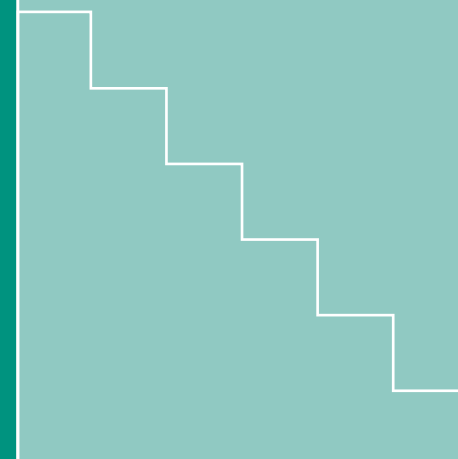


# New Public Health Act for Western Australia

A Précis



Department of Health, Western Australia

June 2005

# A New Public Health Act for WA

## A Précis

This document is a précis of the full Discussion Paper  
on a new legislative framework for public health  
in Western Australia

June 2005



Department of Health  
Government of Western Australia

## A New Public Health Act For WA

This Précis – or summary document – has been produced in order to present the concepts, arguments and proposals detailed in the full **Discussion Paper on a New Legislative Framework for Public Health in Western Australia** in a shorter and more accessible format for those stakeholders and interested parties who wish to gain an understanding of the issues without reading, or prior to reading, the full Discussion Paper. Nevertheless, it is recommended that those reading this Précis do so in conjunction with a copy of the Discussion Paper and refer to it as and when necessary for further information and clarification.

### Obtaining copies of the Discussion Paper

With this in mind, copies of the discussion paper can be obtained by any of the following methods:

- Accessing the website at: [www.newpublichealthact.health.wa.gov.au](http://www.newpublichealthact.health.wa.gov.au)
- Sending an email to: [newpublichealthact@health.wa.gov.au](mailto:newpublichealthact@health.wa.gov.au)
- Telephoning the Project Officer on (08) 9222 4431

### Further information

Further information on the proposed new Public Health Act for WA is available from:

Project Officer - New Public Health Act  
Department of Health (WA)  
Population Health  
189 Royal St.  
EAST PERTH WA 6004  
PH (08) 9222 4431  
Fax (08) 9222 4491

Mary Adam  
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PH (08) 9222 4365  
Fax (08) 9222 4491

Or

Department of Health (WA)  
Legal Services  
189 Royal St.  
EAST PERTH WA 6004

## Expressing your views and opinions

The Discussion Paper poses a number of questions and asks for responses from stakeholders and interested parties to all issues and questions raised or only those that interest you. Should you, in the course of reading this Précis, wish to submit a response, you must do so no later than 5.00 pm 30 September 2005

The Discussion Paper, and a template to assist in preparing submissions, can be found on the Department of Health WA website at: [www.newpublichealthact.health.wa.gov.au](http://www.newpublichealthact.health.wa.gov.au)

Please use the template to make your submission or to record your comments. Your completed template can either be:

Emailed to: [newpublichealthact@health.wa.gov.au](mailto:newpublichealthact@health.wa.gov.au)

Faxed from your computer or printed out and faxed to: (08) 9222 4491

Posted to:

Project Officer  
New Public Health Act  
Department of Health  
Population Health  
189 Royal St.  
EAST PERTH WA 6004

## Freedom of information

Unless marked private and confidential, all correspondence and submissions will be regarded as public documents and may be made available on the Department of Health (WA) website or be viewed by members of the public on request.

For current details of the Freedom of Information Act as it applies in Western Australia, visit [www.foi.wa.gov.au](http://www.foi.wa.gov.au)

**Note: Neither this Précis document nor the full Discussion Paper constitutes a government policy document.**

## SECTION 1 Executive summary

The people of Western Australia are currently subject to outdated health legislation embodied in the *Health Act* (WA) 1911.

The Discussion Paper on a New Legislative Framework for Public Health in Western Australia sets out the framework for a new Public Health Act (WA). It makes the point that the existing Act is so out of date that it can no longer provide adequate responses to new and emerging environmental health problems or to new threats from public health emergencies, possible epidemics or bioterrorism.

In 1911 antibiotics were unheard of. Penicillin wasn't discovered until 1928. The methods of transmission for many common diseases had not yet been determined. And of course such events as the onset of HIV/AIDS, Creutzfeldt-Jakob Disease, successful cancer treatments and the SARS epidemic were decades away. The existing Health Act does not contemplate these advances and emergent diseases, not does it adequately address the possibility of a terrorist attack involving sarin gas, anthrax or some other deadly substance.

The Discussion Paper also recognises the fact that old legislation can be inflexible, lacking the opportunities for shared goals and agreed outcomes not envisaged in a traditional approach, but a common feature of newer models of legislation. In particular, the Paper suggests options for a new approach to public health legislation that supports and augments contemporary public health practice. It suggests that new legislation in WA might adopt some key ideas that are current in public health thinking and practice in other states and territories of Australia, in New Zealand and in other jurisdictions.

### A fundamental change

Traditional health legislation is based on what is known as a 'command and control' approach governed largely by reaction with little or nothing in the way of proactivity.

Contemporary health legislation is largely based on a philosophy of minimising the risk to the public's health at every available opportunity. We now have a far greater understanding of what is (or may be), and what is not, a potential health hazard. The premise of a new health act is to incorporate this knowledge into contemporary legislation which also aims to cater for future and possible unknown risks to health

The change from reactive to proactive legislation may appear to be a relatively simple shift; it is certainly a desirable one. But, when placed within a 95 year timeframe – the span between 1911 and 2006 – it becomes a potentially hazardous transition during which entrenched traditions may have to be uprooted and discarded in favour of modern or even futuristic thinking.

Nevertheless, the Discussion Paper identifies this need for change as its core principal and describes the centrepiece of this approach as a proposed statutory duty, incumbent on all persons, to conduct all of their activities in a way that does not cause risk to the health of others. It states this duty as:

“A person must not undertake any activity that may result in harm to health unless the person takes all *reasonable and practical* measures to eliminate the possibility of that harm occurring.” Generally the duty and the offences relate to impacts on others or the public's health.

This duty is proposed to replace the current ‘nuisance and sanitation’ provisions that have been in place since the inception of public health legislation. The Discussion Paper envisages that the following elements could be put in place to support a ‘risk-based approach’ to the regulation of public health:

- A general duty to protect public health
- Orders to enforce the general duty
- Policies and guidelines spelling out compliance with the duty
- An offence of ‘causing a risk to health’

On the last point; the idea of a significant new penalty for persons who cause serious harm to the public's health is raised for discussion. This mirrors the approach taken in environmental protection legislation for those who cause environmental harm.

## Key priorities

The key priorities of a new health act are the protection of public health from adverse risks and the laying of a foundation to address the major causes of population ill health today, namely lifestyle factors such as poor diets, unhealthy consumption patterns, smoking, preventable injuries and inadequate physical activity.

The current treatment burdens on the health system as a result of unhealthy lifestyle and consumption behaviours are simply not sustainable. The prevention of modern chronic lifestyle-based causes of disease needs to be addressed if we are to achieve a sustainable healthy community.

A New Public Health Act is one of many responses needed to achieve this outcome.

## Public health accountability

It is proposed that a new Health Act would reflect modern approaches by incorporating a set of objects which will establish the extent and limits of public health responsibilities such as those involved in infectious disease control and public health emergencies.

Another important accountability issue is binding the Crown. This has been a long-standing issue in Western Australia and the Discussion Paper argues that the tradition of exempting the Crown or its agencies from the operation of its legislation is no longer tenable.

This means that new Public Health legislation will apply to indigenous communities previously excluded from its operation and will provide equal protection for all Western Australians.

## Conclusion

As is the case with discussion papers, the various options for change are raised as questions and responses are invited. No option is closed and all ideas are welcome. However, while the structure and details of a new Health Act will be the subject of discussion and debate, dramatic change has to be made. The *Health Act* 1911 and the earlier ideas on which it was based are now so old as to offer a model of control first drafted in a world before bacteria were known to exist. It is now quite inadequate to protect and promote the health of Western Australians. By contrast, the Discussion Paper offers a model for public health legislation in Western Australia that reflects leading ideas in Australia and elsewhere. It is one that can better deal with the new and existing public health issues of the new century.

## SECTION 2 Desired outcomes

It is important to establish what a new health act should strive to achieve and define the possible benefits to stakeholders who will quite naturally be asking the question “What’s in it for me?”

### Needs of local government

Local government needs effective and flexible mechanisms to undertake its role and to respond to community needs. Local government as the tier of government closest to the community is a key partner and protector of public health in the community. The existing Act does not meet these needs.

### Needs of the government and Minister

The government needs a more flexible, risk-management-based Act that will enable the Minister and government to effectively respond to emerging health risks, public health emergencies, and the prevention of disease, and which will benefit the state through a reduced burden of disease.

### Needs of health professionals

Public health officials need a modern, flexible risk-based Act as it is their primary means of adequately protecting and promoting the health of Western Australians. Health professionals in both local and state government, along with their professional bodies, have been advocating strongly for decades for a new Health Act.

## Needs of the community

People value their individual and community health above most other priorities.

The community needs and demands effective legislation that adequately protects public health and safety; legislation that is contemporary, relevant and represents world's best practice.

The Discussion Paper proposes new concepts and strategies which hope to address and meet the above needs and deliver the desired health outcomes for Western Australia.

## SECTION 3 Public Health Legislation

The Discussion Paper describes in some detail the history of the *Health Act* (WA) 1911 and reveals how it operates with a view of health that is now regarded as very narrow. By contrast, the World Health Organisation offers a wide view of health encompassing "physical, mental and social well-being" as well as disease and infirmity, now seen as a standard if optimistic definition of the term. The challenge for public health legislation will be to apply these broad ideas within a coherent and workable legislative framework.

Two key ideas emerge from this challenge.

- The first is a recognition that a range of activities and decisions that impact on the public's health and that these are reflected in decision making by other agencies applying legislation that is not regarded as public health legislation.
- The second is a recognition that decision making under health legislation also needs to reflect the fact that the term 'health' and therefore 'public health' is broad and that, to the biological aspect of public health, we must add questions of wellbeing and the social issues that impact on health, while also recognising that we must fit these new dimensions within a workable model of public health regulation.

The Discussion Paper goes on to investigate the role of a new health act in addressing public health and looks at health law reforms taking place in other Australian states and territories and overseas.

At the end of this section in the Paper, the first of many questions appears. These questions solicit responses from all stakeholders and interested parties and are reproduced in this Précis for that purpose.

Responses can be made to any or all questions, however responses to questions posed is requested to enable more consistent and meaningful analysis of community and stakeholder views. (Hence the submission template)

## Question

**Should the remit of a new Health Act be extended beyond its traditional focus of 'nuisance and sanitation' and the containment of infectious diseases to include health in its wider context, recognising perspectives such as those offered by the Ottawa Charter?**

**If so, how should a new Health Act formally support this widened idea of health?**

## SECTION 4 Public Health Administration

### The role of local government

Since the introduction of the very first Australian public health laws, now over 150 years ago, the same administrative structure of a split responsibility between central and local government has been retained. While public health responsibilities for both local and state governments have largely remained unchanged, the nature of local government itself has changed.

The Discussion Paper sees the partnership between local government and the state government in the administration of public health as continuing.

## Question

**The Discussion Paper envisages that the current dual responsibility for public health in Western Australia vested in local government and the state government will continue. Do you agree with this proposition?**

Western Australia does not have a clear statement of roles and functions for local government. The Discussion Paper cites a number of instances in other jurisdictions where the role of local government in the area of public health is defined in different ways. This section ends with the question:

## Question

**Should the public health powers, functions and responsibilities of local government be spelt out in a new Health Act in more detail than currently exists? If so, what should they be?**

### The role of the Minister of Health

Central, or state, responsibility for the administration of the *Health Act* (WA) 1911 is established by section 7 which provides that "the general administration of this Act shall be under the control of a Minister of the Crown."

This raises the issue of whether or not the Minister should have a direct and ongoing role in the administration of the Health Act, or should his or her responsibility be for its general administration. The Discussion Paper investigates a number of possible models.

### Question

- a) **Should the powers and responsibilities of the state (through the Minister or other central statutory office holders) be spelt out in a new Health Act in more detail than currently exists? In particular:**
- b) **Should the Act clearly make the Minister responsible for the general administration and operation of the Act?**
- c) **Should those responsibilities be spelt out in more detail than currently exists under section 7 of the Health Act (WA) 1911?**
- d) **Should the Minister's powers be constrained in any way to reinforce the independence of any other authority or statutory office holder specified in the Act?**
- e) **Should any direction given by the Minister to a statutory office holder be required to be in writing and/or subject to inclusion in the Health Department's Annual Report to Parliament?**

### The role of the Executive Director, Public Health

The Discussion Paper addresses the situation whereby a local government is unable or unwilling to undertake its statutory roles and draws attention to the current provisions in the *Health Act* 1911 which allow the Minister and the Executive Director, Public Health to make appointments and exercise powers if a local government fails to do so.

The role and powers of the Executive Director, Public Health are also discussed in some detail leading to the following question being asked.

### Question

**Should there be a formal process in a new Health Act for having the Executive Director, Public Health assume the public health responsibilities of a local government when exceptional circumstances require it? And, if so, should there be a formal process or inquiry prior to that occurring?**

## The Act should bind the Crown

The Discussion Paper agrees that good public policy should require the Crown to be bound by its legislation. In effect this means that the state government and its instrumentalities ought to be subject to the same legislation that affects ordinary citizens.

*“There is a strong case to argue that the Crown should be bound by all regulatory arrangements and it would be a disturbing loophole were a new Health Act to exclude agencies such as the Aboriginal Lands Trust and it would also erode the important principle that everyone should receive equal protection under the law. While the additional difficulties of compliance with sanitary requirements and removing risks to health should not be made light of, especially in remote areas, a blanket exception for owners of premises who happen to be part of the Crown is not acceptable and in 1994 it was recognised by the Environmental Health Legislation Review to be a problem that needed reviewing. It also runs counter to the current position which is to bind the Crown and its instrumentalities and agencies.”*

The Paper describes several ways in which binding the Crown could be achieved. The section ends with this question.

### Question

**Given that the Crown and its instrumentalities and agencies will be bound by a new Health Act, is there value in incorporating a public health equivalent of the staged environment improvement plans for areas, particularly remote areas or premises in remote areas, that cannot immediately comply with the requirements of new public health legislation?**

## Relationship to other Acts

It is proposed that a new Public Health Act is an important statute on its own right. It will be the ‘umbrella of ideas and values’ under which other public health laws might sit and to which they might be connected.

By necessity a new Public Health Act must make other links, alliances and connections with areas of legislation that impact significantly on the public’s health.

## Defining health and public health

The Discussion Paper suggests a number of definitions for ‘health’ and ‘public health’ and asks the question:

## Question

**Is there value in a new Health Act defining either 'health' or 'public health' and if so, what ideas would it include and how, if at all, might it advance the administration of the Act?**

## Principles and values

Principles and values – often known as objectives in an Act – set the tone for the administration of legislation and often provide the terms of reference for those administering it. They are rarely found in public health legislation but are common in other Acts. There is a strong case for new public health legislation to incorporate a set of objects that will direct the Act.

## Question

**Should a set of objects be placed in a new Health Act and, if so, what should they contain?**

## The powers of the Executive Director, Public Health and other office holders

The Discussion Paper describes the current situation in WA and other Australian jurisdictions and makes suggestions for possible changes in the powers exercised by the Executive Director, Public Health.

## Question

**Should the powers and duties of the principal public health office holder be spelt out (as in some other jurisdictions) in a general section of a new Health Act?**

**Comment is also sought on the following options:**

- a) The principal statutory office holder under a new Health Act should be the Commissioner of Health or the Director General of the Health Department.
- b) The principal statutory office holder under a new Health Act should be the person responsible for the day-to-day operation of the functions of the Department of Health, who may or may not be a registered medical practitioner.
- c) Principal statutory office holder under a new Health Act should continue to be the Executive Director, Public Health, a person who must be a registered medical practitioner to undertake statutory decisions and functions, with a person responsible for administering the policy and management functions of the Department potentially being a separate person.

## Formal committees

The Paper asks whether there should be the capacity to create formal committees and cites South Australia as the only jurisdiction to have established a committee to advise its ministerial, state and local government office holders.

### Question

- a) **Should a new Health Act incorporate statutory committees and, if so, which areas of its operation would be enhanced by the creation of a committee?**
- b) **Should committees only undertake advisory functions?**
- c) **Should there be a general power to create committees or should they specifically be named in a new Health Act?**

## Public health planning

A long-standing criticism of public health legislation, especially older legislation, is that it tends to be reactive. A problem is identified and a remedy is then sought to rectify the problem. This approach is rightly criticised as allowing no capacity for forward thinking or planning for a healthy environment where the risk of future hazards are reduced. The need to change the current approach and to create a regulatory system that is flexible and proactive and where health planning is undertaken is a theme of the Discussion Paper.

### Question

**Should a new Health Act provide for a planning process at the local government level? And, if so, how might it work and what might it achieve?**

## Environmental Health Officers and Medical Officers of Health

This section investigates the roles of Environmental Health Officers and Medical Officers of Health, questions the amount of scrutiny to which they are subjected and also discusses whether EHO's require certain qualifications.

### 'Authorised officers'

A range of issues addressing the human resource requirements for the provision of public health services is canvassed in the paper. For example skills, qualifications and training required, the need or not for appointment processes, use of professional review boards etc.

## Question

**Is the current method as provided for in the Health Act 1911 of specifying the qualifications of, and appointing, environmental health officers acceptable?**

**Should there be changes to either of these?**

**Is there a case for supervisory powers ie of the EDPH in relation to the appointment of environmental health officers and or authorised officers?**

**By what process should environmental health officers or authorised persons be qualified and appointed?**

**Is there a need to continue the Environmental Health Officers Professional Review Board, and if so, should it be given statutory powers?**

**Should a new Health Act contain a provision for authorised officers that accommodates changing workforce issues balanced with the professional competencies required to adequately protect public health and discharge the duties of the Act and subsidiary legislation? If so, how might this be achieved?**

**Should the appointment of a Medical Officer of Health continue as a statutory requirement in a new Health Act?**

## Paying for the costs of Public Health

The discussion paper outlines proposals for how public health services could be paid for namely through the Local Government Act for local government and/or a separate provision in the Health Act.

## Question

**Should a new Health Act allow for cost recovery in respect of orders and other statutory functions or actions that might lead up to them such as inspections? Alternatively, are the provisions of section 6.16 of the Local Government Act 1995 and section 344C of the Health Act 1911 to impose fees and charges sufficient to deal with this issue?**

## SECTION 5 Public health protection

This part of the Discussion Paper focuses on the core public health provisions currently in the *Health Act* 1911 which can be traced back to the first Health and Nuisance Removal Acts. Briefly, it presents the idea that the detailed sanitary provisions in the Act, in particular the term 'nuisance' and its associated provisions, should be replaced by a more generic idea based on 'risk to health' ie a risk based approach rather than a narrow nuisance based approach. This approach is proposed to be supported by a general duty to protect public health. *"A person must not undertake any activity that may result in harm to health, unless that person takes all reasonable and practical measures to eliminate the possibility of harm occurring."*

Generally the duty and the offences relate to impacts on others or the public's health.

The duty expressed in general terms such as this restates the function of public health acts, namely to prevent situations that pose a threat to human health. To assist in addressing any uncertainty in the scope and application of this duty it is suggested the duty be supported by policies and guidelines spelling out compliance with the duty and orders to enforce the duty as well as an offence of 'causing a risk to health'.

Effective protection of public health often requires prevention of risks to health before they occur. Often public health officials can identify an emerging risk before it fully impacts on health ie gradual decline in food premises resulting in an increased risk of food poisoning. However the legislation and abatement mechanisms have only enabled action once the risk has occurred and public health has been affected.

The discussion paper puts a case for requiring preventive action, in the form of a positive duty. The positive duty is relevant where persons undertake work that will prevent a public health problem from occurring and the order is requiring the person to undertake preventative work rather than remedial work. For example requiring the food handler to undertake some food handler-training course.

This is the cornerstone of a new approach using the idea of 'risk to public health' as a principle around which this part of a new Health Act will be organised.

### Question

- a) **Should a new statutory duty to protect public health replace the 'nuisance' provision as the general remedy for a new Health Act?**
- b) **Should a new statutory duty to protect public health impose positive obligations?**
- c) **How do you see the above being able to best protect the health of those who are incapable of achieving the duty themselves? i.e. the elderly, those with dementia or those whose houses may become uninhabitable or a health hazard to the occupier or those living near by?**
- d) **What should a new statutory duty to protect public health extend to and how should it be expressed?**

- e) Should a new Health Act allow for the issuing of guidelines or other advisory documents which are not mandatory but designed to assist persons to discharge their statutory duty of care?**
- f) Should a new Health Act allow for the prescribing of specific activities to which the statutory duty applies?**
- g) Are there aspects of the nuisance power that are important for public health but which are not covered by the proposed duty?**

## Ordering that the risk be removed - the abatement power

Once a nuisance has been identified, it follows that the local government or the Department of Health has the power to order that the person responsible for the problem deal with it in a specified manner. Traditionally this has been done through an 'abatement notice' exercisable by an environmental health officer which have limitations to remove and abate nuisances.

This section debates the need for an 'abatement power' in a new Health Act and suggests how and to whom it might apply.

## Question

- a) Should the abatement power allow a range of possible uses (as specified in the Discussion Paper)?**
- b) When should the abatement power be exercisable by the local Environmental Health Officer and when should it be exercisable by the local government authority?**
- c) Are the supporting provisions in the Health Act (WA) 1911, relating to dealing with nuisance and costs, adequate or should they be strengthened in a new Health Act?**

## The offence of causing a risk to health

This section discusses the possibility and appropriateness of creating an offence of 'causing a risk to health', how widely the offence might apply, what the penalties for such an offence might be, whether or not it should be incorporated into a new Health Act and what might constitute a legal defence for those charged with the offence of 'causing a risk to health'.

## Question

- a) **Should there be an offence of causing a risk to health? And, if so, should it differentiate between a 'Material risk to health' and a 'serious risk to health'?**
- b) **Should there be a defence?**
- c) **Should sentencing principles be part of a new Health Act and, if so, what should they be?**

## SECTION 6 Public Health Policies

The *Health Act* 1911 has approximately 50 sets of regulations dealing with a range of particular issues. Many of these can be repealed and many tend to reflect the language and concerns of earlier times. More significantly, many can be upgraded and converted into public health policies which will contain detailed provisions that might be required for specific areas of public health regulation.

This section describes current public health policies, compares them to policies in other areas such as environmental legislation, suggests a number of possible new/amended health policies including an interim policy for use in special circumstances.

## Question

**Should the new Health Act contain provision for Public Health Policies? If so, what formal process would you envisage in order to develop a Public Health Policy?**

## SECTION 7 Licensing

Licensing or registration currently exists in the *Health Act* 1911 for a series of specific places, products and activities regulated under the Act. These include lodging houses, eating houses, offensive trades, pesticides and the manufacture of therapeutic substances. There is a case to allow for the option of licensing in a new Health Act, although the licensing requirement to apply more generally to 'any activity which is declared to present a health risk' rather than in the specific ways it applies at present.

Since licensing or registration imposes some additional administrative burdens and costs on those required to be licensed, a need for licensing and a clear value flowing from it needs to be demonstrated.

This section of the Discussion Paper addresses these issues and asks the following questions:

## Question

- a) Do you agree with the concept of licensing as a mechanism to protect public health from specific risks and, if not, why not?
- b) If yes, what options and possible arrangements do you see by which licensing could possibly support the protection of public health?
- c) Should the specific licensing and registration provisions currently in the Health Act 1911 be replaced in a new Health Act with a power vested in the Minister to declare that specified activities that present a risk to public health should require a licence or registration?
- d) Should there be the potential for licensing at either/both state and local government level?

## SECTION 8 Local Laws

Local laws, as they relate to wider health legislation, form part of the Health Act 1911. The Discussion Paper raises the issue of to what extent local authorities should retain the power to create local laws under the new Public Health Act.

## Question

- a) Should local governments continue to make and administer local laws under a new Health Act?
- b) Should either the Minister or the Executive Director, Public Health retain their existing control over the making and repeal of local laws?
- c) Should a new Health Act allow for regulations that apply only to particular local governments?

## SECTION 9 Health Impact Assessment

In this section, the Discussion Paper cites various examples of what appear to be ‘non-health-related’ decisions which may have an impact on public health in the future such as the siting of a new factory or waste dump; the routing of a freeway or the desirability of a new fast-food restaurant.

The broad issue here is whether or not such decisions should be subject to health impact assessments and how such assessments might be carried out. The paper discusses the need for a possible inquiry power to ensure health impacts are adequately addressed if it is believed this has not been undertaken where needed or undertaken inadequately.

## Question

- a) In what way should a new Health Act help implement health impact assessments?
- b) Is there a case for an independent inquiry power in a new Health Act?
- c) Should the power to initiate an inquiry lie with the Minister or the Executive Director, Public Health or both?

## SECTION 10 Sustainability

This section of the Paper maintains that people form an integral part of the Earth's ecosystem and that their health is fundamentally interlinked with the total environment. Concerted action to achieve a sustainable, supportive environment for health is the challenge of our times. Good public health policy must make sustainability its key objective. The issues of global warming and the hazards of living on a planet that cannot sustain our lifestyles will rival all of the public health problems of earlier generations.

## Question

**Do you think that a new Health Act can integrate with, support and advance the state's 'sustainability strategy'? And, if so, in what way might it do this?**

## SECTION 11 The control of communicable diseases

This section of the Discussion Paper maintains that those parts of the *Health Act* 1911 that deal with the control of communicable diseases are out of date and do not relate to contemporary scenarios such as an outbreak of SARS or bird flu. It offers suggestions for more relevant legislation, discusses how new legislation might be administered and offers options for the management of communicable diseases

The Paper puts forward the idea of a progressively staged response to public health issues whereby the response must be consistent with, and not out of proportion to, the nature of the problem with the least intrusive power necessary being deployed.

This is referred to as proportionality. The discussion paper also proposes a better balance of individual rights and protection of public health, in particular more effective consideration of individual rights than the current Act provides

### Question

**Should there be over-arching principles under which the disease and emergency powers provision of a new Health Act operate? And, if so, should they be based on the general idea of proportionality?**

### Question

**Should there be a statement of rights and responsibilities in relation to communicable diseases in a new Health Act? And, if so, how should it be set out?**

Note: The Discussion Paper includes a suggestion for the wording of such a statement.

### Question

**Should notification of notifiable diseases follow the model discussed in the Paper? If not, what variations to the model would you suggest?**

### Question

**Should the framework envisaged here, notably the ‘staged process’ of examination, counseling, order making and detention or isolation –together with the ancillary powers –be implemented in a new Health Act?**

**If not, what model would you consider desirable or what variations to the particular issues set out above would you recommend?**

## SECTION 13 Behaviour placing others at risk

This section describes the act of taking part in behaviour which may place others at risk and how it is handled in various Australian jurisdictions. The debate centres largely around whether this should be a separate offence or whether it should be covered by the general offence of causing risk to health.

### Question

- a) **Should the act of placing another at risk through the transmission or possible transmission of a notifiable disease be part of the general ‘risk to health’ offence canvassed in the Discussion Paper?**
- b) **Should it remain a stand-alone offence?**
- c) **Are there other ways in which you believe this issue should be dealt with?**

## Question

**Do you agree with the framework for both protecting privacy and for dealing with personal information for public health purposes outlined in the framework? If not, what part of the framework do you disagree with and what do you think should be put in its place?**

## SECTION 15 Immunisation

Western Australia does not have a consistent or modern approach to immunisation. Current legislation covers only a short list of diseases and conditions. This section questions whether a new Health Act should include immunisation legislation and how it should be approached.

## Question

- a) Should a new Health Act have the power to incorporate the model immunisation provision advocated by the National Public Health Partnership either by way of a public health policy or by way of regulations made under the Act?**
- b) Should the Western Australian provision vary from the National Public Health Partnership model?**

## SECTION 16 Emergency powers and serious incidents

This section argues that emergency powers provisions designed specifically to combat outbreaks of influenza and tuberculosis are no longer relevant to today's issues which include disasters and the threat of bioterrorism. It suggests that certain elements of the emergency powers provisions should be reconsidered and that there should be a lesser power to deal with serious incidents not as dire as a public health emergency.

## Conclusion

The Discussion Paper concludes with a brief section on transitional arrangements and puts forward a model framework for a new Health Act.

The Discussion Paper poses a number of questions and asks for responses from stakeholders and interested parties. Should you, in the course of reading this Précis, wish to submit a response, you must do so no later than 5.00 pm 30 September 2005

Please see details at the beginning of this document relating to obtaining a copy of the Discussion Paper and how to submit your responses.