



Victorian Infectious Diseases Reference Laboratory (VIDRL)

WHO Collaborating Centres for Virus Reference and Research, and Biosafety



10 Wreckyn St
North Melbourne 3051
Victoria, Australia

Locked Bag 815
Carlton South 3053
Australia

Telephone
61-3-9342 2600
Facsimile
61-3-9342 2660
61-3-9342 2666

Email
vidrl@mh.org.au
Web

<http://www.vidrl.org.au>

ABN: 73 802 706 972

October 19, 2004

Dr Jacqueline Goodall
Legislation and Policy Officer
Legislation Review Unit
Public Health
Department of Human Services
12/120 Spencer Street
MELBOURNE VIC 3000

Please find below a response from VIDRL to the discussion paper "Review of the Health Act 1958: a new legislative framework for public health in Victoria". Dr David Leslie has assisted me in compiling this response.

Our comments are structured as responses to selected issues for comment from the list in Appendix 2 of the discussion paper. Numbering and section references are those from Appendix 2.

Issue	Section reference
58 Should emergency powers be general for 'public health emergencies' or be specific to infectious diseases?	7.8

Comment: There may be a delay of hours to days while the aetiology of an outbreak or CBR incident is determined. During this time a response needs to be initiated without fear of legislative restriction.

60 Should there be a fast-track mechanism for notifying a disease associated with a public health emergency?	7.8
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Comment: Yes. This already the case under group A notifiable diseases, which includes the category: 2 or more related cases of food or waterborne illness. This could be expanded to include other undiagnosed case clusters such as 2 or more related cases of encephalitis, Acute Flaccid Paralysis or undiagnosed severe respiratory illness.

At present there is some difficulty with notifying DHS of disease clusters that are not on the list, as among other things this potentially violates privacy legislation.

There also needs to be a mechanism for reporting certain non-urgent non-reportable disease clusters to allow investigation if considered appropriate by the department, without running into privacy issues.

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An example would be clusters of *M kansasii* infections due to a common source, as occurred in the Portland *M kansasii* outbreak, where the source was contamination of the cooling tower on the artesian bore supplying the reticulated water system.

Also on this issue, there are some gaps in the current Victoria notifiable diseases list: Any haemorrhagic fever, Chancroid (*H ducreyi*), Simian Herpes B virus, Hantaan virus, Hendravirus, Nipah virus and Histoplasmosis are a few that come to mind. Exotic infections that could potentially become established in local environments should also be considered, eg coccidioidomycosis, schistosomiasis

61 Should the Secretary be given powers in a public health emergency to compel examination, testing, vaccination, treatment (including preventative treatment), isolation and quarantine? 7.8

Comment: Yes.

63 Should compliance with demands from the Secretary during an emergency or outbreak of an infectious disease be specifically exempted from confidentiality? 7.8

Comment: No, except as a last resort that the department would be prepared to defend in court.

65 Should the new Act include a provision for cost recovery where a person: 7.9

- has been convicted of an offence?
- has contravened the Act, but there has been no conviction?
- has caused a risk to public health?

Comment: We note the use of the word "person" above. Could this not be expanded to any group, corporate body etc over the entire document?

Section 8

Control of infectious diseases. We agree with the statement made in 8.12 – There is no need for further regulation.

The basis for exempting the practices of medical practitioners, dentists, nurses, podiatrists, accredited pathology services and acupuncturists from registration appears to be that these professionals are trained in infection control and are regulated by professional bodies who regard poor infection control practices as unprofessional conduct. Providing an exemption for the practices of these health professionals avoids dual regulation. The rationale for these exemptions is sound and should be applied consistently to all health professionals who are:

- trained in infection control
- regulated by recognised professional bodies that would regard poor infection practices as unprofessional conduct.

80 Should an additional guiding principle for provisions in relation to the management and control of infectious diseases be that, wherever practicable, the least coercive power should be used first? 8.3

Comment: Yes.

81 Should the new Act clearly set out the action that may be taken when contact tracing is authorised and the protections provided to individuals that may be required to provide personal information under these provisions? 8.3

Comment: Yes.

82 Should the Secretary to the Department of Human Services have the power to authorise an autopsy where they believe there is a risk to public health and the Coroner does not have jurisdiction over the body? 8.3

Comment: Yes, or just as importantly but less invasively, to be able to order collection of diagnostic specimens from the deceased to provide a definitive diagnosis.

83 Should the new Act continue to outline the procedures for non-consensual testing orders where consent for testing has been refused? 8.4

Comment: Yes.

84 Should the new Act introduce a system for the authorisation of non-consensual testing where consent cannot be given to testing? 8.4

Comment: Yes This would need to be made consistent with existing powers of hospital CEOs, who are presumably acting on request of the senior medical officer attending the patient / custodian

85 Should the provisions in the new Act be extended to beyond the care giver or custodian situation and, if so, to what situations? 8.4

Comment: Perhaps this might be appropriate for highly contagious diseases such as TB, new influenza strains etc.

86 Should public health orders under the new Act apply to any infectious disease or condition where there is a serious risk to public health? 8.5

Comment: Yes – if the condition can apparently be readily transmitted unconsciously by the infected person, eg in the case of TB, smallpox, and other highly infectious respiratory spread conditions, including emerging infections such as SARS, HPAI, Hendra etc, and clusters of severe undiagnosed disease eg viral haemorrhagic fevers, encephalitides and dengue or malaria-like illnesses in a setting where suitable vectors exist

87 Should the new Act provide a power for involuntary testing with reasonable use of force? If so, should it be exercised by 'an authorised officer', a delegate of the Secretary and/or the police? 8.5

Comment: Yes.

88 Should the Act contain a list of the types of restrictions that may be imposed by an order of the Secretary? 8.5

Comment: Yes.

89 Should the new Act introduce a power to order that a person undergo treatment where treatment is refused? If so, what limits should be placed on the use of the power? 8.5

Comment: Yes, when effective treatment is available and will shorten the disease process and/or reduce the risk of transmission – this has existed for TB in the past.

92 Should there be a power for the police to apprehend a person who fails to comply with a public health order, rather than merely the ability to provide 'assistance' to the medical officer? If so, should there be a requirement to obtain a warrant to apprehend the person? 8.5

Comment: Yes – the "Typhoid Mary" case is a good example where incarceration was ultimately required. This is much less likely now with modern effective treatment and isolation techniques.

93 Should the new Act continue to provide that it is an offence for a person to fail to comply with an order? 8.5

Comment: Yes.

95 Should the new Act provide for introducing new notification requirements by an Order of the Governor in Council where it is necessary to respond quickly to new and emerging diseases? 8.6

Comment: Yes..

96 Should the new Act require that hospitals have processes in place to ensure that notification requirements under the Act are met? 8.6

Comment: Yes.

97 Should the term 'notifiable disease' be replaced with the term 'notifiable condition'? 8.6

Comment: No.

8.7.3

HIV testing

We feel that the high level of regulation of HIV testing has served the state very well and should not be changed. It has allowed very accurate incidence figures to be generated rapidly and has allowed avoidance of many of the testing problems seen in other countries.

- 102 Should the Act include a regulation-making power to ensure participation in current quality assurance programs and supply of data for epidemiological analyses by HIV testing laboratories? 8.7

Comment: No. We believe that current participation in quality assurance programs is satisfactory. The epidemiological data on risk categories supplied to testing laboratories by doctors is so fragmentary that regulation covering its transfer from the laboratories to DHS is not warranted.

8.8 Immunisation

- 108 Should the new Act provide for different forms of evidence of immunisation? If so, what should they be? 8.8

Comment: Need a central electronic record linked to Medicare number for Australian citizens/residents or passport nationality & number for non-residents. Access by Medical practitioner or other authorised person only. Hard copy reports to be provided to people on request.

- 111 Should the new Act facilitate consistency with the NHMRC schedule for immunisation? 8.8

Comment: Yes.

- 112 Should school principals and persons in charge of children's services be required to seek advice from the Department of Human Services before excluding children during an actual or suspected outbreak of an infectious disease? 8.9

Comment: This should be recommended, but not be considered mandatory, as there may be a need for urgent action by the principal in serious cases, eg closure of an entire class whilst investigation takes place.

- 113 Should there be a power in the new Act for the Secretary to waive or alter the prescribed periods in individual cases? 8.9

Comment: Yes.

- 114 Should the requirement for a parent to inform the principal or a person in charge of a school or children's services centre be limited to where their child has a vaccine preventable or excludable disease? 8.9

Comment: No – schools should be confidentially informed by parents of any serious communicable disease that may effect other students, eg TB

- 115 Should the new Act facilitate consistency with the NHMRC *Guidelines on the Recommended Minimum Periods of Exclusion from School, Preschool and Child Care Centres of Infectious Disease Cases and Contacts*? 8.9

Comment: As a guideline, but not proscriptively if a medical practitioner is prepared to advise safe return to school

117 Should public health risks related to rats, mice, vermin, 9.1 pests or other animals suspected of having a disease capable of transmission to humans be dealt with by the issue of an improvement notice?

Comment: Not always – there would be need for urgent action & mass rodent extermination if there was a local outbreak of cases of serious rodent transmitted disease such as plague or Hantaan.

The same applies to chickens / HPAI etc.

118 Should Parts 5A and 5B of the *Building Act 1993* be transferred to the new public health Act?

Comment: It would seem reasonable for the legislation to be simplified and combined under health, particularly as they are the first dept informed of Legionella cases.

I trust that this feedback is useful. Please contact me if additional clarification is required.

Yours sincerely



Dr Mike Catton
Director

CC: Dr David Leslie