

# Departmental Disclosure Statement

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Health Protection Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9 July 2014

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## Part One: General Policy Statement

The Health Protection Amendment Bill gives effect to the Government's decision in October 2013 to improve the range of measures available to protect the public from the harm associated with some infectious diseases and artificial UV tanning.

The Bill introduces measures to support 3 areas of public health practice to further protect the public from risks associated with the spread of infectious diseases of significant concern.

The first area relates to the tracing of people who may have an infectious disease, or may have been exposed to one. This is known as contact tracing. Moving from the current reliance on voluntary involvement, specific measures on contact tracing will improve the ability of public health staff to identify, isolate, and test the sources of infectious diseases in the community. Where voluntary consent is not gained, the Bill introduces a duty on a person who may have an infectious disease, or may have been exposed to one, to provide prescribed contact information. The Bill also places a duty on public health staff to keep patient and contact information private to the fullest extent possible. An offence is introduced for failing to provide the prescribed contact information. There is a fine upon conviction of not more than \$2,000 and convictions can be appealed. The practice of seeking voluntary consent for contact tracing will remain the preferred first option.

In the second area, the Bill increases the range of infectious diseases that are "notifiable", thereby improving surveillance on infectious diseases of concern because of their long-term impact on health. The Bill makes gonorrhoeal infection, Human Immunodeficiency Virus (HIV) infection, and syphilis notifiable infectious diseases. This will improve the availability of information on the rates and prevalence of these diseases in the community. The Bill also makes new provisions for the notification of cases of these 3 diseases without disclosing information that identifies the individual with the infection. Measures to protect the identity of individuals are being introduced to allay concerns that people may not seek treatment if they believe their identity will be made public. The provisions for non-identifying notification do, however, place a duty on the notifying medical practitioner to provide identifying information to a medical officer of health if the medical officer needs to take measures to prevent the further spread of disease.

In the third area, the Bill provides a series of incremental options for the management of individuals with significant infectious diseases whose behaviour puts other people at risk of contracting a disease. Additional management provisions have been developed within a human rights framework, using principles of risk management and proportionality. The Bill places as few restrictions as possible on the person concerned while, at the same time, meeting public health objectives. The measures provide better tools for public health staff to deal with people with infectious diseases who, for whatever reason, do not voluntarily seek treatment or modify behaviour, thereby creating a public health risk. Where consent is not given (a minority of cases), the current legislation allows only for the detention of the infected person. Provisions in the Bill cover rights, duties, offences, penalties, a range of restrictive powers and procedures for directions, court orders and urgent orders for people whose behaviour may place others at risk. Powers at the lesser end of the range (directions), are able to be exercised by a medical officer of health. These are community level measures, and may include directing people to seek testing, treatment, or counselling, or may involve directing people not to attend public places for specified periods of time. The lack of such intermediate powers has been identified as a weakness in the current legislation. More restrictive powers (for example, detention) can only be exercised following a public health order made by a court. Considered higher level, court orders may involve

extending directions or applying new measures of a more serious nature. Where urgent action is required to take measures to protect public health, an urgent public health order detaining an individual for up to 72 hours can be issued by a medical officer of health with immediate effect. Directions and orders are time limited and subject to review and appeal. The Bill creates offences for failing to comply with directions and orders. Penalties are limited to a fine upon summary conviction of not more than \$2,000, and convictions can be appealed. However, voluntary consent for treatment and the modification of risky behaviour will remain the preferred approach for managing infection risk.

The Bill also introduces a ban on the commercial provision of artificial UV tanning services to people under 18 years of age. It has been shown that voluntary compliance with guidelines on the provision of commercial UV tanning services is low and is improving only slightly over time. Artificial UV tanning is associated with an increased risk of developing skin cancer and evidence shows that younger people are more vulnerable to this risk.

Finally, the Bill makes a number of administrative changes that will streamline legislation, most notably the inclusion of tuberculosis as a notifiable infectious disease under the Health Act 1956, allowing the repeal of the Tuberculosis Act 1948.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p><b>Artificial UV tanning devices</b></p> <p>Joint Australia/New Zealand Standard AS/NZS 2635:2008 <i>Solaria for cosmetic purposes</i> (the joint Standard) (voluntary standard) (accessible via Google search)</p> <p>Consumer NZ Survey on sunbed use (accessible at <a href="http://www.consumer.org.nz/reports/sunbeds">http://www.consumer.org.nz/reports/sunbeds</a> )</p> <p>Monitoring and Advisory Services NZ Ltd guidelines on sunbed use (accessible at <a href="http://www.emfservices.co.nz/resources/uv-and-sunbeds">http://www.emfservices.co.nz/resources/uv-and-sunbeds</a> )</p> <p><b>Infectious diseases</b></p> <p>Public Health Bill, as reported from the Health Committee, 26 June 2008 (Bill 177–2)</p> <p><a href="http://www.parliament.nz/en-nz/pb/sc/documents/reports/48DBSCH_SCR4091_1/public-health-Bill-177-2">http://www.parliament.nz/en-nz/pb/sc/documents/reports/48DBSCH_SCR4091_1/public-health-Bill-177-2</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>RIS: Reducing public harm from devices that artificially tan the skin through the use of UV light: Ministry of Health, September 2013</p> <p>RIS: Improving the management of infectious diseases in the community: Proposed Health (Health Protection) Amendment Bill 2013: Ministry of Health, October 2013</p> <p>Both RISs are accessible at <a href="http://health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/proposed-health-protection-amendment-bill">http://health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/proposed-health-protection-amendment-bill</a>.</p> <p>They can also be found and downloaded at:</p> <p><a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p>	
<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
<p>The Regulatory Impact Analysis Team (RIAT) based in Treasury reviewed the RIS on artificial UV tanning services prepared by the Ministry of Health. RIAT considered that the information and analysis summarised in the RIS partially met the quality assurance criteria. Consultation on the size of the problem and the proposed options was limited to a small number of solarium operators and did not involve the general public, young people or other interested groups.</p> <p>RIAT indicated that the RIS on the management of infectious diseases did not meet the threshold which necessitated review by RIAT. The RIS was reviewed internally by the Papers and Regulatory Committee of the Ministry of Health.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
See RISs cited in 2.3 above, at pp. 9 – 22 and pp. 12 – 14 respectively.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>Although the Solaria industry has claimed compliance already with the joint voluntary standard related to artificial tanning devices, evidence suggests compliance is still low. Therefore, there may be some business impacts in implementing the ban on the supply of UV tanning services to people aged under 18 years, subject to the number of clients who are in this age group. This impact has not been quantified by the industry.</p> <p>Assessment of compliance will be added to the regular audit visits by regulating agencies to artificial tanning businesses, at minimal extra cost.</p> <p>The notification requirements for infectious diseases are expected to cause only minor additional work as part of usual reporting requirements and compliance is not anticipated to be a problem. While there will be some increased regulator effort associated with seeking court orders or in prosecuting people who fail to supply requested contact information, the very low numbers of expected cases and reduced treatment costs will moderate the overall cost impacts.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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Relevant international obligations are the commitments New Zealand has made as a party to the Universal Declaration of Human Rights, the United Nations Convention on the Rights of the Child, and the International Covenant on Economic, Cultural and Social Rights. Those instruments are designed to protect people from harm, breaches of rights and unjustifiable discrimination, and to ensure that governments advance policies and systems which ensure people's right to health.

Although the RIS analyses do not comment specifically in relation to these instruments, account has been taken of:

- evidence of harm (eg the increased health risk for younger people from UV exposure, leading to justifiable age-based proposals on artificial UV tanning services)
- protection of individual rights and freedoms, and rights to good health, in the development of the recommended policy proposals on infectious diseases (such as privacy/confidentiality measures; and least restrictive measures to protect people's health against the risk of infection posed by the behaviour of others).

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Analyses for RIS preparation and Cabinet paper drafting concluded that there were no Treaty of Waitangi implications.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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YES

The provisions on infectious diseases in the Bill reflect earlier provisions in the Public Health Bill, for which BORA consultation was undertaken with Justice in 2007.

The Ministry of Justice has advised in 2014 that on balance, the proposals represent justifiable limitations on rights and freedoms under the Bill of Rights Act 1990, given the importance of protecting the public from significant infectious diseases and the safeguards provided.

Advice provided to the Attorney-General by the Crown Law Office, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/Bill-of-rights/>

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p><b>Offences or penalties</b></p> <p>The Bill introduces offences for failing to comply with an infectious disease direction (cl 92O<sup>1</sup>), failing to comply with a public health order (cl 92ZM), failing to provide contact tracing information (92ZY) and for providing UV tanning services to a person under the age of 18 years (cl 114).</p> <p>In all cases, a person committing an offence under the Bill is liable on summary conviction to a fine not exceeding \$2,000, or in the case of clause 92ZM, an individual convicted of an offence may be liable to a term of imprisonment not exceeding six months.</p> <p>In the case of the offence for providing UV tanning services to a person under the age of 18 years, a body corporate is liable on summary conviction to a fine not exceeding \$10,000 (cl 114).</p> <p>A person or a body corporate has a defence against the charge of providing UV tanning services to a person under the age of 18 years if they can prove that an evidence of age document was provided prior to the service being provided and that there were reasonable grounds to believe that document was approved, related to the person receiving the service, and provided evidence that the person receiving the service was over the age of 18 years (cl 114). (See also section 4.4 below: 'Strict liability or reversal of the usual burden of proof for offences').</p> <p>However, the Bill allows for a healthcare provider (eg, a District Health Board) to administer therapeutic treatment from a UV-emitting device to a person younger than 18 years for the purposes of medical treatment prescribed by a medical practitioner without committing an offence (cl 114).</p> <p><b>Jurisdiction of a court or tribunal</b></p> <p>Infectious disease directions may be made by a medical officer of health and must specify a time limit not exceeding six months in duration (cl 92J). Directions may be appealed to the District Court (cl 92N). The District Court may confirm, vary, or cancel a direction (cl 92N).</p> <p>Public health orders may be made by the District Court (cl 92Q), on application by a medical officer of health. Orders must specify a time limit not exceeding six months in duration (cl 92T). Both the individual subject to an order and the medical officer of health may appeal the District Court decision to the High Court (cl 92ZJ).</p> <p>A person who has an infectious disease, or may have been exposed to one, has a duty to provide information about the people they have been in contact with and the circumstances in which they believe they contracted, or were exposed to, the infectious disease (cl 92ZR). The information the person may be required to provide is specified (cl 92ZR). The contact tracer collecting the information must not, as far as is practicable, disclose the identity of the infected person when dealing with the person's contacts (cl 92ZV).</p> <p>In the event of any breach of confidentiality, medical practitioners' conduct is regulated under the Health Practitioners Competence Assurance Act 2003, which provides a complaints and conduct review protection or under the Health and Disability Commissioner Act 1994, via the Code of Health and Disability Services Consumers' Rights.</p>	

<sup>1</sup> Clause references are correct as at the time of writing (9/7/14) per version 2.0 of the draft Bill, but may differ from the Bill as introduced.



<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
A review of offences and penalties was undertaken by the Ministry of Justice, which expressed no concerns with the compliance and enforcement provisions of the Bill.	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p><b>Notification of infectious diseases</b></p> <p>Clause 13(3) creates a new Section C in Schedule 1, Part 1, of the Act. The new section C will list <i>infectious diseases notifiable to medical officer health on a non-identifiable basis</i> and will list Human Immunodeficiency Virus (HIV) infection, Gonorrhoeal infection, Syphilis, and Acquired Immune Deficiency Syndrome (AIDS).</p> <p>Clause 13(4) will delete the diseases to be listed in the new section C from other parts of Schedule 1.</p> <p>Clause 5 amends section 74 of the Act so that medical practitioners must not disclose identifying details of a patient or deceased person if the disease being notified is listed in the new section C. However, Clause 5 also requires the notifying medical practitioner to disclose identifying details to the medical officer of health if this is necessary for an effective public health response.</p> <p>Clause 6 amends section 74AA of the Act so that medical laboratories must not disclose identifying details of a person who may have an infectious disease if the disease is one listed in the new section C. However, Clause 6 also requires the medical laboratory to disclose identifying details to the medical officer of health if this is necessary for an effective public health response.</p> <p><b>Contact tracing</b></p> <p>Clause 92ZR places a duty on a person who may have, or have been exposed to, an infectious disease to provide information about those people with whom they have been in contact and the circumstances in which they believe they contracted or may have spread the infectious disease. The information that may be required is specified and an offence is created for failing to provide information.</p> <p>Clause 92ZV places a duty on the medical officer of health, as far as practicable, not to disclose the identity of the person who may have an infectious disease to that person's contacts.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
The Office of the Privacy Commissioner indicated in September 2013 that it did not oppose any of the provisions in the proposed Bill.	

## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The UV tanning proposals for the Bill received targeted consultation with a selection of solarium operators in 2013, the majority of whom recorded either support for or no opposition to the proposal to ban the commercial provision of UV tanning services to people under 18 years of age.</p> <p>The infectious disease provisions in the Bill have been subject to public consultation from 2001 to 2007 as part of the development of the Public Health Bill. Also, these provisions were extensively consulted on by the Health Select Committee in 2008 during its consideration of the Public Health Bill.</p> <p>Limited consultation occurred in 2013 with Medical Officers of Health through the Public Health Clinical Network, on the continued relevance and workability of the proposals on infectious diseases. (Wider consultation had occurred in 2007-8 during Health Committee consideration of the Public Health Bill.) The Public Health Clinical Network indicated the continuing need for, and the relevance and practicality of, the proposals to improve the management of infectious diseases.</p> <p>An earlier draft of this Bill received targeted consultation during March 2013 with experienced medical officers of health nominated by the Public Health Clinical Network. The medical officers of health considered the practicality on the ground of the proposals and made a number of suggestions to improve the implementation of the legislation.</p>	

## Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Ministry of Education was consulted on powers to make school closures.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>YES</b>
<p>The relevant provisions are in Clause 12 (114). The proposed new controls make the provision of commercial artificial UV tanning services to those aged under 18 years an offence. This is a strict liability offence. The offence would apply to the owner of the business as well as to staff who undertake the supply of services.</p> <p>However, there is a defence for sellers/suppliers, if they can show that the contravention occurred without their knowledge and that they took reasonable precautions and exercised due diligence to prevent the contravention (eg if they can prove that an evidence of age document was provided prior to the service being provided and that there were reasonable grounds to believe that document was approved, related to the person receiving the service, and provided evidence that the person receiving the service was over the age of 18 years).</p> <p>The reversal of the burden of proof is necessary because the defendant is in the best position to demonstrate why they were not at fault, and proof of this would not impose an undue burden on the defendant.</p> <p>The penalty for any offence is a fine of not more than \$2,000 in the case of an individual, or not more than \$10,000 in the case of a body corporate. This provision is consistent with the offence provisions under the Sale and Supply of Alcohol Act 2012.</p>	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
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Under Clause 92E or 92G, a medical officer of health may give one or more directions to a person with an infectious disease, or their contacts (cl 92F), if the medical officer of health judges that there is a risk that the person might spread the disease. These directions must not exceed six months in duration (cl 92J). The person given directions may appeal to the District Court, and that Court may confirm, vary or cancel the direction (cl 92N).

Failure to comply with a direction is an offence, liable on summary conviction to a fine not exceeding \$2,000 (cl 92O).

Under Clause 92Q, the District Court may make public health orders in respect of a person who has an infectious disease if the Court Judge hearing the application is satisfied that there is a risk that the person might spread the disease. Clause 92ZA also provides for court orders for contacts of people with an infectious disease. These orders must not exceed six months in duration (92T), except that an urgent public health order under Cl 92W has effect only for 72 hours. The medical officer of health or the person in respect of whom the order is made may appeal to the High Court against the decision of the District Court (92ZJ), and there is a further right of appeal to the Court of Appeal (92ZK).

Failure to comply with a public health order is an offence, liable on summary conviction to a fine not exceeding \$2,000 (cl 92ZM).

While clearly significant in terms of an impact on rights and interests, the provisions on directions or orders are justifiable, given public interest in protection from the risk of serious infectious diseases. This is confirmed by the views of the Ministry of Justice on compliance of the proposals with the New Zealand Bill of Rights Act 1990 and their vetting in 2007 of the Public Health Bill and in their 2014 review of the Health Protection Amendment Bill.

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
Clause 8 amends the regulation making provisions of Section 117 of the Health Act to provide for the making of regulations on the management of persons with infectious diseases and their contacts, including the power of the medical officer of health to give directions and the power of the Family Court to make public health orders (Cl 8 (1) (da)); and the identification of, and communication with, contacts of persons with infectious diseases (Cl 8 (2) (ha)). These regulations, necessary for implementation, will be made through amendments to the Health (Infectious and Notifiable Diseases) Regulations 1966.	

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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