6. PUBLIC HEALTH LEGISLATION – DISCUSSION PAPER

Officer responsible	**Authors**
Director of Policy	Terence Moody, DDI 941-8834 Willis Heney DDI 941-8732

The purpose of this report is to review the proposals of the Ministry of Health to replace the Health Act 1956 and suggest submissions the Council may make on the proposals.

CONTEXT

The discussion paper entitled *Public Health Legislation – Promoting public health, preventing ill health and managing communicable diseases*, November 2002 puts forward proposals for a Public Health Bill to replace the Health Act 1956. The Minister of Health, in her Foreword, states this paper arises from decisions of the Government to develop a new Public Health Bill, as well as the matters included in a 1998 Ministry of Health discussion document on the same subject.

This Council made extensive submissions on the latter document in 1998.

The 1998 submissions were in addition to those made on *The Public Health Role of Local Government, Ministry of Health, June 1996* and repeated some of the points made in the latter case. These related to the need to have an overriding definition of 'public health' to include those matters contained in the generally accepted World Health Organisation definition.

In addition points were made about the role that local authorities play in dealing with social, economic and environmental determinants of health both through their service activities, eg water supplies and waste removal and treatment, and through policies related to other matters in the social and economic fields eg various policies such as youth, older persons, leisure and sports and job creation being some examples. In addition territorial authorities are currently responsible for various registration provisions of premises and activities included under regulations made under health legislation.

THIS DISCUSSION DOCUMENT

It is pointed out that Cabinet has already agreed to some elements of the proposed Bill as follows:

- The Bill will provide for a responsible Minister and functions.
- It will provide for the designation of public health services by the Director-General.
- It will enable effective management of all significant risks to public health that are not otherwise managed effectively.
- It will provide for an explicit methodology for assessing risks to public health and possible actions in response.
- It will provide that some activities and services with public health significance or risks must have 'activity consents' (or 'licences' to use present terminology).
- It will provide for what may happen in a public health emergency.

It is stated that Cabinet agreed in August and September 2001 to a general framework and some features for the new Public Health Bill that are currently being drafted. These include the above matters but will also make clear, in the case of overlap with other agencies and statutes where risks to public health may occur, what legislation takes precedence in particular situations and provide mechanisms for co-ordination. It will also provide for flexibility in which agencies at the local level deliver specific services through requirements for 'district protocols'.

The provisions in this current discussion paper would fit into the above general framework but it does not include details of organisation structures or roles or responsibilities of public health units or territorial authorities.

The discussion paper is relatively lengthy but is available on the Ministry of Health's website http://www.moh.govt.nz.

In this discussion paper the emphasis is largely on matters to do with the protection of the public health from the spread of communicable diseases. The paper proposes that, in regard to notification in particular, the term 'condition' should be used rather than 'disease'. It is argued that this broader concept would enable pre-clinical changes, syndromes, and post-disease abnormalities to be made the subject of notification. The intention is to include 'risk factors' in the definition. The point is made that the purpose of notification would be to enable public health action to be taken and this would normally be expressed in appropriate regulations.

It is proposed that notification criteria may be in two groups, the first related to conditions that must be notified to comply with international obligations such as those required by the World Health Organisation. The second group would relate to conditions that have one or more criteria such as the possibility of transference to other people, control of outbreaks, or the monitoring of health risk factors.

It is proposed to extend the list of persons who would be required to undertake notifications, in addition to a requirement for laboratory notification where appropriate. The main initial recipient of notification would be the Medical Officer of Health who would then determine whether other agencies, including local authorities should be notified. Details will be specified in regulations.

The discussion paper contains a chapter on promoting public health. This chapter includes matters relating to the promotion of well being and preventing ill health, and improving the health of populations. This recognises all factors that contribute to health, including housing, income, employment and educational opportunities, as well as immediate risk factors such as nutrition and smoking for example. The point is made that the primary causes of ill health such as communicable diseases and environmental sanitation have largely been dealt with through better housing, clean water supplies, and better waste (both liquid and solid) disposal, at least through a large part of New Zealand. Provisions will remain to cover these matters, however, in the Public Health Bill the question is asked whether the Bill should include provisions aimed at reducing morbidity from non-communicable diseases such as cardiovascular diseases, cancers, diabetes, respiratory diseases, and oral ill health. The suggestion is made that health impact assessment provisions be included to enable the health impact of policies from other than the health sector to be more properly considered.

To support the promotion of public health, covering the wider social, physical, and cultural determinants that influence health status it is suggested the Bill could have as one of its purposes as the following:

> *Promote public health and reduce preventable ill health from communicable and non-communicable diseases and accidental injury through recognition of the principles of the Ottawa Charter, and in particular by:*
>
> *(a) creating supportive social, physical and cultural environments for health.*
>
> *(b) ensuring that information on factors relevant to social, physical and cultural environments for health is available.*
>
> *(c) empowering regulations relevant to products, services, facilities and other things associated with risk factors for ill health and accidental injury.*

It is intended that the Bill would make it clear that these purposes would only be undertaken through collaboration with other agencies. The point is made that a number of agencies including local authorities have responsibility for the factors relevant to the social, physical and cultural environments.

The chapter on preventing ill health and promoting child health discusses the matters of immunisation and screening for managing communicable conditions (using this term to cover diseases among other matters). It is intended that the Bill would contain provisions to empower regulations to establish registers, which could include some presently in place, eg the Cervical Screening Register and the National Immunisation Register but also others under general provisions. The Bill would clarify the relationship of the Official Information Act 1982 to such registers and limits on disclosure of information.

The issues of care, management and compulsory powers are contained in chapter 7. This section deals with the problems posed by persons with a communicable condition that may pose a risk to other people as well as what are currently provisions under the Health Act 1956 to deal with 'aged, infirm, incurable or destitute' persons living in insanitary conditions or without proper care or attention.

It is proposed to carry forward a similar provision into the new Bill as it has been useful in obtaining agency co-operation in the past, despite having been used infrequently to its full extent. There is at least one high profile case of a person being held in a secure facility to preclude the possibility of spread of a communicable condition and it is considered the Bill should retain provisions to deal with cases such as these. It is accepted that any of these restrict individual freedom but can be justified on the basis of protecting the wider public health and effects on a larger number of the community.

These powers would only be applied when the individual refuses or is unable to fulfil reasonable criteria of treatment and restrictions on activities that may lead to the spread of disease.

The paper suggests that it may be possible to develop two lists of conditions to which compulsory powers could be used. The first list would contain conditions that would be quarantinable under World Health Organisation regulations plus communicable conditions that could provide a significant risk to people due to its means of transmission and effects. The second list would specify high-risk infections such as tuberculosis and HIV, for example.

The more coercive powers, such as detention for example, would be available for the more serious condition and would require a court order. The suggestion is made that such orders should be made in the Family Court as this has experience in the difficult ethical issues that arise in public health, as they are experienced in administering the mental health legislation.

Chapter 8 covers the issue of contact tracing which relates to the identification of people who have been in contact with a person with a communicable disease to enable control of the spread of the disease in the community. This latter can be by providing diagnosis, treatment, or preventive measures. It also provides for the identification of 'carriers', ie those who have the infectious agent but may not have symptoms. There are significant privacy and confidentiality issues involved in this area but in some cases the risk to others can be sufficient to accept some legislative controls and requirements subject to reasonable safeguards.

The final chapter deals with border health protection. It is pointed out that this concept is somewhat wider than the traditional quarantine as it includes controls before, as well as after a person has entered a country. It is appreciated that border protection legislation is administered by a number of agencies such as Customs and Ministry of Agriculture and Forestry, as well as immigration authorities but in many cases these may also operate to provide human health protection. Some of the latter may have been introduced to protect animal and plant health but can limit the possibility of human health effects.

The paper points to the changes that have occurred in the speed of travel since quarantine provisions were included in the current health legislation and many other communicable diseases are not currently caught up in this process at the border. The emergence of diseases new to the country or those that may have major public health significance possibly need to be captured in this process, not least from the point of being able to provide for treatment of those suffering from the disease.

There are also concerns that controls are limited in regard to the introduction of some animals, vectors, organisms or other pathogens capable of posing a risk to human health that may be introduced on international craft and be capable of being carried by humans, animals, vehicles or goods.

The proposal is to include a wider range of communicable conditions, with the internationally 'quarantinable' diseases within this provision. There would be provisions for notification by the carrier or passenger of such conditions. These would be then dealt with in the same way as persons with such communicable conditions would be if they had occurred within the country.

It is suggested that provisions will be made to deal with public heath emergency situations, which may require more restrictive powers than would apply under normal circumstances. Similarly it may be that provisions will be included to control importation of goods or organisms that may have public health significance but may not be caught up by other legislation such as the Biosecurity Act or the Hazardous Substances and New Organisms Act. For example, currently regulations, under the Health Act 1956, exist to control the importation of hairbrushes to control anthrax for example.

CONCLUSIONS

While the subject of preventing communicable diseases is of importance to Christchurch City in operational terms in recent years there has been a limited amount of involvement with the investigation of such cases that may occur. As the suggested provisions of the Bill have been spread over two discussion documents it will not be until the Bill is finally put before Parliament that the full impact will be known. At that time it will be possible to more fully consider the implications for this Council.

However, the attached brief submissions have been prepared as representing the views of the Council in regard to the protection of the public health of the City.

Recommendation: That the attached submission be forwarded to the Ministry of Health.