sympathetic to the problems outlined in section 1.12.3 of the <i>Draft Policy Paper</i>, we do not accept that this recommendation is an acceptable solution to the problems. Our concerns about this recommendation are amplified when we consider the non-legislative mechanism proposed in recommendation 27 to deal with ensuring authorized officers meet appropriate standards of competency. The “general enforcement powers” proposed for these authorized officers in recommendation 110 are significant intrusions into citizens’ rights, and it is proposed that they should be able to be exercised without a warrant. The public is entitled to expect that officers exercising entry, search and seizure powers such as these have been trained to the highest standards and have been assessed as psychologically competent to exercise these powers. In our view, the very broad delegation power proposed in this recommendation falls short of satisfying these reasonable public expectations.</p>	
27	<p>That the public health Act require that a council only appoint as an environmental health officer a person who has qualifications and/or experience nominated by the Secretary, or by a person approved by the Secretary.</p>	1.12
	<p><b>Comment:</b> See comments on recommendation 26 above.</p>	

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	Issue	Section reference
28	That the provision of the Health Act that provides that, in addition to any other duties, the Secretary, "health officers", environmental health officers and "engineers" have the same powers and duties as environmental health officers and medical officer of health appointed by municipal councils not be re-enacted.	1.12
<b>Comment:</b> We support this recommendation.		
29	That the public health Act provide that: (a) the Secretary may appoint Departmental officers as authorised officers (b) a municipal council may appoint employees or officers of the council as authorised officers.	1.12
<b>Comment:</b> For the same reasons as we advanced in relation to recommendation 26, we do not support this recommendation if it anticipates that this would be a "once and for always" appointment. Our objection is again based on the very broad intrusive powers being proposed for these officers to use as part of their day to day work under the Act. We would support time limited appointments to exercise specified functions in situations where the Secretary was seeking to implement incident, epidemic or emergency powers, subject to the Secretary or municipal council being satisfied of the person's competence to undertake the specified functions.		
30	That the Secretary or municipal council (as appropriate) may only appoint a person to be an authorised officer if the Secretary or municipal council (as appropriate) is satisfied that the person has the qualifications or experience required to perform his or her functions. Those competencies regarding qualifications or experience would not be specified in the public health Act.	1.12
<b>Comment:</b> See comments on recommendations 26 and 29 above.		
31	That consideration be given to the development, in consultation with stakeholders, of non-legislative guidelines as to competencies and minimum standards of training required to fulfil particular statutory functions.	1.12

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	Issue	Section reference
	<p><b>Comment:</b> If government accepts recommendations 26-30, this recommendation is an absolute necessity to address the concerns set out in the <i>Draft Policy Paper</i> about disparity in levels of competency between councils leading to variations in standards of enforcement and execution of duties.</p>	
35	<p>That the public health Act provide for a broad power to conduct inquiries into matters of public health concern (modelled on the modern public health inquiries powers in other jurisdictions' public health Acts), including the power to appoint independent experts to conduct the inquiry.</p>	2.1
	<p><b>Comment:</b> We support this recommendation.</p>	
36	<p>That the public health Act continue to provide that such an inquiry can be initiated at the direction of the Governor in Council, the Minister or the Secretary, or on the initiative of the Secretary.</p>	2.1
	<p><b>Comment:</b> We support this recommendation. We would also suggest that the Health Services Commissioner and Ombudsman be added to the list of bodies that can initiate an inquiry. This power could be exercised by those offices in response to systemic issues arising from complaints made to them. While, in general, we would expect that the Secretary or Minister would be receptive to an approach from the HSC or Ombudsman identifying the need for such an inquiry, this may not always be the case. The concerns about potential conflicts of interest, as identified in the <i>Draft Policy Paper</i>, could be met by adding these two additional sources for commencing such an inquiry.</p>	
37	<p>That, if a statutory position of Chief Health Officer is established, the public health Act provide that the Chief Health Officer may conduct and initiate an inquiry.</p>	2.1
	<p><b>Comment:</b> We support this recommendation.</p>	
38	<p>That there be a requirement that a report on any inquiry be made available to the public (subject to exceptions relating to privacy and confidentiality).</p>	2.1
	<p><b>Comment:</b> We support this recommendation.</p>	
39	<p>That the public health Act provide that, when</p>	2.1

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	<p>conducting an inquiry, the Secretary, Chief Health Officer, person or panel:</p> <ul style="list-style-type: none"> <li>(a) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.</li> <li>(b) is not bound by the rules of evidence;</li> <li>(c) may inform itself in any way it considers appropriate, including by holding hearings;</li> <li>(d) subject to any directions, may decide the procedures to be followed for the inquiry; and</li> <li>(e) may allow or refuse to allow a person, including a lawyer, to represent someone else at the inquiry.</li> </ul>	
	<p><b>Comment:</b> We support this recommendation.</p>	
40	<p>That the public health Act require that, when conducting an inquiry, the Secretary, Chief Health Officer, person or panel must observe the principles of natural justice.</p>	2.1
	<p><b>Comment:</b> We support this recommendation.</p>	
41	<p>That the provisions regarding the constitution, procedures and functions of all consultative councils be consolidated in one part of the public health Act.</p>	2.2
	<p><b>Comment:</b> We support this recommendation.</p>	
48	<p>That the public health Act contain a provision allowing the Minister to empower the Consultative Council on Paediatric Mortality and Morbidity (or another consultative council established by the Minister) to co-opt any person with special knowledge or skill. This would include a consumer representative (or any other relevant person) to assist the council. Such a person should be regarded as a member of the consultative council to which they are appointed, until their period of co-option ends.</p>	2.2

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	<p><b>Comment:</b> We do not support this recommendation. We recommend that the relevant section of the Act dealing with the configuration of consultative councils should include provision for the appointment of one or more members who are consumer representatives. The current government has made significant progress in facilitating consumer participation in health (for example Community Advisory Committees in Health Services) and is requiring health services to develop, publish, implement and evaluate consumer participation plans. The proposals in this recommend smack of tokenism and are not in accord with other policy initiatives within the Department. By making consumer representation an intrinsic part of the Committee makeup, this tokenism is removed, and advertisements for membership of the Committees should attract a wider field than co-option might.</p>	
49	<p>That the public health Act include a provision enabling the Consultative Council on Paediatric Mortality and Morbidity and consultative councils established by the Minister to establish subcommittees.</p>	2.2
	<p><b>Comment:</b> We support this recommendation.</p>	
50	<p>That the public health Act include a provision enabling consultative councils to disclose information to another consultative council, if the council considers that the information is relevant to the functions of the other council. It is proposed that this power only be exercised following a formal determination by the council that such information should be disclosed to the other council.</p>	2.2
	<p><b>Comment:</b> We support this recommendation, with some qualifications. If a consultative council is disclosing information to another consultative council, and that disclosure would identify an individual person, that person must be informed that the disclosure has been made, the nature of the material disclosed, and the individuals to whom that information has been disclosed. While we have stopped short of recommending that such disclosure occur only with the consent of the identifiable individual, we believe that it is consistent with the general principles of health privacy and information privacy that people know where their personal health information is being used and who has access to it.</p>	
51	<p>That consultative councils could, in appropriate cases, jointly examine matters. For instance, if</p>	2.2

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	<p>there was a maternal death while the mother was anaesthetised, Consultative Council on Paediatric Mortality and Morbidity and the Consultative Council on Anaesthetic Mortality and Morbidity could jointly examine the death.</p>	
	<p><b>Comment:</b> We support this recommendation.</p>	
52	<p>That the public health Act enable the Consultative Council on Paediatric Mortality and Morbidity and prescribed consultative councils to disclose information to the following specified entity or entities, if the councils determine it is in the public interest to do so:</p> <ul style="list-style-type: none"> <li>(a) the Secretary to the Department of Human Services</li> <li>(b) the Medical Practitioners Board of Victoria</li> <li>(c) the Nurses Board of Victoria</li> <li>(d) the State Coroner</li> <li>(e) a Ministerial Committee (ie the Victorian Child Death Review Committee)</li> <li>(f) a protective intervener under section 64(1) of the <i>Children and Young Persons Act 1989</i> (Vic), if the council believes on reasonable grounds that a child is in need of protection</li> <li>(g) (g) a day procedure centre, multipurpose service, private hospital, public hospital and denominational hospital within the meaning of section 3(1) of the <i>Health Services Act 1988</i> (Vic)</li> <li>(h) any person or body in another state or territory that the council determines has functions corresponding to a body referred to above</li> <li>(i) any other prescribed person or class of person.</li> </ul>	2.2
	<p><b>Comment:</b> We support this recommendation, subject to the same disclosure requirements we recommended in recommendation 50.</p>	
61	<p>That the Department of Human Services develop a non-legislative public health plan that assesses and sets priorities for the public health system. However, at this stage, the Act should not require the Secretary to develop such a plan.</p>	3.2

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	<p><b>Comment:</b> We do not support this recommendation. We recommend that the Act contains a legislative requirement for the Secretary (or the Chief Health Officer) to develop, implement and evaluate such a plan. While such a plan might be best practice, the failure of the Department to embark on the development of such a plan, in the absence of any legislative requirement to do so, suggests that the legislative approach is warranted.</p>	
62	<p>That the Department of Human Services continue to establish non-legislative bodies to advise on specific public health matters, as required. The public health Act should not establish a public health advisory council.</p>	3.3
	<p><b>Comment:</b> We support the recommendation that non-statutory bodies be established. However, we strongly support those submissions to the earlier stages of this review that recommended the establishment of a Public Health Advisory Council. Such a Council would be an important body to advise the government on the development, implementation and evaluation of the statewide public health plan (under whatever scheme that plan was undertaken – see recommendation 61 above).</p>	
66	<p>That the Department of Human Services consider non-legislative guidelines for consultation, if appropriate, to support provisions in the new Act.</p>	3.5
	<p><b>Comment:</b> We support this recommendation, with some reservations. The consultations in relation to this <i>Draft Policy Paper</i> have hardly been a model the government or department can be proud of. The initial time frames were ridiculously tight, even more so given the time of the year. In the same week as the department released its Health Act discussion paper, other areas of Public Health were consulting VAC about new performance indicators for funding contracts, and giving us an equally tight turn around time for comments on the <i>Victorian Sexually Transmitted Infections Strategy</i>. The Secretary has already put in place very good guidelines for consultation with the community sector as part of the partnership project. These guidelines acknowledge the importance of consultation to sound policy development. The problem is less with guidelines, and more with poor coordination – even within the same area of the Department – and workplans that enable sufficient time for consultation to be inclusive.</p>	
67	<p>That the public health Act continue to provide for the collection of the following information: (a) notifiable diseases (Health Act, s 138)</p>	3.6

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	(b) perinatal data (Health Act, ss 162F, 162G) (c) HIV incidence (Health Act, s 130).	
	<b>Comment:</b> We support this recommendation.	
68	<p>That the public health Act authorise the establishment of registers by regulation. The Act would set out general provisions as to the purposes and procedures for registers established and their proposed use and confidentiality requirements (modelled on the proposed Public Health Bill (NZ)). Registers that may be established by regulation include:</p> <ul style="list-style-type: none"> <li>(a) an environmental events register (modelled on the <i>Public Health Act 2005</i> (Qld))</li> <li>(b) a register of public health information held by the Department of Human Services and provided to third parties, for example, for research purposes (modelled on the <i>Public Health Act 2005</i> (Qld)).</li> </ul>	3.6
	<b>Comment:</b> We support this recommendation.	
69	<p>That the public health Act provide that, if the Secretary determines it is in the public interest, he or she may release information held by the Secretary or an authorised officer to a statutory authority if, in the opinion of the Secretary, the disclosure would assist the body to carry out one or more of its functions.</p>	3.6
	<b>Comment:</b> We support this recommendation subject to the same disclosure requirements we recommended in recommendation 50.	
70	<p>That the public health Act provide that, if the municipal council determines it is in the public interest, it may release information held by the council to a statutory authority if, in the opinion of the council, the disclosure would assist the body to carry out one or more of its functions.</p>	3.6
	<b>Comment:</b> We support this recommendation subject to the same disclosure requirements we recommended in recommendation 50.	

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71	That the public health Act support and enhance the practice of risk management, rather than incorporate specific procedural requirements.	4.1
<b>Comment:</b> We support this recommendation.		
72	That the Department of Human Services consider developing administrative guidelines where appropriate, to ensure that issues of risk are addressed properly and in a consistent manner (such as guidelines for the issue of improvement and prohibition notices: see 4.9).	4.1
<b>Comment:</b> We support this recommendation.		
82	That the public health Act not introduce a “risk to health” offence.	4.3
<b>Comment:</b> We support this recommendation.		
93	That the Department of Human Services continue to issue best practice standards of practice, as appropriate. Compliance with standards of practice would be non-binding, unless they were set out in the regulations. However, compliance with guidelines could be a defence under the public health Act, if the guidelines relate to the General Duty.	4.5
<b>Comment:</b> We support this recommendation.		
95	That there is consideration regarding whether any other people undertaking a registerable or licensable activity should be required to prepare a risk management plan. The Act would specify whether such people are required to prepare a risk management plan.	4.6
<b>Comment:</b> We support this recommendation. In particular, we would strongly support requiring businesses that conduct skin penetration activities to prepare a risk management plan. In our view, such a requirement could coexist with addressing the risks at an industry level through guidelines or regulations. In making this recommendation, we have taken particular account of the comments made by the Tribunal in <i>Hay –v- Dubbeld</i> [2005] VCAT 643 (15 April 2005).		

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	Issue	Section reference
96	<p>That the provisions in the public health Act regarding risk management plans in the case of registerable/licensable activities, be based on the approach used in Part 5B of the <i>Building Act 1993</i> (Vic) in relation to cooling tower systems. For instance:</p> <ul style="list-style-type: none"> <li>(a) there would be provision for approved auditors who are approved by the Secretary</li> <li>(b) approved auditors would need to comply with any conditions imposed on their approval</li> <li>(c) the approved auditors would assess whether the risk management plan addresses the required matters, but not its adequacy</li> <li>(d) there would be provisions regarding reporting "failed" audits to the registering authority (the Secretary or municipal council)</li> <li>(e) there would be provisions regarding conflicts for approved auditors, granting audit certificates and impersonation of approved auditors.</li> </ul>	4.6
<b>Comment:</b> We support this recommendation.		
97	<p>That an improvement notice could require a person to prepare a risk management plan (see 4.9). (This would not include the requirement that external approved auditors audit the plan.)</p>	4.6
<b>Comment:</b> We support this recommendation.		
98	<p>That the public health Act provide powers for the Secretary (or municipal council, where applicable) to:</p> <ul style="list-style-type: none"> <li>(a) grant, renew, vary, suspend or cancel the registration/licence</li> <li>(b) determine whether the registration/licence applicant is a fit and proper person</li> <li>(c) set registration/licensing periods for public health risk activities within specified parameters (for example, a maximum licensing period of three years)</li> <li>(d) set conditions to which the licence is subject (registration would not be subject to conditions)</li> <li>(e) make enquiries regarding the authenticity and</li> </ul>	4.7

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Issue	Section reference
<p>suitability of documents presented with licence or registration applications</p> <p>(f) reissue a licence or certificate of registration upon application of a licence holder that the original licence/registration has been lost, stolen or destroyed</p> <p>(g) monitor the activities of licence/registration holders, to ensure that they comply with any requirements of the licence/registration.</p>	
<p><b>Comment:</b> We support this recommendation. One issue that does not seem to have been canvassed in the <i>Draft Policy Paper</i> is whether there should be a requirement to license individual operators rather than, or as well as, premises or businesses. In <i>Hay –v- Dubbeld</i> [2005] VCAT 643 (15 April 2005), the Tribunal stated the wisdom of a tattooist adopting a policy of universal precautions (para. 22) but went on to state that a tattooist was unlikely to have the same training or understanding of infectious diseases as a health professional (para. 24). Further on in the judgment, the Tribunal found that “Mr Dubbeld [the tattooist] was not highly trained and had an incomplete understanding of the transmission of infectious diseases” (para. 28). In this case the licensing of City Ink Tattooing (the premises) under s.366C of the <i>Health Act 1958</i> did not mean that tattooists working in those licensed premises had the necessary understanding of infectious diseases transmission. We could understand that there might be some reluctance to go as far as licensing individual operators. An interim position between the current unsatisfactory situation and full licensing would be a scheme similar to the one that currently applies to HIV testing – as set out in s.127 of the <i>Health Act 1958</i> and r.16 of the <i>Health (Infectious Diseases) Regulations 2001</i>. Under such a scheme, tattooists (and others) in registered premises would only be able to conduct skin penetration activities if they had successfully completed a course approved by the Secretary (or Chief Health Officer, in the proposed new arrangements) in infection control in the skin penetration industry. It is clear from the Hay case that leaving such training to proprietors is a high-risk strategy.</p>	
<p>99 That the public health Act:</p> <p>(a) set out criteria for registration/licence applications, renewals, variations, transfers, suspensions or cancellations of registration/licences, so that the registration/licensing process is transparent and decisions to register/licence are consistent</p> <p>(b) set out eligibility requirements for a</p>	4.7

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	Issue	Section reference
	<p>licence/registration, such as prescribed qualifications or training competencies</p> <p>(c) provide for prescribing fees, including for the issue and reissue of a registration/licence, and for late applications.</p>	
<p><b>Comment:</b> We support this recommendation, subject to our additional comments as set out in recommendation 98.</p>		
100	<p>That the following offence provisions be set out in the public health Act:</p> <p>(a) conducting an activity for which a licence is required, without the operator being registered/licensed</p> <p>(b) breaching the conditions of the licence</p> <p>(c) making a false or misleading statement in relation to an application for the grant, renewal or variation of a registration/licence</p> <p>(d) failing to prepare a risk management plan (where there is an obligation to have a risk management plan)</p> <p>(e) an offence of failing to notify authorities in the event of certain types of incidents occurring.</p>	4.7
<p><b>Comment:</b> We support this recommendation.</p>		
<p><b>Comment:</b></p>		
103	<p>That there should not be a requirement that public events be registered with municipal councils (or the Secretary).</p>	4.7
<p><b>Comment:</b> We support this recommendation.</p>		
104	<p>That regulation-making powers allow for an obligation being imposed on people conducting activities subject to registration/licensing and on proprietors of non-registered premises (for example, proprietors of swimming pools or brothels) to notify the relevant authority (Secretary or municipal council) in the event of prescribed circumstances.</p>	4.7
<p><b>Comment:</b> We support this recommendation.</p>		

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	Issue	Section reference
105	<p>That the Secretary or municipal council (as appropriate) must issue the authorised officers with identity cards that:</p> <ul style="list-style-type: none"> <li>(a) contain the authorised officers' name and photo</li> <li>(b) identify the authorised officers as authorised officers under the Act</li> <li>(c) are signed by the authorised officer</li> <li>(d) are signed by the Secretary (for Department of Human Services officers) or a member of council staff authorised to issue the identity cards (for council officers or employees).</li> </ul>	4.8
<p><b>Comment:</b> We support this recommendation, with the following qualifications. We are not clear whether this recommendation and the following recommendations (up to and including recommendation 109) are intended to address the concerns alluded to in the <i>Draft Policy Paper</i> "that appropriate checks and balances be included, to ensure that the powers are used appropriately". If that is the case, we do not believe that the checks and balances contained in recommendations 105-109 are sufficient to guard against the misuse of the significant powers proposed to be given to State officials in recommendation 110. Those powers are coercive and intrusive and it is proposed that they be exercised without a warrant. The ambit of those powers is equally broad: "to monitor compliance and investigate possible contraventions of the Act" (rec. 110). It is likely that these powers would be exercised by a significant number of officers across Victoria. We believe that, except in genuinely emergency circumstances, officers exercising the powers set out in recommendation 110, should be required to obtain consent from a delegated senior officer prior to the entry, search or seizure and that the information provided to obtain this consent should be generally consistent with the requirements for Police Officers to obtain search and/or seizure warrants under the <i>Magistrates' Court Act 1989</i> and the <i>Magistrates' Court General Regulations 2000</i>.</p>		
106	<p>That an authorised officer is subject to the directions of the Secretary or municipal council (as appropriate) in the performance of his or her functions, or the exercise of his or her powers under the Act or the regulations. A direction of the Secretary or municipal council (as appropriate) may be of a general nature or may relate to a specified matter or specified class of matter.</p>	4.8

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	Issue	Section reference
	<b>Comment:</b> We support this recommendation subject to the qualifications set out in recommendation 105.	
107	<p>That an authorised officer must produce his or her identity card for inspection:</p> <ul style="list-style-type: none"> <li>(a) before exercising any of the powers noted below (general enforcement powers, incident powers and emergency powers), unless the request is made in writing or it is otherwise not practicable, such as entry onto land that is temporarily unoccupied)</li> <li>(b) if asked to produce his or her card by the occupier of the premises during the exercise of the power.</li> </ul>	4.8
	<b>Comment:</b> We support this recommendation subject to the qualifications set out in recommendation 105.	
108	<p>That an authorised officer may not continue to exercise any of his or her powers if he or she fails to produce on request his or her identity card for inspection by the occupier of the premises.</p>	4.8
	<b>Comment:</b> We support this recommendation subject to the qualifications set out in recommendation 105.	
109	<p>That before entering a premises to exercise a general enforcement, incident or emergency power, the authorised officer must (subject to the exceptions noted in this paragraph) announce that he or she is authorised under the public health Act to enter the premises and give any person at the premises an opportunity to allow entry to the premises. The exceptions to this requirement are if:</p> <ul style="list-style-type: none"> <li>(a) it is not practicable (the premises are vacant)</li> <li>(b) the authorised officer believes on reasonable grounds that immediate entry to the premises is required to ensure: <ul style="list-style-type: none"> <li>(i) the safety of any person; or</li> <li>(ii) the effective exercise of the powers noted below.</li> </ul> </li> </ul>	4.8

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	Issue	Section reference
	<p><b>Comment:</b> We support this recommendation, in part, subject to the qualifications set out in recommendation 105. We believe that, before entering the premises, the authorized officer should state to the occupants the nature of the search and what information, materials etc are the subject of the search.</p>	
110	<p>That the public health Act provide that an authorised officer is able to exercise powers to monitor compliance and investigate possible contraventions of the Act. This should include the power to (at any reasonable time) exercise the following “general enforcement powers”:</p> <ul style="list-style-type: none"> <li>(a) enter a place</li> <li>(b) stop and search any person, animal, vehicle, vessel or other means of conveyance</li> <li>(c) inspect, examine and make enquiries at the place</li> <li>(d) examine or inspect any thing at the place</li> <li>(e) bring any equipment or materials to the place that may be required</li> <li>(f) seize any thing, including a document, at the place, where: <ul style="list-style-type: none"> <li>(i) the seizure is required to determine whether there has been a contravention of the Act; or</li> <li>(ii) the seized thing may be used as evidence for a possible prosecution; or</li> <li>(iii) the seizure is required to minimise a risk to health</li> </ul> </li> <li>(g) seal a place or thing</li> <li>(h) take a sample of any thing at the place</li> <li>(i) take any photographs or measurements or make sketches, impressions or any audio or visual recordings</li> <li>(j) make copies of, or take extracts from, any document kept on the place</li> <li>(k) use or test any equipment at the place</li> <li>(l) request a person at the place to provide information or produce documents</li> <li>(m) request a person at the place to operate equipment to access information from that equipment (such as from a disk or tape)</li> <li>(n) request a person at the place to provide any document that is needed to investigate or monitor compliance</li> </ul>	4.8

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	<b>Issue</b>	<b>Section reference</b>
	<ul style="list-style-type: none"><li>(o) use any assistants the authorised officers considers necessary to exercise the powers conferred on an authorised officer</li><li>(p) exercise any other power conferred on the authorised officer by the public health Act</li><li>(q) do any other thing that is reasonably necessary for the purpose of the authorised officer performing his or her functions, or exercising his or her powers, under the public health Act.</li></ul>	

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Issue	Section reference
<p><b>Comment:</b> We do not support this recommendation. Our comments on recommendations 26, 29 and 105 are also relevant here. We do not believe that the case has been made for a significant number of authorized officers to exercise these powers as “general enforcement” powers on a day to day basis, particularly given that the intrusive powers would be exercised without a warrant. Except in genuinely emergency circumstances, we do not believe the case has been made for authorized officers under the Act to exercise greater powers than police have in dealing with crimes. In addition, police have mandated levels of training, are sworn officers, are subject to scrutiny by an ethical standards unit, and a range of other protections that enable citizens to have some confidence that their substantial powers will not be used in a way that is oppressive. By comparison, the enforcement powers regime for this Act offers few checks and balances against misuse of these powers.</p> <p>We have also considered the inspection regime that has been established under Division 8A of the <i>Prostitution Control Act 1994</i>. We would support an inspection regime under the new public health Act that contained similar protections as are set out in that Division, on the basis that they provide a better balance between inspectors powers and individual and business rights than is being proposed under recommendation 110.</p> <p>In addition to our general concerns about the powers proposed here, we have some additional concerns about some of the specific powers. In relation to (e), (f), (i), (j), or (n), we would not support a general enforcement power which would enable an authorized officer to access a client record held at a place. We believe that such a power should only be enforceable by way of a warrant, and that a process, similar to the one that applies when a search warrant is produced for confidential legal files from a legal practice, should be put in place to enable a file to be sealed and taken to the warrant issuing Court to determine whether the documents are relevant to the application.</p> <p>In line with our view on the need for more senior authorization for activities that involve entry, search and seizure, we do not support section (o) of the recommendation. We have concerns about the appropriate training of authorized officers. Allowing them to use “any assistants they consider necessary” is unsupportable and does not address the need for coercive powers to be used only by people with appropriate training who have been assessed as psychologically suitable to exercise such powers.</p> <p>While we understand the desire to address the matters that might arise in a particular circumstance which require powers that are not set out in (a) to (p), we cannot support the breadth of the “any other thing” power proposed in recommendation 110 (q).</p>	

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	Issue	Section reference
111	That there is no need to have a warrant to perform any of the above powers.	4.8
<p><b>Comment:</b> See our comments on recommendation 105. While we are not recommending a warrant process, we are recommending that these powers should not be exercised unchecked and that a case for using intrusive or coercive powers should have to be made to a delegated senior officer. Such a scheme would also protect officers and the Department when claims were made that the exercise of the powers was done unreasonably.</p>		
112	<p>That the following provisions apply for seized things:</p> <ul style="list-style-type: none"> <li>(a) the authorised officer must provide a receipt for any seized thing in the prescribed form</li> <li>(b) seized things may be held for up to 60 days, unless: <ul style="list-style-type: none"> <li>(i) the Magistrates' Court extends the period of seizure, on the application of an authorized officer; or</li> <li>(ii) the thing had to be destroyed by the Secretary or council (for example, due to contamination)</li> </ul> </li> <li>(c) the seized things should be returned (if practicable) if the reason for their seizure no longer exists. If the thing cannot be returned, it becomes the property of the Secretary or council.</li> </ul>	4.8
<p><b>Comment:</b> We support this recommendation in part. If the seized thing is a document, the authorized officer must provide a copy of the document to the person as soon as practicable after it has been seized.</p>		
113	<p>That self-incrimination is not an excuse from complying with a request of the authorised officer. However, any self-incriminatory statement made under a direction is not admissible in any criminal proceedings against that person, unless:</p> <ul style="list-style-type: none"> <li>(a) the answer is admitted in respect of a proceeding regarding the provision of false information to an authorised officer; or</li> <li>(b) the information is contained in any document or item that a person is required to keep by any Australian law.</li> </ul>	4.8

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	Issue	Section reference
	<p><b>Comment:</b> We do not support this recommendation. We are not persuaded that the Draft Policy Paper makes a sufficiently strong case for abrogating the long standing privilege against self incrimination.</p>	
114	<p>That the public health Act include offences regarding:</p> <ul style="list-style-type: none"> <li>(a) impersonating an authorised officer</li> <li>(b) failure to answer questions of an authorised officer without a reasonable excuse</li> <li>(c) knowingly providing an authorised officer, council, Secretary or Chief Health Officer with information that is false or misleading</li> <li>(d) interference with, or obstruction of, an authorised officer</li> <li>(e) failure of a person that is required to keep records to (upon request by an authorised officer) provide the records to the authorised officer.</li> </ul>	4.8
	<p><b>Comment:</b> We support this recommendation. We should also state here that, in our view, protecting the confidentiality of a client's information would constitute a reasonable excuse under (b).</p>	
115	<p>That the public health Act provide that an improvement or prohibition notice could be issued by a municipal council or the Secretary, where the council or Secretary believes on reasonable grounds that a person is breaching or may breach an obligation under the public health Act or its regulations.</p>	4.9
	<p><b>Comment:</b> We support this recommendation, in part. We support that this power should rest with the Secretary or the municipal council, rather than with any authorized officer. While we have no concerns about a notice being issued where a person has breached an obligation, we are less persuaded that a notice should be able to be issued where a person <i>may</i> breach an obligation. In such circumstances, the Department or council should be working with the person to prevent a breach, rather than taking pre-emptive enforcement action.</p>	
116	<p>That the public health Act provide an illustrative list or examples of some of the types of improvement or prohibition notices that could be issued under the Act. An improvement or prohibition notice would be able to achieve everything that a "notice</p>	4.9

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	Issue	Section reference
	to abate” can achieve under section 44 of the Health Act.	
	<b>Comment:</b> We support this recommendation.	
117	That failure to comply with an improvement or prohibition notice is an offence under the public health Act.	4.9
	<b>Comment:</b> We support this action, subject to the reservations we have set out in recommendation 115 in relation to pre-emptive notices.	
118	<p>That the public health Act provide for additional powers where:</p> <p>(a) The Chief Health Officer is of the view that there is a serious risk to public health (the reference to “a serious risk to public health” incorporates risks that may eventuate). In these circumstances, authorised officers should have the ability to respond quickly to the relevant incident to protect the health and safety of people.</p> <p>(b) The Chief Health Officer is of the view that an epidemic or the risk of an epidemic of a disease poses a serious risk to public health. In these circumstances, authorised officers (who are registered medical practitioners) should have the ability to respond quickly to the relevant incident to protect the health and safety of people, by providing treatment or prophylaxis.</p>	4.10

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	Issue	Section reference
	<p><b>Comment:</b> We support this recommendation, subject to the following caveats. We support the proposal that authorized offices should be able to <i>provide</i> treatment or prophylaxis but we would not support a power to <i>compel</i> people to take this treatment or be vaccinated. If the recommendation is proposing compulsory treatment or vaccination, we believe that the relevant section should contain the “opt out” provisions set out in recommendation 120(b) below. We would also draw a distinction between treatment that is curative (e.g. treatment for Chlamydia) and treatment that is non-curative (e.g. treatment for HIV). There are no circumstances in which we would support compulsory treatment for HIV given that it is non-curative and comes with significant metabolic side-effects. In our view, any legislative approach to mandated treatment should contain a conscientious opt-out clause and should specifically <i>not</i> include HIV treatments.</p>	
119	<p>That in the event that the Chief Health Officer (“CHO”) determines that there is a serious risk to public health, the CHO can, in order to lessen or prevent the serious risk to public health, authorise an authorised officer to exercise the following “incident powers”:</p> <ul style="list-style-type: none"> <li>(a) close any premises, place, vehicle or vessel, including a school, children’s services centre or shopping centre</li> <li>(b) direct a person or group of people to enter, not to enter, to stay at or to leave any particular place</li> <li>(c) enter any, place and search for and seize any thing (without a warrant) for the purpose of investigating the serious risk to public health</li> <li>(d) require the provision of information to investigate the serious risk to public health or to address that risk</li> <li>(e) inspect any place where a disease may be spread</li> <li>(f) require cleaning or disinfection of any place where the risk may arise</li> <li>(g) require disposal or destruction of any thing in order to address the risk</li> <li>(h) direct the proprietor of a business or the person in charge of a place to take any action necessary to address the risk</li> <li>(i) direct any person to take any other action that the CHO considers reasonably necessary to prevent or address the risk</li> </ul>	4.10

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	Issue	Section reference
	(j) exercise any of the general enforcement powers noted in any of the earlier recommendations.	
	<b>Comment:</b> We support this recommendation.	
120	<p>That in the event that the Chief Health Officer makes a finding that an epidemic or the risk of an epidemic poses a serious risk to public health, the Chief Health Officer may, in order to lessen or prevent the serious risk to public health, authorise an authorised officer (who is a registered medical practitioner) to exercise the following “epidemic powers”:</p> <ul style="list-style-type: none"> <li>(a) treat any person</li> <li>(b) administer prophylaxis (including vaccination) to the person, subject to any of the following exceptions: <ul style="list-style-type: none"> <li>(i) the proposed prophylaxis is vaccination and the person has been vaccinated against the disease</li> <li>(ii) a registered medical practitioner reasonably believes that an individual may suffer an adverse reaction to the prophylaxis, which may contraindicate prophylaxis</li> <li>(iii) the individual has produced medical confirmation of experiencing the natural disease against which the prophylaxis protects, which renders the administration of the prophylaxis ineffectual</li> <li>(iv) the individual has produced laboratory confirmation of the presence of existing adequate immunity</li> <li>(v) the individual (or legal representative) objects in a statutory declaration on the basis that the individual has a conscientious objection to the prophylaxis (modelled on section 5-109[h] of the US Turning Point Model State Public Health Act and section 144 of the Health Act)</li> </ul> </li> </ul>	4.10

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	Issue	Section reference
	<p><b>Comment:</b> We support this recommendation with the following caveats. Our comments on treatment in recommendation 118 are equally applicable here. It is our firm view that any competent adult should retain the right to refuse medical treatment.</p>	
121	<p>That, if a person refuses to comply with a direction given under these provisions, a member of the police force may use reasonable force to ensure compliance with that direction.</p>	4.10
	<p><b>Comment:</b> We do not support this recommendation. We would not support people being vaccinated or treated without their consent, and the form of recommendation 120 appears to allow for conscientious objection, in any case.</p>	
122	<p>That, in exercising these powers, a search warrant should not be required. (There would be requirements that the authorised officers identify themselves and display their identification.)</p>	4.10
	<p><b>Comment:</b> We support this recommendation and would distinguish this support from our lack of support for similar powers in recommendation 110. The powers recommended in recommendation 122 would only be exercisable once the CHO had made a determination that circumstances warranted invoking the use of these powers. This decision that the powers should be invoked would, we assume, be reviewable under the mechanisms set out in the <i>Victorian Civil and Administrative Tribunal Act 1988</i>.</p>	
123	<p>That the Governor in Council may proclaim an emergency in relation to a specified area, as a result of a serious risk to public health. Such a proclamation:</p> <ul style="list-style-type: none"> <li>(a) may be made for up to 4 weeks</li> <li>(b) may be extended for 4 week periods up to a maximum of 6 months</li> <li>(c) would be a disallowable instrument (could be disallowed by either House of Parliament).</li> </ul>	4.10
	<p><b>Comment:</b> We support this recommendation.</p>	
124	<p>If there is such a proclamation of an emergency by the Governor in Council, the Chief Health Officer may, in order to lessen or prevent the serious risk to public health, authorise an authorised officer to</p>	4.10

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	Issue	Section reference
	<p>exercise the following “emergency powers”:</p> <ul style="list-style-type: none"> <li>(a) detain any person or class of person in a proclaimed area (an authorised officer must facilitate any reasonable request for communication made by a person subject to detention)</li> <li>(b) restrict the movement of any person within the proclaimed area</li> <li>(c) prevent any person from entering the proclaimed area</li> <li>(d) give any other direction that is reasonable and necessary to protect the health and safety of people</li> <li>(e) exercise any of the “incident powers” or “epidemic powers” noted at recommendations 119 and 120 above</li> <li>(f) exercise any of the “general enforcement powers” noted at recommendation 110 above.</li> </ul>	
	<p><b>Comment:</b> We support this recommendation subject to the caveats we have expressed in relation to recommendations 26, 29 105, 110-115, 118, 120 and 121.</p>	
125	<p>That further consideration be given to whether the Chief Health Officer should have reserve powers, to direct public hospitals and public health services to provide services or use of facilities to respond to a public health emergency. Mechanisms for engagement of private health services and health care workers may also be examined.</p>	4.10
	<p><b>Comment:</b> While we support the proposal that public hospitals and public health services should be able to be given such a direction, we question whether this direction should come from the CHO or whether it should be a direction from the Minister.</p>	
126	<p>That if a person is prosecuted and found guilty of contravening the public health Act, the following provisions apply:</p> <ul style="list-style-type: none"> <li>(a) a municipal council or the Secretary could seek reimbursement of costs it has incurred costs as a result of the contravention (such as clean-up costs)</li> <li>(b) if a municipal council or the Secretary is awarded legal costs, it could seek payment for</li> </ul>	4.11

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	Issue	Section reference
	the costs incurred by its officers to investigate the contravention.	
	<b>Comment:</b> We support this recommendation on the basis that it would be up to a court to make the decision about whether it was appropriate for costs to apply in the circumstances of the particular case.	
127	That if a person fails to comply with a direction of a municipal council, authorised officer, the Secretary or an improvement or prohibition notice and the municipal council, authorised officer or Secretary steps in to perform that task, then the municipal council or Secretary would be entitled to seek the cost of performing that task.	4.11
	<b>Comment:</b> We support this recommendation, provided that the decision about whether costs should be recoverable, and the quantum of those costs, was a matter that was determined by a court.	
128	That expenses incurred by a municipal council in the abatement of a nuisance can be recovered from the occupier of the land, even if there has not been a prosecution.	4.11
	<b>Comment:</b> We do not support this recommendation. An obligation to pay costs should only apply after a court has determined that the circumstances warrant the making of a costs order, and that the quantum of costs claimed is reasonable.	
129	That there should also be further consideration regarding whether other cost recovery provisions would be appropriate, having regard to the provisions in the <i>Environment Protection Act 1970</i> (Vic) and the <i>Health Act 1958</i> (Vic).	4.11
	<b>Comment:</b> We do not support this recommendation.	
130	That there be the capacity for contraventions of some provisions of the public health Act to be enforced through the Penalty Enforcement by Registration of Infringement Notice system.	4.12

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	Issue	Section reference
	<p><b>Comment:</b> We support this recommendation in principle but would like to be consulted further on the specific provisions that would be dealt with by the PERIN court process if this recommendation is accepted by the government.</p>	
131	<p>That during the development of the relevant regulations that determine which offences are subject to the Penalty Enforcement by Registration of Infringement Notice system, the Department of Human Services consult closely with local government and other relevant stakeholders.</p>	4.12
	<p><b>Comment:</b> We support this recommendation.</p>	
132	<p>That the public health Act set penalty levels that reflect the seriousness of the public health consequences of a breach and be sufficient to deter conduct that creates an unacceptable risk to public health.</p>	4.12
	<p><b>Comment:</b> We support this recommendation. We would also support a system whereby any monetary penalties for breaching the public health Act were applied to health promotion interventions (through VicHealth and/or some other mechanism) that were designed to improve public health outcomes in Victoria.</p>	
133	<p>That higher penalties be imposed on bodies corporate, than those imposed on individuals. The maximum fine would be 5 times the maximum fine for a natural person.</p>	4.12
	<p><b>Comment:</b> We support this recommendation. Our suggestion that penalties be applied to public health promotion would answer any concerns that higher penalties were a de facto form of State revenue raising.</p>	
134	<p>That, based on the offence provisions that are currently proposed for the public health Act, the public health Act not introduce a defence of due diligence (modelled on section 17E of the <i>Food Act 1984</i> (Vic)).</p>	4.13

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	Issue	Section reference
<p><b>Comment:</b> We do not support this recommendation. We support a defense that a person took all reasonable precautions and exercised due care to prevent an offence by them or someone under their control. We would support this defense in addition to any specific defenses that might be developed for particular offences.</p>		
135	<p>That blood and tissue donation forms (which create statutory defences) are approved by the Secretary. Notice of the form would need to be published in the government gazette and the form would need to be published on the Department of Human Services' website.</p>	4.13
<p><b>Comment:</b> We support this recommendation as an effective mechanisms to ensure cross-jurisdictional consistency.</p>		
136	<p>That the public health Act provide for the following appeal rights in relation to licences and registrations:</p> <ul style="list-style-type: none"> <li>(a) a right of internal review for applicants for decisions by the municipal council/Secretary to: <ul style="list-style-type: none"> <li>(i) refuse to grant, extend or vary a licence/registration</li> <li>(ii) vary, suspend or cancel a licence/registration</li> <li>(iii) impose certain conditions on a licence/registration.</li> </ul> </li> <li>(b) full appeal rights to the Victorian Civil and Administrative Tribunal in relation to any decision made upon internal review</li> <li>(c) a right of direct appeal to the Victorian Civil and Administrative Tribunal in relation to any decision to cancel or suspend a registration or licence (the holder of the cancelled/suspended licence or registration could elect to utilise the internal review or apply directly to the Victorian Civil and Administrative Tribunal for review).</li> </ul>	4.14
<p><b>Comment:</b> We support this recommendation.</p>		
137	<p>That there is a review mechanism for improvement and prohibition notices that specifies the steps to be undertaken. The review mechanism needs to be</p>	4.14

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	Issue	Section reference
	prompt and review should be by the Victorian Civil and Administrative Tribunal.	
	<b>Comment:</b> We support this recommendation.	
138	An application for an appeal in relation to licences/registrations and review in relation to improvement/prohibition notices must be made within 28 days after the later of: (a) the day on which the applicant was notified of the decision (b) the day on which the eligible person is notified by the Secretary/municipal council of the eligible person's right to a review.	4.14
	<b>Comment:</b> We support this recommendation.	
139	That a person may appeal to the Supreme Court against the exercise of an order (but not a testing or examination order) made under the equivalent section to section 121.	4.14
	<b>Comment:</b> We do not support this recommendation as it is currently drafted. While we recognize that the current s.121 does not provide for any right of appeal in relation to a testing or examination order, we can see no good reason why these forcible breaches of a person's autonomy and integrity should not be subject to review. It is unclear to us whether force could be used to enable a test or an examination to be undertaken under this section. Certainly recommendation 175 recommends that force should be able to be used and that section of the <i>Draft Policy Paper</i> refers back to s.121 in the current Act. If it proposed to use force to test or examine a person without their consent, this decision should be subject to independent review. We accept that there will often be some time imperative to undertake the test. However, the current Act provides that the Supreme Court must urgently hear and determine an appeal against an order and we can see no persuasive argument why that Court should not determine whether a test or examination should proceed, using force, against the explicitly withheld consent of the person. Put in its simplest terms, we believe that a Court, rather than the Secretary, should determine that an action proposed by the State should proceed in circumstances that would constitute an assault if anyone else was undertaking a similar action. It goes without saying that we do not anticipate that the Court would be dealing with a rash of such applications.	

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	Issue	Section reference
140	That the review mechanism regarding incident and epidemic powers be similar to the current approach for reviewing public health orders (internal review to the Secretary and external review to the Supreme Court) (modelled on section 122 of the Health Act).	4.14
<b>Comment:</b> We support this recommendation.		
141	That there are no appeal provisions in relation to the exercise of emergency powers (although the proclamation of the emergency by the Governor in Council would be a disallowable instrument and the provision would not oust judicial review).	4.14
<b>Comment:</b> We support this recommendation in part. While we would have no objection to the powers outlined in recommendation 124 (a) to (d) being free of review, we would support their being ongoing review of the incident, epidemic or general enforcement powers which would have been re-invoked by the emergency declaration.		
142	Subject to a decision to the contrary (by the Supreme Court, the Victorian Civil and Administrative Tribunal or the person who is conducting the internal review), an appeal does not affect the decision that is subject to review.	4.14
<b>Comment:</b> We are not entirely clear about the implications of this recommendation. If, as we suspect, it means that a decision would stand until the outcome of the review, the reasonableness of this application would depend on the circumstances. For example, if the decision was to restrict a person's movements, it might be reasonable to continue this restriction while the matter was being considered on review or appeal, given that the review or appeal would need to be conducted expeditiously. However, if the decision was to use force to take blood or tissue samples, it would, in our view, be unreasonable to proceed to execute this decision during an appeal period. Put simply, if the appeal succeeds, you cannot "undo" the use of force or reinstate the lost blood or tissue.		
143	That further consideration be given to whether the Chief Health Officer and Secretary should be able to apply to the Supreme Court to compel a person to comply with a direction that was made as part of an incident power, epidemic power, emergency power	4.14

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Issue	Section reference
or public health order.	
<b>Comment:</b> We support this recommendation as the determination by the Supreme Court of the application for a compulsory direction would provide a further avenue for review of the reasonableness of the original decision.	
144	That the requirement that businesses conducting hairdressing be registered with municipal councils not be re-enacted in the public health Act. 5.1
<b>Comment:</b> We support this recommendation.	
145	That the requirement that a person conducting a business of beauty therapy be registered with municipal councils be re-enacted. 5.1
<b>Comment:</b> We support this recommendation, given the range of activities now being conducted by such businesses.	
146	That businesses conducting tattooing, skin penetration and colonic irrigation be required to be registered with municipal councils. 5.1
<b>Comment:</b> We support this recommendation. See also our comments at recommendation 98 about operators in such businesses and the desirability of some form of licensing or compulsory accreditation for such workers to ensure they are familiar with the basics of infection control.	
147	That the specific regulatory scheme set out in the Regulations would be proportionate to the level of risk associated with the specific activity. For example, the regulations for premises conducting skin penetration could be more prescriptive than the regulations for premises conducting beauty therapy. 5.1
<b>Comment:</b> We support this recommendation.	
148	That definitions for "beauty therapy", "tattooing", "skin penetration" and "colonic irrigation" be included in the public health Act. The definition of skin penetration would include various cosmetic and decorative procedures such as scarification, 5.1

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	Issue	Section reference
	branding and beading.	
	<b>Comment:</b> We support this recommendation.	
149	That the practices of professionals who are trained in infection control and regulated by professional bodies which regard poor infection control practices as unprofessional conduct (registered medical practitioners, dentists, nurses, podiatrists and acupuncturists) be exempted from the requirement to register with municipal council. The practices of accredited pathology services and hospitals should also be exempted from the requirement to register with municipal council. However, exempt businesses would still be required to comply with the requirements regarding cleanliness of equipment (including sterilisation) and personal hygiene of each person in the business that conducts the skin penetration activity.	5.1
	<b>Comment:</b> We support this recommendation.	
150	That proprietors of swimming pools continue to be subject to regulation under the public health Act, but not be required to be registered with municipal councils.	5.1
	<b>Comment:</b> We support this recommendation.	
151	That the brothel provisions under the Health (Infectious Diseases) Regulations 2001 (Vic) not be transferred to the Prostitution Control Regulations 1995 (Vic), but that administrative arrangements between the Department of Justice and the Department of Human Services ensure that the members of the industry are informed of their requirements under the Health (Infectious Diseases) Regulations 2001 (Vic).	5.1

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	Issue	Section reference
	<p><b>Comment:</b> We do not support this recommendation. After consultations with workers in the sex industry and their organizations, we believe that the brothel provisions under the <i>Health (Infectious Diseases) Regulations 2001 (Vic)</i> should be transferred to the <i>Prostitution Control Regulations 1995 (Vic)</i>, on the basis that consolidating provisions on the regulation of brothels will make it easier for members of the industry to understand their rights and responsibilities. It is unclear why there would be difficulties if DHS officers exercised enforcement powers under more than one piece of legislation. However, to the extent that such difficulties do exist, we believe that they could be overcome with appropriate protocols, guidelines, training and supervision more easily than brothel operators and sex workers could take into account multiple sources of legislation.</p>	
152	<p>That public health risks associated with sex on premises venues be addressed under the public health Act, by the ability for the Chief Health Officer to issue an improvement or prohibition notice if the proprietor fails to take all reasonable and practicable measures to prevent or minimize the possibility of a serious harm happening to another person (such as the spread of sexually transmissible infections).</p>	5.1
	<p><b>Comment:</b> We support this recommendation, subject to our comments about pre-emptive notices in recommendation 115.</p>	
153	<p>That the public health Act have regulation-making powers broad enough to allow regulation of sex on premises venues, should voluntary arrangements not succeed.</p>	5.1
	<p><b>Comment:</b> We do not support this recommendation. If the government wishes to regulate sex on premises venues, we believe it should do so directly and not by the application of some broad general regulation-making power.</p>	
158	<p>That the following principles apply in relation to the investigation and control of infectious diseases:</p> <ul style="list-style-type: none"> <li>(a) the general principles that apply to the whole Act (see 1.7)</li> <li>(b) the guiding principles which are currently in section 119 of the Health Act (except to the extent that the principles are incorporated into the general guiding principles).</li> </ul>	5.3

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	Issue	Section reference
	<b>Comment:</b> we support this recommendation.	
159	<p>That the following people be authorised to exercise contact tracing powers for a notifiable condition under the public health Act:</p> <ul style="list-style-type: none"> <li>(a) authorised officers of the Department of Human Services, subject to directions of the Secretary</li> <li>(b) authorised officers of council, but only if directed to do so by the Secretary and subject to the directions of the Secretary.</li> </ul> <p>These powers authorise the collection, use and disclosure of personal information and health information.</p>	5.3
	<b>Comment:</b> We do not support this recommendation. We would only support the use of authorized officers of councils as part of the invoking of epidemic or emergency powers. We would not support, for example, using authorized officers of councils to undertake contact tracing activities in relation to HIV or STIs.	
160	<p>That contact tracing powers extend to permit information to be obtained from:</p> <ul style="list-style-type: none"> <li>(a) the person with the condition and their contacts</li> <li>(b) any other person who has or may have relevant information, including: <ul style="list-style-type: none"> <li>(i) business records</li> <li>(ii) other records held about the person.</li> </ul> </li> </ul>	5.3

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	Issue	Section reference
	<p><b>Comment:</b> We do not support this provision. The language in this recommendation is inconsistent with the language in the <i>Draft Policy Paper</i>. For example, the recommendation uses the term “permit information to be obtained” while the text in the paper refers to “individuals who may be required to provide”. We would not support any provisions that gave contact tracers the authority to compel any individual or organization to provide information about a person with, or who might have, a communicable disease without that person’s specific consent. In particular, we will strenuously oppose any draft legislation that sought to override existing privacy and confidentiality provisions. Such provisions would work counter to public health in the HIV and STI area. Service providers need as much information as possible to deliver high quality services tailored to the individual needs of people with HIV and/or STIs. Any system that might mean that this information was available to DHS for other purposes has a significant capacity to compromise the full disclosure that is the cornerstone of effective diagnosis, treatment, and ongoing service delivery. We are particularly concerned at the suggestion that it may be an offence to fail to provide this information. Introducing these provisions will force a large number of doctors, hospitals and other service providers either to keep inadequate clinical notes or risk breaching the confidentiality of their clients.</p>	
161	<p>That the public health Act clearly set out what action 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 (modelled on the <i>Public Health Act 2005 (Qld)</i>).</p>	5.3
	<p><b>Comment:</b> We support this recommendation in so far as it maintains the confidentiality of personal information obtained by contact tracers.</p>	
162	<p>That the Chief Health Officer has the power to require a registered medical practitioner who has the appropriate qualifications or experience to conduct an autopsy on a body, or collect diagnostic specimens from a body, in cases where the Chief Health Officer reasonably believes there is a risk to public health and the coroner does not have jurisdiction over the body.</p>	5.3
	<p><b>Comment:</b> We support this recommendation.</p>	
163	<p>Before conducting an internal examination of the</p>	5.3

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	Issue	Section reference
	<p>body, the Chief Health Officer would need to seek to advise the senior next of kin of the proposed internal examination. The senior next of kin would be able to object to the examination, in the same manner that the senior next of kin may object to a coroner that proposes to conduct an autopsy under the <i>Coroners Act 1985 (Vic)</i>.</p>	
	<p><b>Comment:</b> We support this recommendation.</p>	
164	<p>That the provisions in the public health Act relating to compulsory testing orders and authorisations:</p> <ul style="list-style-type: none"> <li>(a) continue to apply to human immunodeficiency virus and forms of hepatitis that may be transmitted by blood or body fluids, such as hepatitis B, C and D</li> <li>(b) continue to apply to infectious diseases that are prescribed for the purposes of the compulsory testing provisions</li> <li>(c) apply to occupational incidents, irrespective of whether the person is a care-giver or custodian</li> <li>(d) apply to incidents involving a volunteer or "Good Samaritan".</li> </ul>	5.4

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Issue	Section reference
<p><b>Comment:</b> We remain concerned about the breadth of these powers for involuntary testing. We were unconvinced of the need for the changes that were made in Division 2A of Part 6 of the <i>Health Act 1958</i> to enable senior medical staff in specified hospitals to order/authorize testing for specified infectious diseases. We also continue to have concerns about the implications of s.120A(2B) whereby the test can be ordered if the person is unconscious even though there may be a competent substitute decision maker who could be consulted, informed of the circumstances and could give consent to the test. We note that although the sections specifically exclude substitute decision makers when consent for a test is being considered, s.120AC requires that they be given post-test counseling. We believe that any extension of these provisions to a wider class of incidents should only occur if all other avenues of obtaining consent have been excluded, including obtaining consent from appropriately authorized substitute decision makers. We also believe that DHS should require reporting of instances where the compulsory testing has been authorized, that the number of occasions on which this occurs and the hospitals where the authorizations have occurred should be published annually and be and publicly available, and that the Health Services Commissioner should be empowered to review the use of this power periodically to ensure that it is not being misused.</p>	
165	<p>That there is further consideration regarding whether there should be specific restrictions in the public health Act regarding the permitted use of a sample taken under the compulsory testing provisions.</p> <p style="text-align: right;">5.4</p>
<p><b>Comment:</b> We support this recommendation.</p>	
166	<p>That public health order powers under the new Act continue to apply to an infectious disease or condition where there is a serious risk to public health.</p> <p style="text-align: right;">5.5</p>
<p><b>Comment:</b> We support this recommendation.</p>	
167	<p>That the power in section 121(1) of the Health Act for the Secretary to order that a person be examined and tested for a disease be re-enacted, but the power should be granted to the Chief Health Officer. The basis of the order should continue to be a reasonable belief that the person has an infectious disease, or has been exposed to</p> <p style="text-align: right;">5.5</p>

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	Issue	Section reference
	an infectious disease in circumstances where a person is reasonably likely to contract the disease.	
	<p><b>Comment:</b> We support this recommendation subject to the person being given written reasons setting out the reasons for the belief prior to requiring them to be tested or examined. People in this situation are extremely vulnerable to being coerced and providing them with written reasons for the decision in advance of the test, together with appropriate pre-test counseling, may decrease the number of occasions on which consent to a test is refused.</p>	
168	That the Chief Health Officer be given the power to make an order to detain or isolate the person for the purpose of examination or testing (where a person refuses to undergo an examination or testing). The basis of the order should continue to be a reasonable belief that the person has an infectious disease, or has been exposed to an infectious disease in circumstances where a person is reasonably likely to contract the disease.	5.5
	<p><b>Comment:</b> We support this recommendation, subject to the additional requirement outlined in recommendation 167. In addition, we would support an administrative requirement that a person who is subject to a detention order should be advised that they may appoint an advocate to assist them negotiate their way through what, by then, will be a confusing and frightening experience, particularly if the use of force to enforce the order is being anticipated.</p>	
169	That there should be an obligation to conduct the examination or test as soon as practicable, if an order was made on the basis of the Chief Health Officer's ("CHO's") belief that the person has an infectious disease, or has been exposed to an infectious disease in circumstances where a person is reasonably likely to contract the disease. If the CHO no longer holds the belief that is required to make an order, then the CHO must revoke that order.	5.5
	<p><b>Comment:</b> We support this recommendation.</p>	
170	That the public health Act not include additional guiding principles from the US Model Act in respect of the power to conduct testing and examination	5.5

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	Issue	Section reference
	<p>under a public health order. Issues in relation to validity; justification; pre-test information; and post-test information (modelled on US Model Act) would be considered in developing administrative guidelines to support the provisions.</p>	
	<p><b>Comment:</b> We do not support this recommendation. Using force to compel a person to be tested or examined is a substantial infringement of accepted personal autonomy. In circumstances where the State believes that infringing that autonomy is warranted in the interests of public health, it seems reasonable to us to provide some guiding principles such as those set out in the US Model Act. We fail to see how any of the stated principles would conflict with the overarching principles set out in section 1.7 of the Draft Policy Paper. The suggestion that these principles could be incorporated into administrative guidelines is a strange one if the concern is that these principles might be in conflict with the overarching principles suggested for the new public health Act. Our major problem with using the Guidelines approach is that decision makers (and they will be multiple given the provisions of s.120AB) will be able to disregard the guidelines in particular cases.</p>	
171	<p>Subject to a law to the contrary, the sample taken under these provisions could only be used and kept for the purpose of conducting the test or a further permitted test (such as a confirmatory test). Once there is no longer a need to keep the sample for the permitted purpose, the sample would be destroyed.</p>	5.5
	<p><b>Comment:</b> We support this recommendation.</p>	
172	<p>That the public health Act include a power for the Chief Health Officer to make an order that may require a person to do any or all of the following for the period stated in the order:</p> <ul style="list-style-type: none"> <li>(a) undergo testing or examination</li> <li>(b) undergo counselling by a stated person or people</li> <li>(c) refrain from stated conduct</li> <li>(d) refrain from visiting stated places</li> <li>(e) stay at a specified place</li> <li>(f) submit to the supervision of another person</li> <li>(g) undergo treatment</li> <li>(h) be isolated and detained</li> </ul>	

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Issue	Section reference
<p><b>Comment:</b> We do not support this recommendation. Subject to our comments on recommendations 164, 167 and 168, we support recommendation 172 (a), and 172 (b) in so far as it applies to the desirability of having a consensual test or examination in the particular circumstances that apply. In line with the approach taken in the NPHP's guidelines paper (referred to at p.94 in the <i>Draft Policy Paper</i>) we would only support the application of recommendation 172 (b) in any circumstances which did not fall under the circumstances set out in the previous sentence, and recommendation 172 (c) to (h) in circumstances where the CHO knew the person to be infected with the particular disease. In any case where these powers are exercised, the person must be given written notification of the decision, the reasons for the decision, and notice of the mechanisms for having the decision reviewed.</p> <p>As set out in recommendation 117, we would not support a power to <i>compel</i> people to take HIV treatments. As the current recommendation is proposing compulsory treatment, we believe that the relevant section should contain the "opt out" provisions set out in recommendation 120(b) above. We would also draw a distinction between treatment that is curative (e.g. treatment for Chlamydia) and treatment that is non curative (e.g. treatment for HIV). There are no circumstances in which we would support compulsory treatment for HIV given that it is non-curative and comes with significant metabolic side-effects. In our view, any legislative approach to mandated treatment should contain a conscientious opt-out clause and should specifically <i>not</i> include HIV treatments.</p>	
173	<p>That the public health Act provide that orders may be subject to the reasonable conditions the Chief Health Officer considers appropriate.</p> <p style="text-align: right;">5.5</p>
<p><b>Comment:</b> We support this recommendation.</p>	
174	<p>That the general structure of the provisions indicate that the powers provided form a general hierarchy from the least to most restrictive, although there would be flexibility to allow powers to be used as needed to protect public health.</p> <p>As a result of this hierarchy, a restrictive order may not be imposed unless the Chief Health Officer believes:</p> <p>(a) The person has an infectious disease or has been exposed to an infectious disease in circumstances where a person is reasonably likely to contract the disease; and</p> <p style="text-align: right;">5.5</p>

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	Issue	Section reference
	<p>(b) If infected with that infectious disease, the person is likely to transmit that disease; and</p> <p>(c) There is a serious risk to public health; and</p> <p>(d) The person has been counselled, or reasonable attempts have been made to counsel the person, before the making of the restrictive order is not practicable.</p> <p>In practice, the way powers are used will be affected by:</p> <p>(a) the disease concerned</p> <p>(b) the availability of treatment for that disease</p> <p>(c) the infectivity and ease of transmission of that disease</p> <p>(d) whether urgent action will significantly affect the public health outcome</p> <p>(e) whether the person will comply voluntarily with a requirement of the Chief Health Officer and, if so, to what extent</p> <p>(f) the capacity of the person to understand the public health risk they present.</p>	
	<p><b>Comment:</b> We do not support this recommendation as the drafting is too broad and not in line with the NPHP Guidelines document. See further our comments on recommendation 172.</p>	
175	<p>That reasonable use of force may be exercised by an authorised officer or the police to enforce a public health order made under this section. If an authorised officer exercises the power, the person may obtain the assistance of any member of the police force.</p>	5.5
	<p><b>Comment:</b> We do not support this recommendation. In our view any use of force should only be subject to the authorisation by the Chief Health Officer (<i>not</i> any authorized officer) and only after the person has been warned that continued refusal may result in the use of force.</p>	
176	<p>That the public health Act require that all public health orders be reviewed by the Chief Health Officer, at intervals not exceeding 28 days.</p>	5.5

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	Issue	Section reference
	<p><b>Comment:</b> We support this recommendation in part. However, in relation to orders imposing restrictions on free movement, isolation and detention we do not believe that the CHO should keep reviewing his/her own decision if the order is continue for more than two calendar months. We would support a provision that, if such orders were to continue for more than two calendar months, an external body (the Ombudsman, the Health Services Commissioner, for example) should review the basis for the decision and the reasonableness of continuing the order.</p>	
177	<p>That the public health Act provide that an authorised officer who is a registered medical practitioner may seek a warrant to apprehend a person who fails to comply with a public health order and take the person to a place named in the warrant.</p>	5.5
	<p><b>Comment:</b> We support this recommendation.</p>	
178	<p>That the public health Act provide that a person on a public health order who is apprehended must be advised of his or her rights and obligations.</p>	5.5
	<p><b>Comment:</b> We support this recommendation, although we would extend it to cover any person to whom a public health order was being applied.</p>	
179	<p>That the public health Act not re-enact the offence of knowingly and recklessly infecting another person with an infectious disease, and instead rely on the <i>Crimes Act 1958</i> (Vic) for prosecutions of this nature.</p>	5.5
	<p><b>Comment:</b> We support this recommendation.</p>	
180	<p>That the term “notifiable disease” be replaced by the term “notifiable condition” in the public health Act.</p>	5.6

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	Issue	Section reference
	<p><b>Comment:</b> We support this recommendation. We do not support the suggestion in section 5.6.4 of the <i>Draft Policy Paper</i> that Group C and D notifiable diseases may no longer need to be notified in coded form. We are also concerned at the comment in the <i>Draft Policy Paper</i> that coded notification “makes it impossible for contact tracing to be conducted in relation to these diseases”. This hyperbole cannot go unchallenged. Victoria has undertaken contact tracing for many years with coded notifications, and the DHS team would reject the assertion that this is impossible, as we do. We believe that contact tracing is best done as a collaborative effort between the person with the diagnosis, their doctor and/or the contact tracers. We firmly believe that coded notification is not a barrier to ethically-conducted, non-coercive contact tracing. Our preliminary focus testing for a Chlamydia campaign reveals that people would rather be advised of a risk exposure by their sexual partner than by a DHS officer.</p> <p>We believe very strongly, on the basis of our consultations on the <i>Draft Policy Paper</i>, that removing coded notifications would be a significant disincentive to testing for HIV and STIs. At present, knowing your HIV and/or STI status is the cornerstone of protecting yourself and your sexual partners. Any change that inhibited the willingness of people to test for HIV or STIs would have a devastating effect on transmission rates of these conditions. The negative reactions in the GLBTI community to this proposal are as strong as any we have seen in twenty years of the HIV epidemic. In fact, the reaction is so strong that we recommend that the Minister, in her second reading speech, should specifically announce that the government does <i>not</i> intend to proceed with this proposal in the regulation-drafting phase following passage of the new public health Act.</p>	
181	That notifiable conditions (notifiable diseases) continue to be prescribed in a schedule to the regulations.	5.6
	<b>Comment:</b> We support this recommendation.	
182	That the public health Act enable the Governor in Council to proclaim that a condition is a notifiable condition. The proclamation would be used for new and emerging diseases. This proclamation would last for up to 12 months and be a disallowable instrument.	5.6
	<b>Comment:</b> We support this recommendation.	
183	That pathology laboratories and registered medical	5.6

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	Issue	Section reference
	practitioners continue to be required to notify the Secretary of a notifiable condition, in the prescribed form and within the prescribed time.	
	<b>Comment:</b> We support this recommendation as necessary to ensure that epidemiological data are available for planning, treatment and health promotion purposes.	
184	That the public health Act require that hospitals have processes in place to ensure that notification requirements under the Act are met.	5.6
	<b>Comment:</b> We support this recommendation.	
185	That the public health Act not re-enact the HIV-specific pre and post-test counselling provisions.	5.7

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	Issue	Section reference
	<p><b>Comment:</b> We do not support this recommendation. We are not committed to the continuing use of the term “pre-test counseling” and would be happy to move to “pre-test information” as recommended, but not implemented due to an oversight, in the last review of the national HIV Testing Policy. However, we remain committed to continuing informed consent for all HIV tests, which requires that the person conducting the test (or some other suitably trained and accredited person) gives the person requesting the test sufficient information about the test and its consequences for the person to give informed consent. We are particularly concerned at the suggestion in the <i>Draft Policy Paper</i> (at p.100) that the requirement for pre-test counseling may present obstacles to pre-natal screening for HIV. We would strenuously oppose any changes that might lead to women being given pre-natal HIV tests without their informed consent. We should place on the record here our view that a generalized consent to “ante-natal tests” is not sufficient to undertake an HIV test which, given the possible consequences for the woman, her partner and the child of a positive test result, requires specific informed consent.</p> <p>We are not persuaded by arguments that the provisions in the current Act are sometimes (maybe even often) not complied with. Indeed, the <i>HIV Futures 4 Report</i> (ARCSHS 2003, p.4) found that a little more than a quarter of HIV positive respondents could recall receiving pre-test counseling or engaging in a pre-test discussion. VAC received a number of similar comments in person and by email during our consultations on this submission. There are many laws that are inconsistently complied with (the laws that regulate traffic speed come to mind), but nobody seriously suggests that abolishing those laws is an appropriate public policy response. Rather, better enforcement and ongoing community education are the more usual policy responses – as they should be here. We would also note that the National HIV Testing policy is currently being reviewed by a working party of the HIV and STI subcommittee of the (Commonwealth) Ministerial Advisory Committee on AIDS, Sexual Health and Hepatitis and their report should be available towards the middle of 2006.</p>	
186	<p>That the public health Act include a regulation-making power that requires post-test counseling to be provided for prescribed diseases and by a prescribed class of people (if any). It is expected that the Regulations would require post-test counselling for positive test results for human immunodeficiency virus (and possibly hepatitis C) by registered medical practitioners, and nonmedical practitioners who have completed an approved course.</p>	5.7

VICTORIAN AIDS COUNCIL SUBMISSION  
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	Issue	Section reference
	<p><b>Comment:</b> We do not support this recommendation. We believe that all test results require face to face post-test counseling, whether the result is positive or negative. If a post test visit is required only for positive results, people would soon be able to preempt the result. A negative test result is an opportunity to reinforce the need for ongoing safe sex or safe injecting practices, often at a time when a person is very receptive to receiving such messages and engaging in a structured discussion about how they might operationalise such messages.</p>	
187	<p>That the public health Act not include specific privacy provisions for human immunodeficiency virus (the privacy framework for all health records provided in the <i>Health Records Act 2001</i> (Vic) would apply).</p>	5.7
	<p><b>Comment:</b> We do not support these provisions as we do not believe that the <i>Health Records Act 2001</i> (Vic) provides sufficient protection or that information about a person's HIV status is in the same category as other medical records information. Privacy remains a key concern for people living with HIV/AIDS and <i>HIV Futures 4</i> (ARCSHS 2003, p.40) reveals that 55 percent of respondents reported that their HIV status had been disclosed without their permission, 29.8 percent in the last two years. It was also of concern that 18 percent nominated a worker in a health care setting as the source of this unauthorized disclosure. Being diagnosed with HIV also exposes a person to stigma and discrimination. Again, as <i>HIV Futures 4</i> (ARCSHS, 2003, pp.69-70) reveals, "PLWHA continue to receive less favorable treatment in many domains of their lives". On our reading of s.128 of the current <i>Health Act 1958</i>, the current privacy provision extends well beyond the area that would fall within the <i>Health Records Act (2001)</i> Vic, as it arguably captures any area relating to the provision of (goods and) services. We would support the continuation of the existing provision into the new public health Act.</p>	
188	<p>That the public health Act not retain the provision specifying that the court may be closed when evidence is presented concerning any matter related to human immunodeficiency virus and instead, courts rely on their general powers to hear evidence in a closed court.</p>	5.7

VICTORIAN AIDS COUNCIL SUBMISSION  
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Issue	Section reference
<p><b>Comment:</b> We do not support this recommendation. Given the information from <i>HIV Futures 4</i> (ARCSHS 2003) we have quoted earlier in this submission, we believe that the provisions of s.129 in the <i>Health Act 1958</i> should be continued in the new public health Act. While we accept that the decision about whether to close the court is ultimately one for the presiding officer, we do not support the recommendation to rely on the courts' general powers for two reasons. Firstly, the removal of a provision like s.129 from the new Act will signal to the courts that there is less reason now to need such a provision, a contention with which we would not agree. Secondly, reliance on the general power means that the solicitor acting for the person about whom HIV-related evidence might be led, or the presiding officer, must be aware of the potential social or economic consequences to a person if information about their HIV status is disclosed without the alert that is currently provided by s.129.</p>	
<p><b>Comment:</b> We support this recommendation.</p>	
203	5.9
<p>That a parent or guardian be required to notify the school if their child is infected or comes into contact with a person infected with a vaccine preventable or excludable infectious disease.</p>	
<p><b>Comment:</b> We support this recommendation. We can see no basis for continuing the requirement that parents must notify the school if their child is infected with, or comes into contact with HIV, hepatitis B or C, or hookworm.</p>	
218	6.2
<p>That the public health Act enable the Governor in Council to make regulations that would re-enact the provisions in Part 3 of the Health (Legionella) Regulations 2001 (Vic) (maintenance and testing of warm water systems).</p>	
<p><b>Comment:</b> We support this recommendation. We are aware of several occasions on which legionella counts above the allowable level have been detected in warm water systems in health providers' premises. While there have been no recorded cases of transmission to people with compromised immune systems, we support continued regulation in this area.</p>	