

# Legal responsibilities in relation to HIV and viral hepatitis

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**Note:** This chapter refers to a number of key Australian laws and policies relating to privacy, confidentiality and duty of care including a summary of leading legal cases. Although addressing some important questions, this information does not constitute legal advice. Practitioners who are uncertain about their statutory or common law obligations to patients or to the local Health Department, including privacy and reporting obligations, are strongly advised to contact their local health department, applicable privacy office or seek independent legal advice.

## Introduction

While special issues arise concerning the treatment of people who may have the human immunodeficiency virus (HIV) or hepatitis infection, or are suspected of having the infection, for the most part those laws that pertain to the treatment of any patient also apply to these patients. This chapter will, where relevant, pass very briefly over those areas of law that deal with the treatment of patients generally and focus particularly on what is required of health care practitioners regarding HIV, hepatitis B virus (HBV) and hepatitis C virus (HCV), diseases that are of greater social sensitivity.

Each State and Territory's body of law deals with this area differently. In most cases the differences are a matter of degree. Occasionally the differences are significant. Table 14.1 summarises these laws as they apply in each State and Territory. It is useful in guiding health care practitioners as to their responsibilities to patients and in informing the content of counselling.

## Provision of information to the patient

Normally given the misnomer of 'informed consent', the provision of information, and the exchange of information between a health care provider and a patient, is a key element in any treatment or procedure. When this is done well it allows the health care practitioner to discuss the risks and benefits of any treatment or procedure and the patient to consider these risks and benefits in the light of his or her circumstances. These discussions may be concluded in the course of a single consultation or

may need to take place over the course of several consultations. The aim of such discussion is to enable the patient to consider the information that is provided in order to facilitate his or her decision-making. The result may be patient consent to the treatment or procedure, refusal or some other negotiated outcome. It is no longer possible to assert that the view of the health care provider should take precedence.

In many jurisdictions testing for HIV is subject to additional laws. These laws were drafted for a number of reasons. During the early 1980s, many health care practitioners in Australia were ill informed about HIV and responsible for poor treatment of those suspected of being HIV positive. A proliferation of horror stories from those people who had suffered at the hands of their practitioners in both surgery and hospital settings emerged. There was no treatment. Testing was often undertaken solely to prevent transmission to others. Testing was not necessarily in the interests of the patient, who would in all likelihood suffer from discriminatory behaviour. These circumstances indicated that legislative intervention was required. This testing regimen was called 'voluntary counselling and testing' (VCT).

The 2006 National HIV Testing Policy and 2007 National Hepatitis C Testing Policy highlight pre-test and post-test discussions as integral components of the testing process. Once a result is known, the patient is to be informed in person and a discussion must take place which includes, amongst other matters, how to prevent placing others at risk or (in the case of a negative result) how to maintain a negative status (Chapter 9).

It is incumbent on a health care practitioner to advise a person who is found to be infected of what the law may demand of him or her. For example, in some jurisdictions the law requires that a person disclose his or her status to a potential sexual partner. There are prohibitions on giving blood. In Western Australia if a person is found to have an infectious disease they commit an offence if they are engaged or employed in the handling, or packaging of food. In addition a person commits an offence if they allow a person

with an infectious disease to make clothing items on their premises. The table at the end of this chapter describes such obligations as they apply in each State and Territory.

## Confidentiality

Health practitioners will be well aware of their duty to maintain the confidentiality of their patients. The reasons for this are clearly understood and relate, at the individual level, to the creation of a climate of trust between the health care practitioner and the patient, and at the population level to the protection of public health. If people believe that their trust will be betrayed they will be less likely to seek attention, and this may have an impact on the general health of the community. This duty is now reinforced by Commonwealth and State privacy laws.

There are also health specific laws requiring that medical practitioners not disclose any information regarding a person who has tested positive to an infectious disease.

In the ACT, NSW and Tasmania, disclosure of private information regarding infectious diseases is an offence, and in South Australia such disclosure attracts civil liability. Victorian legislation does not make disclosure a crime, but instead requires that medical practitioners and other people involved in the testing of HIV have appropriate systems in place for protecting the privacy of persons tested for HIV.

The duty to preserve privacy and confidentiality is complicated by a different, and at times contradictory, legislation. The first is ordinary notification to government of instances of HBV, HCV and HIV. The second is that further follow-up may be required where it is feared a patient is actively placing others at risk. Ordinary notification of infectious disease is necessary for the purposes of identifying risk factors, monitoring outbreaks, service planning, implementation and evaluation, and in some cases enabling contact tracing. Such information may also be used in research.

## Notification of Third Parties

Health care practitioners may become aware a patient has placed one or more people at risk of contracting HIV, HBV or HCV. In such instances the health care practitioner may wish to encourage the patient to discuss the matter with those who may be at risk of infection. Alternatively, the health care practitioner may advise that the patient bring his or her partner/s or contact/s in so they may be counselled. This will raise particular difficulties where, for example, a woman has been diagnosed with HIV infection and lives in a situation where she is exposed to violence from her partner.

There will be the occasional patient whom the health care practitioner sincerely believes may

have transmitted the infection to others and who refuses to cooperate. In such cases, depending on the jurisdiction, there may not be an immediate legal obligation to notify, however, the practitioner will need to weigh the relative moral issues. In the very rare instance where the practitioner believes his or her patient is intentionally placing others at risk, the obligation to notify becomes more compelling.

The case of *BT v Oei* [1999] NSWSC 1082 examined whether a medical practitioner owes a duty of care to the spouse of his or her patient. Dr Oei had not ordered an HIV test for AT, his patient. BT argued that Dr Oei, by virtue of his specialist training and knowledge, should have known that given AT's history and symptoms, AT was at risk of having HIV infection. This being so, it was reasonably foreseeable that AT, if HIV positive, would transmit the virus to sexual partners. After an extensive consideration of Australian and international law, the judge found that, had AT been appropriately counselled, he would have had a test for HIV which would have shown he had contracted HIV. Had AT been counselled properly, he would have understood the need to protect his partner from risk of infection. The couple would not then have engaged in unprotected sexual relations. The judge concluded that the doctor's negligent failure to properly advise AT with respect to a possible diagnosis of HIV and the need for an antibody test materially contributed to BT's infection with the virus.

Another recent judgement, *PD v Dr Nicholas Harvey & 1 Ors* [2003] NSWSC 487, reinforces this point. A couple attended a general practitioner together for pre-marital counselling and sexually transmitted infection (STI) screening. The man was found to be HIV positive. When he was given the result, he was referred to a specialist HIV clinic. When the woman rang, having ascertained that she was HIV negative, she asked about the man's result. She was told she could not be given the man's result without his consent. He told her his result was negative; they had unprotected intercourse, and she became HIV positive. She sued the doctors involved. The judge supported the doctors' observance of their duty not to disclose the man's result to the woman without his consent. However, having ascertained that the man had not told the woman his result, and that he did not attend the specialist clinic, the judge found the doctors were in breach of their statutory duty under the Public Health Act 1991 (NSW) to notify the Director-General of Health that an HIV-positive patient was placing another individual at risk. Under that Act the Health Department had power to intervene. Further, the judge found the pre-test counselling at the original joint consultation was negligently provided in that it did not meet the standard required under guidelines issued by the NSW Department of Health.

Many patients are reluctant for the doctor to ring their home or workplace; some patients instruct

their doctors not to ring under any circumstances, and other patients attend giving a false name and false contact details. In some cases the person with the infection will purposefully maintain ignorance concerning any identifying details of sexual or needle-sharing contacts. In some situations, the doctor is unable to initiate passing the result to the patient but relevant public health authorities must, of course, be informed of positive test results regarding notifiable diseases. At the same time, the clinician can report that the patient had not sought the result and could not be contacted. It would then be a matter for the public health authority to find the patient. Though extremely difficult, this may still be possible.

### Contact tracing

Contact tracing is the practice whereby a medical professional or the relevant governmental agency traces all the contacts of a person who has, or is suspected of having, an infectious disease. Faced with an outbreak of an infectious disease which spreads rapidly through person-to-person contact, public health officials can use contact tracing to identify people at risk of infection and people or places contributing to the spread of the disease.

The nature of HIV, HBV and HCV, along with society's reaction to them, makes contact tracing a delicate exercise. Firstly, the stigma associated with HIV and the other blood-borne viruses means many people who have the infection do not want every person they are in contact with to know of the infection. Secondly, the nature of transmission, requiring transfer of bodily fluids, makes it unnecessary to identify any of a person's non-sexual contacts. Public health legislation in Australia is not cognisant of this difference in the nature of contact tracing between HIV, HBV and HCV and other infectious diseases, however. In every State or Territory which has contact tracing provisions (ACT, NSW, NT, Queensland and Tasmania), the powers of the relevant person to require and disclose information are identical no matter the type of condition.

Contact tracing powers vary between the various States and Territories. In the ACT, NT and Queensland authorised people can require that a person with HIV, HBV or HCV provide their name and address, the name and address of anyone they may have been in contact with, and information about how and in what circumstances the person acquired the infection. In Tasmania the Director of Public Health can require only that a person with a notifiable disease provide the name and address of any person he or she might have transmitted the disease to. NSW limits the extent of contact tracing to advising a contact of the possibility that they may have been exposed to an STI or a blood-borne virus, counselling and precautions to be taken to minimise the chance of infection or of passing it to others. Finally Victoria has the most circumscribed powers, only having power to require the name and address of contacts in the case of an infectious disease outbreak.

Additional powers exist in the ACT and Queensland for an authorised officer or contact tracing officer to advise contacts they may have been in contact with an infectious disease even where the person with the disease has told the doctor he or she does not wish the contact to be told. These provisions are understandable in the context of an infectious disease like tuberculosis, which can spread rapidly and is difficult to contain, but are less appropriate in the context of HIV, HBV and HCV unless there is evidence to suggest the person with the infection is likely to endanger the health of others.

It is unclear from the legislation what role medical practitioners play in the collecting of contact-tracing information. In each jurisdiction the powers of the relevant person to demand information appear unfettered (except in the case of Victoria which requires an outbreak) and therefore, as a matter of practicality it is likely that medical practitioners will be used as the major sources of such information. Many of the States have provisions which protect the medical practitioner from liability for any information given pursuant to an order under the relevant Act.

A list of relevant resources and professional guidelines relating to contact tracing can be found on the Australian Models of Care database available on the ASHM website ([www.ashm.org.au](http://www.ashm.org.au)).

### Testing in health care or custodial settings

Health care and custodial settings are environments where the possibility of transmission of disease may be increased. In health care settings, transmission may occur where proper infection control procedures are not observed. In custodial contexts, particularly for people detained in correctional facilities, blood-borne viruses can be spread between inmates through intravenous drug use, the use of unsterilised tattoo equipment or unprotected sex. There is some anecdotal evidence that the practice of drug testing prison inmates has resulted in a shift from cannabis use (which remains detectable for up to six months) to injecting drug use (which can be flushed out in under 48 hours).<sup>1</sup> If this is true, the lack of clean needles in prison is likely to increase the prevalence of HIV, HBV and HCV and equally increase the risk to correctional workers.

If a person has, or may have contracted their infection in either of these settings, for the most part the standard laws regarding notification and testing will apply. Victoria does, however, have specific provisions aimed at infectious diseases contracted in these settings. The provisions give the Secretary of the Department of Human Services greater powers to order testing if an infection occurs in a health care or custodial context. In other circumstances the Secretary in Victoria can only order that a person be tested for an infectious disease if he or she believes the person to constitute a public health risk. In

health care and custodial settings, however, the Secretary can order tests even when the person does not represent a public health risk. This section covers situations where, for example, a health care practitioner may be at risk of contracting an infection from a patient, for example through a needlestick injury. Testing supports the appropriate provision of post exposure prophylaxis.

Otherwise, under corrections legislation, prisoners must submit to medical testing when ordered to do so and must comply with the instructions of a medical practitioner.

## Criminal law

There are two types of criminal offences associated with HIV, HBV and HCV. The first has been discussed above and relates to the disclosure of information regarding a person with, or who is suspected of having, HIV, HBV or HCV infection. There are also laws in every jurisdiction making it an offence to transmit the infection to another person. The majority of these laws do not specify HIV, HBV or HCV, but instead refer to infectious diseases generally. As with the other areas of legislation, the scope and requirements of these offences differ between jurisdictions.

Offences regarding the spread of HIV, HBV and HCV exist both in public health law and criminal law. Typically the offences contained in the public health law have much lighter penalties than do the criminal provisions and they also allow for defences that the criminal law does not.

The ACT, NSW, Queensland, South Australia, Tasmania and Victoria have public health provisions which make it an offence for a person to transmit an infectious disease to another person. Penalties vary greatly between the jurisdictions. The least punitive requirements exist in the ACT which requires that a person with an infectious disease take 'reasonable precautions' not to pass it on. Failing to do so risks a \$1000 fine. Stricter standards exist elsewhere; Queensland law, for example, prohibits the reckless spread of an infectious disease and prescribes up to a \$30,000 penalty. In most jurisdictions it is a defence if the person who contracted the disease knew of, and voluntarily accepted, the risk.

The ACT is the only jurisdiction not to have any specific criminal provisions relating to the spread of HIV, HBV or HCV infection. The other States and the Northern Territory criminalise the spread of the infections in one of two ways. Either specific offences addressing HIV, HBV and HCV have been created or spreading a disease is incorporated within existing provisions which prohibit causing harm to another person.

Tasmania has specific provisions under the HIV/AIDS Preventative Measures Act. South Australia, Western Australia and the Northern Territory have adopted the latter approach and included 'disease' within the

definition of 'harm' for the purposes of the criminal law. As a result, all of the provisions prohibiting harm also prohibit infecting someone else with a disease. For example, the prohibition on intentionally causing serious harm also prohibits intentionally causing a serious disease; similarly the prohibition on negligently causing harm also prohibits negligently causing a disease. This approach makes use of an extensive existing body of law and is thus more likely to address sensitive issues of HIV, HBV and HCV infection more effectively.

NSW, Queensland and Victoria have separate criminal offences addressing the deliberate (or recklessly in Queensland and Victoria) infecting of another with an infectious or grievous bodily disease. Victoria also has an HIV-specific crime of 'intentionally causing a very serious disease' (HIV is the only defined very serious disease) which carries a maximum penalty of 25 years imprisonment. This approach runs the risk of treating people accused of spreading HIV, HBV and HCV differently to someone accused of causing any other type of bodily harm. Although the consequences of infection with these diseases are long-term, these are issues which can be considered when assessing the gravity of the harm caused.

Thus, although it has been regarded as politically populist to create HIV specific offences, doing so is arguably unnecessary and indeed runs counter to the position adopted by agencies such as the World Health Organization, the Joint United Nations Programme on AIDS and the Office of the High Commissioner on Human Rights.

## Anti-discrimination

Anti-discrimination provisions exist in every Australian jurisdiction which make it illegal to discriminate against someone on the basis of their having HIV, HBV or HCV. In each jurisdiction, discrimination is prohibited either on the basis of disability or impairment and, whichever word is used, it includes organisms in the blood which cause, or are capable of causing, a disease. Table 4.1 summarises each of these provisions. (NSW differs from the other States and Territories, as it is the only state that outlaws vilification on the grounds of HIV, of homosexuality and of being a transgender person. Vilification is defined as doing anything publicly that could encourage or incite hatred, contempt or severe ridicule).

The only aberrant jurisdiction is South Australia which prohibits discrimination on the basis of 'impairment' which is defined as a condition which impairs a person's functioning. As a result, the South Australian law will cover acquired immune deficiency syndrome (AIDS) and symptomatic HIV but may not include HIV before a person begins to display symptoms.

More pertinent questions for medical practitioners are, however, what constitutes discrimination on the

basis of disability or impairment and what behaviour health care practitioners must avoid when testing and treating people with HIV, HBV and HCV.

Discrimination on the basis of disability or impairment is, at its simplest, treating a person less favourably as a result of his or her (perceived) disability or impairment. Such treatment in a health care setting could include refusing to see a patient or offering different or inappropriate treatment to the patient.

Most complaints about discrimination on the basis of HIV status are related to the perceived link between homosexuality and HIV status. Health care workers must not treat someone as if they are HIV positive merely because they are homosexual and, similarly, they must not treat someone as homosexual merely because they are HIV positive. Treating homosexuality and HIV status as inextricably linked increases the stigma associated with each and makes both groups less likely to seek medical care.

Health complaints commissioners have, in the past, received complaints concerning doctors, dentists and other health service workers placing persons with HIV infection last on their consultation lists. However, better training on effective infection control procedures appears to have been successful. In situations where a person's HIV, HBV or HCV status does pose a health risk, employers, sporting clubs and other relevant groups are encouraged to take an accommodating rather than exclusionary approach. Thus, rather than forcing a person to leave work or refusing to allow them to play sport, the various pieces of anti-discrimination legislation require that all possible accommodation of the disability or impairment occur and that any limitations on their behaviour be only those necessary to protect the health of others.

### Infected health care workers

Health care workers who perform exposure-prone procedures have a responsibility to know their infectious status with regard to HIV, HBV and HCV and are encouraged to undertake voluntary testing<sup>2</sup> (Chapter 13). Health care workers have an obligation to care for the safety of others in the workplace (including patients) under both common law and the Occupational Health and Safety and Welfare Act 1986.

### Conclusion

It has often been noted that unlike many other infectious diseases, HIV, HBV and HCV are not easily transmitted to others. Laws in Western Australia, for example, which make it an offence for a person with an infectious disease to work in food preparation, are wholly inappropriate in relation to HIV, HBV and HCV. Similarly obsolete is a Northern Territory law that gives a bus conductor the power to stop a person with contagious diseases from riding on a bus.

Hopefully a legal and social milieu, cognisant of the impact of discriminatory and stigmatising behaviour, will facilitate an environment in which good health care is possible and the incidence of new infections is reduced.

### References

- 1 Crofts N, Thompson S, Wale E, Hernberger F. Risk-behaviours for blood-borne viruses in Victorian prisons. *Aust NZ J Criminol* 1996;29(1):6.
- 2 Communicable Diseases Network of Australia (CDNA), National Public Health Partnership (NPHP), and Australian Health Ministers' Advisory Council (AHMAC). Infection control guidelines for the prevention of transmission of infectious diseases in the health care setting. Canberra: Commonwealth Department of Health and Ageing; 2004. Available from <http://www.health.gov.au/internet/wcms/Publishing.nsf/Content/icg-guidelines-index.htm>

**TABLE 14.1 Laws as they apply in each State and Territory****Commonwealth**

| Subject | Section | Act  | Notes / Summary   |
|---------|---------|--|---|
| Privacy |         | Privacy Act 1988<br><br>Sets out the National Privacy Principles (NPP) | The NPP govern how all health workers, hospitals etc. must collect, handle, retain and disclose personal information.<br><br>The general rule is that information should only be collected when necessary and the information should not be disclosed to any third party. |
|         |         | Privacy Amendment (Private Sector) Act 2000                            | Extends the operation of the NPP to all private sector workers, including health workers.   |

**Australian Capital Territory**

| Subject                     | Section    | Act   | Notes / Summary  |
|-----------------------------|------------|---|--|
| Notifiable condition        | Schedule 1 | Public Health Notifiable Condition Determination 2005 | HIV, AIDS and viral hepatitis are notifiable conditions.   |
| Notification to patient     | s 102      | Public Health Act 1997                                | If a doctor or nurse believes a person has or may have a notifiable condition, he or she must give the patient information about transmission and prevention of transmission of that condition. Failure to do so may have implications under other legislation.  |
| Notification to Department  | s 102A     | Public Health Act 1997                                | Doctor or nurse commits an offence if he or she believes a person has a notifiable condition and he or she fails to notify the Chief Health Officer (CHO).<br><br>Doctor must also notify the CHO if a patient of the doctor dies of what the doctor believes is a notifiable condition.   |
| Notification by pathologist | s 103      | Public Health Act 1997                                | If a pathologist tests a person and the test indicates the person has or may have a notifiable condition, the pathologist, or the person in charge of the laboratory, must notify the CHO.   |
| Notification by hospital    | s 104      | Public Health Act 1997                                | Hospital must notify CHO of any in-patient with a notifiable condition.  |
| Contact tracing             | s 106      | Public Health Act 1997                                | Where an authorised officer believes on reasonable grounds a person has a notifiable condition, he or she may request that the person provide: <ul style="list-style-type: none"> <li>• The person's name and address</li> <li>• Information about how the person acquired the condition</li> <li>• Information about the circumstances under which the person may have transmitted the condition</li> <li>• The name and address of any contact of the person</li> </ul> The person must not refuse this request without a reasonable excuse. |

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| Informing contacts  | s 108      | Public Health Act 1997        | If a person with a notifiable condition advises a responsible person that he or she refuses to tell a contact about the condition and refuses to give the responsible person permission to do so, the responsible person may contact the CHO who may then inform the contact. A responsible person is a doctor, nurse practitioner, counsellor or person responsible for the care, support and education of the person. |
| Privacy   | s 110      | Public Health Act 1997        | A person shall not without good reason or consent of that person disclose any information regarding a person having a notifiable condition, unless for the purposes of the Act, or another law of Commonwealth, State or Territory, or authorised under a code of practice.   |
| Privacy of doctors, pathologists  | s 111      | Public Health Act 1997        | It is an offence for a person to disclose without reasonable excuse or consent any information regarding a person with a notifiable condition in which the doctor, pathologist etc. is identifiable.  |
| <b>Prostitution</b>   |            |                               |   |
| Sexually transmitted infection (STI)  | Dictionary | Prostitution Act 1992         | HIV is an STI.<br>Hepatitis is not.   |
| Operator responsibility   | s 24       | Prostitution Act 1992         | Operator of a brothel must take reasonable steps to ensure that a prostitute does not provide commercial sexual service if the prostitute has an STI.   |
| Prostitute responsibility   | s 25       | Prostitution Act 1992         | A person shall not provide or receive commercial sexual services if he or she knows or can reasonably be expected to know he or she has an STI.   |
| Medical testing   | s 26       | Prostitution Act 1992         | It is an offence for an operator or owner of a brothel to fail to take reasonable steps to ensure that prostitutes receive regular medical testing for STIs. It is also an offence for a prostitute to mislead a person about the results of a test.  |
| Condoms   | s 27       | Prostitution Act 1992         | Operator or owner of a brothel must take all reasonable steps to ensure that condoms are used. Penalties are provided for failure to comply.  |
| <b>Offences</b>   |            |                               |   |
| Unauthorised assertions   | s 107      | Public Health Act 1997        | It is an offence to assert to a person who has been exposed to or may be a source of infection that a third person has a transmissible notifiable condition without the consent of the third person.  |
| Transmission  | r 21       | Public Health Regulation 2000 | A person with a transmissible notifiable condition must take reasonable precautions not to pass that condition on to another person. Penalty is 10 penalty units.   |
| The ACT does not have a separate offence for transmitting a serious disease and the Crimes Act 1900 does not define harm to include inflicting a disease. |            |                               |   |

|                    |         |                         |   |
|--------------------|---------|-------------------------|---|
| Non-discrimination | s 7 (j) | Discrimination Act 1991 | Must not discriminate on the basis of disability which includes 'the presence in the body of organisms that cause or are capable of causing disease' (s 5AA(e)) |
|--------------------|---------|-------------------------|---|

## New South Wales

| Subject                     | Section    | Act                                     | Notes / Summary   |
|-----------------------------|------------|---|---|
| Scheduled medical condition | Schedule 1 | Public Health Act 1991                  | NSW legislation divides medical conditions into 5 categories.<br>HIV and hepatitis B and C are Category 3 conditions.<br>HIV and AIDS are Category 5 conditions.<br><br>AIDS is also a Schedule 3 notifiable disease.   |
| Notification                | s 16       | Public Health Act 1991                  | A positive test result for a Category 3 medical condition must be notified to the Director General in an approved form. Where the positive test result is for a medical condition that is also a Category 5 medical condition, such notification must not disclose the person's name and address.<br><br>The obligation falls on the person who certifies the result of the test, not the treating doctor.            |
| Confidentiality             | s 17       | Public Health Act 1991                  | Notification to the Director General of a Category 5 medical condition must not include the person's name or address. A person who acquires information about Category 5 testing must take reasonable steps to prevent disclosure unless disclosure is with consent, in the course of administration of the Act, by court order or to a person involved in the care, treatment or counselling of the person affected. |
| Advice                      | r 12       | Public Health (General) Regulation 2002 | The Director General or an authorised medical practitioner may notify a person with a Category 2 or 3 condition of measures to be taken and activities to be avoided in order to minimise the danger of passing the condition to another person.  |
| Contact tracing             | r 13       | Public Health (General) Regulation 2002 | The Director General may notify a person whom they reasonably believe may have been in contact with a person suffering from a Category 2, 3 or 4 medical condition of measures to be taken, and activities to be avoided, in order to minimise the danger of the first person contracting the condition or passing it to a third person.  |

| <b>Public Health Orders</b>     |       |                              |  |
|---------------------------------|-------|------------------------------|--|
| Examination                     | s 22  | Public Health Act 1991       | The Director General may make an order requiring that a person be tested for a Category 4 or Category 5 medical condition if the Director General believes on reasonable grounds that the person is suffering from a Category 4 or Category 5 medical condition.   |
| Behaviour                       | s 23  | Public Health Act 1991       | The Chief Health Officer or a medical practitioner authorised by the Director General may make a public health order (PHO) if a person is believed on reasonable grounds to be suffering from a Category 4 or Category 5 medical condition and is behaving in a way that is endangering or is likely to endanger the public health.<br><br>A PHO may require that the person refrain from specified conduct, undergo counselling or specified treatment, or if the Order is based on a Category 5 medical condition, be detained at a specified place. |
| Confirmation by Tribunal        | s 25  | Public Health Act 1991       | A PHO based on a Category 5 medical condition ceases to have effect if an application to the Administrative Decisions Tribunal is not served on the person to whom the PHO applies within 3 business days of the PHO, or if the Tribunal does not confirm the PHO, or vary the PHO and confirm it as varied.   |
| Offence to contravene           | s 28  | Public Health Act 1991       | It is an offence for a person to whom a PHO applies to contravene a PHO.   |
| Apprehension                    | s 29  | Public Health Act 1991       | An authorised medical practitioner can give a certificate which is the grounds for apprehension by a police officer of a person who has contravened a PHO.   |
| Revocation                      | s 31  | Public Health Act 1991       | If an authorised medical practitioner considers that the person is no longer a risk to public health, the practitioner must revoke the order immediately.  |
| Unlawful release                | s 34  | Public Health Act 1991       | It is an offence to release, or to attempt to release, a person detained under a PHO without lawful authority to do so.  |
| <b>Transfer of human tissue</b> |       |                              |  |
| Prescribed contaminant          | r 14  | Human Tissue Regulation 2005 | HIV and viral hepatitis are 'prescribed contaminants'.   |
| False statements                | s 20E | Human Tissue Act 1983        | A donor must not sign a certificate that is false or misleading in a material particular.  |
| Restrictions on liability       | s 20F | Human Tissue Act 1983        | No action lies against the donor of blood unless the donor has signed a false certificate. No action lies against a supplier of blood products if the supplier was an exempt supplier, and the donor signed a certificate, and tests indicated that no prescribed contaminant was present in the blood.  |

|  |         |   |  |
|--|---------|---|--|
| Correctional setting                     | s 73    | Crimes (Administration of Sentences) Act 1999 | Any prisoner can be forced to undergo any medical procedure deemed necessary by Justice Health for the preservation of the prisoner's life or to prevent serious damage to the prisoner.<br><br>This includes testing for HIV, HBV and HCV.  |
| <b>Offences</b>                          |         |   |  |
| Sexually transmissible medical condition | s 13    | Public Health Act 1991                        | It is an offence for a person who knows they have a sexually transmissible medical condition to have intercourse with another person unless that person has been informed of the risk of contracting the disease and voluntarily accepts that risk.<br><br>It is also an offence for an owner or occupier of premises who knowingly permits a person with a sexually transmissible medical condition to have intercourse with another person on their premises.<br><br>Maximum penalty of 50 penalty units (\$5500). |
| Causing a grievous bodily disease        | s 36    | Crimes Act 1900                               | A person who maliciously and with intent causes, or attempts to cause, another person to contract a grievous bodily disease is committing an offence.  |
| Non-discrimination                       | Part 4A | Anti-Discrimination Act 1977                  | It is an offence to discriminate on the basis of disability which includes 'the presence in a person's body of organisms that cause or are capable of causing disease or illness' (s.4).   |

## Northern Territory

| Subject                                     | Section | Act  | Notes / Summary   |
|---|---------|--|---|
| Notifiable disease                          | s 6     | Notifiable Diseases Act 1999   | Minister may by notification in the Gazette declare a disease to be a notifiable disease.   |
| <b>Notification</b>                         |         |  |   |
| Medical practitioner                        | s 8     | Notifiable Diseases Act 1999   | If a medical practitioner diagnoses that a person is an infected person or considers that a person is a suspect person in relation to notifiable disease, the medical person must give specified information about the notifiable disease to a medical officer. |
| Pathology laboratory                        | s 16    | Notifiable Diseases Act 1999   | If a pathology laboratory diagnoses a person with a notifiable disease, the person in charge must give specified information about the notifiable disease to the Chief Health Officer.  |
| Proprietor of hotel, hostel, boarding house | r 48    | Public Health (Shops, Boarding Houses, Hostels and Hotels) Regulations | Proprietor who becomes aware that any person is suffering from or suspected to be suffering from an infectious disease on a premises must immediately notify the Medical Officer of Health of the circumstances, and must isolate the person.                   |

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| Advice                 | s 10  | Notifiable Diseases Act 1999               | When a doctor diagnoses a notifiable disease, he or she must explain the nature of the disease and the measures necessary to prevent the spread of the disease.<br><br>That advice may be provided to the parents of a person under 18 years of age.  |
| Disclosure protected   | s 30  | Notifiable Diseases Act 1999               | No action lies against a person including doctor or pathology laboratory for notifying the Minister or other person as required.  |
| <b>Testing</b>         |       |  |   |
| Person                 | s 7   | Notifiable Diseases Act 1999               | A person who has reasonable grounds to believe he or she may be an infected person or suspected infected person shall consult a medical practitioner at the first reasonable opportunity.   |
| Contact tracing        | s 9   | Notifiable Diseases Act 1999               | A person who is infected shall provide to a doctor or authorised person either the name and address of person he or she may have contracted the disease from or the name and address of all persons he or she has been in contact with during a specified period.                                     |
| Behavioural order      | s 11  | Notifiable Diseases Act 1999               | A medical officer may serve an infected person with a notice in writing directing the person to carry out measures the officer believes necessary for the treatment or to prevent transmission of the disease.  |
| Appeal                 | s 12  | Notifiable Diseases Act 1999               | A person can appeal to the Local Court against a notice given under s 11.   |
| Enforcement            | s 13  | Notifiable Diseases Act 1999               | The Chief Health Officer may order compliance with a s 11 notice.<br><br>CHO may also order orally or in writing the infected or suspect person be detained in hospital, that premises be disinfected and bedding destroyed and take all steps necessary to give effect to the order made by the CHO. |
| Notice to attend       | s 14  | Notifiable Diseases Act 1999               | CHO may by notice in the Gazette require a person or class of persons to attend at specified times for medical examination.   |
| <b>Blood Donation</b>  |       |  |   |
| Liability of Red Cross | s 26B | Notifiable Diseases Act 1999               | In an action against the Red Cross for transmitting a notifiable disease through blood transfusion, it is a defence if the Red Cross complied with the specified requirements in taking, testing, processing and handling the blood.  |
| <b>Employment</b>      |       |  |   |
| Barbers                | r 18  | Public Health (Barbers' Shops) Regulations | A barber suffering from a contagious disease shall not attend to a customer.  |
| Taxi                   | r 12  | Taxis Regulations                          | A taxi driver may refuse to pick up a person who is apparently suffering from an infectious disease.  |

|                                     |        |                                     |   |
|-------------------------------------|--------|-------------------------------------|---|
| Bus                                 | r 45   | Motor Omnibus Regulations           | A conductor of an omnibus shall not allow a person suffering from an infectious or contagious disease to be carried in the omnibus.   |
| Correctional setting                | s 75   | Prisons (Correctional Services) Act | If in the opinion of a visiting medical officer a prisoner is deemed a threat to him- or herself or others, the Director can order medical examination and/or treatment, including the provision of blood or bodily secretions. |
| <b>Offences</b>                     |        |                                     |   |
| Bribes                              | s 35   | Notifiable Diseases Act 1999        | A medical practitioner or authorised person commits an offence if he or she accepts a reward on account of a failure to perform his or her duty.  |
| Recklessly endangering life         | s 174C | Criminal Code Act                   | Creates offence if reckless conduct gives rise to danger of death.  |
| Recklessly endangering serious harm | s 174D | Criminal Code Act                   | Creates offence if reckless conduct gives rise to danger of serious harm.   |
| Negligently causing serious harm    | s 174E | Criminal Code Act                   | Creates offence if conduct negligently causes serious harm.   |

## Queensland

| Subject                        | Section    | Act                           | Notes / Summary   |
|--------------------------------|------------|-------------------------------|---|
| Notifiable condition           | s 64(1)    | Public Health Act 2005        | Notifiable condition is defined in the regulations.   |
|                                | Schedule 1 | Public Health Regulation 2005 | HIV, AIDS and all hepatitis are notifiable conditions.  |
| Notifiable diseases            | Schedule 6 | Stock Regulation 1988         | The term 'notifiable disease' applies to animals and does not include HIV or AIDS.  |
| Notifiable Conditions Register | s 67       | Public Health Act 2005        | Chief Executive (CE) must create and maintain a register of persons about whom notification has been received.  |
| Notification by doctor         | s 70       | Public Health Act 2005        | Doctor must notify CE when a person is diagnosed or provisionally diagnosed with a notifiable condition.  |
| Anonymity                      | s 74       | Public Health Act 2005        | Notification may occur with an anonymity code.  |
| Confidentiality                | s 77       | Public Health Act 2005        | Confidential information must not be disclosed.   |
|                                | s 81       | Public Health Act 2005        | Confidential information can be disclosed where the disclosure is in the public interest (as judged by the CE and where the CE has, in writing, authorised the disclosure).   |
| <b>Contact Tracing</b>         |            |                               |   |
| Disclosure                     | s 80       | Public Health Act 2005        | The prohibitions against disclosure of information in s 77 do not apply where the information is disclosed with authorisation by CE for the purpose of monitoring the patterns of notifiable conditions; identifying the sources of outbreaks; identifying persons who may transmit a notifiable condition to others; identifying persons who may have contracted, or may be at risk of contracting a notifiable condition to prevent or minimise transmission of the condition; or contact tracing by a contact tracing officer. |

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| Functions  | s 89           | Public Health Act 2005 | A contact tracing officer has the following functions:<br>a. identifying persons who may have contracted a notifiable condition<br>b. identifying persons who may transmit a notifiable condition to others<br>c. informing persons who may have contracted a notifiable condition so that they may seek medical examination and treatment<br>d. providing information to persons who may have contracted a notifiable condition to prevent or minimise transmission of the notifiable condition<br>e. obtaining information about the following to prevent or minimise transmission of a notifiable condition—<br>(i) how a person has, or may have, been exposed to the notifiable condition<br>(ii) how a person has, or may have, exposed other persons to the notifiable condition. |
| Power to require information                     | s 99           | Public Health Act 2005 | Where a contact tracing officer reasonably believes that a person has a notifiable condition or has been in contact with someone who has a notifiable condition, the officer can, after explaining to the person that information is needed to attempt to prevent or minimise the spread of the condition, require that person to provide his or her name, address and the name and address of any person who may have transmitted the condition to the person or who the person may have transmitted the condition to.  |
| An offence not to provide information under s 99 | s 100          | Public Health Act 2005 | Person must comply with request under s 99 unless the person has a 'reasonable excuse'   |
| Detention  | s 113          | Public Health Act 2005 | CE may order that a person be detained if the CE believes 'the person's condition and likely behaviour constitutes an immediate risk to public health; and is satisfied the person has been counselled, or reasonable attempts have been made to counsel the person about the condition and its possible effect on the person's health and on public health.'  |
| Orders by magistrate<br>Detention                | s 116<br>s 117 | Public Health Act 2005 | Following a sworn application, CE may obtain order for detention from magistrate.<br><br>Orders including a detention order may be made in the person's absence if magistrate believes the person represents an immediate risk to public health.   |
| Initial examination                              | s 118          | Public Health Act 2005 | If satisfied that a person has a controlled notifiable condition and that a medical examination is necessary, Magistrate may make an 'Initial Examination Order' requiring that a person submit to examination for a notifiable condition.   |
| Behavioural                                      | s 125          | Public Health Act 2005 | If satisfied that a person has a controlled notifiable condition and the condition constitutes an immediate risk to public health, a Magistrate may make a 'Behavioural Order'.  |

|                                   |                |                              |  |
|-----------------------------------|----------------|------------------------------|--|
| Detention                         | s 129<br>s 130 | Public Health Act 2005       | If satisfied that a person has a controlled notifiable condition and the condition constitutes an immediate risk to public health a Magistrate may issue a 'Detention Order' which requires that the person remain in detention for not more than 28 days.               |
| Warrant                           | s 136          | Public Health Act 2005       | Warrant for apprehension of a person may be issued to enforce Initial Examination Order or Detention Order.  |
| Correctional settings             | s 21           | Corrective Services Act 2006 | A prisoner must submit to any medical examination or treatment deemed necessary by a doctor.   |
| <b>Offences</b>                   |                |                              |  |
| Recklessly spreading disease      | s 143          | Public Health Act 2005       | <p>Person must not recklessly spread a controlled notifiable condition.</p> <p>It is a defence if the person placed at risk knew of the condition and voluntarily accepted the risk.</p> <p>Maximum penalty of 400 penalty units (\$30 000) or 2 years imprisonment.</p> |
| Grievous bodily harm              | s 317          | Criminal Code 1899           | <p>Offence to intentionally transmit a serious disease to another person.</p> <p> LIABLE to life imprisonment.</p> <p>A 'serious disease' is defined in s 1 as one that is likely to endanger life and would include HIV, AIDS, and hepatitis.</p>                       |
| Risk minimisation                 | s 151          | Public Health Act 2005       | <p>Every person involved in the provision of a declared health service must take reasonable precautions to minimise risk of infection to other people.</p> <p>This includes dentists, nurses, employers with a first aid room, etc.</p>                                  |
| <b>Employment</b>                 |                |                              |  |
| Therapeutic goods                 | s 176          | Health Regulation 1996       | Person suffering from any contagious or infectious disease cannot be employed for the purpose of making therapeutic goods.   |
| Prostitution                      | s 77A          | Prostitution Act 1999        | It is an offence for a prostitute to provide or offer to provide prostitution services unless a prophylactic is used. A licensee or approved manager must take reasonable steps to ensure a prophylactic is used.  |
| Sexually transmissible infections | Schedule 4     | Prostitution Act 1999        | HIV is a STI for the purposes of the Act.  |
|                                   | s 90           | Prostitution Act 1999        | Prostitute with an STI is not allowed to work as a prostitute at a licensed brothel.   |
| Non-discrimination                | s 7(h)         | Anti-Discrimination Act 1991 | Must not discriminate on the ground of 'impairment' which includes 'the presence in the body of organisms capable of causing illness or disease' (Schedule Dictionary).  |

## South Australia

| Subject                              | Section               | Act                                      | Notes / Summary  |
|--------------------------------------|-----------------------|--|--|
| Notifiable disease                   | Schedule 1            | Public and Environmental Health Act 1987 | HIV, AIDS and viral hepatitis are notifiable diseases.   |
| Controlled notifiable disease (CND)  | Schedule 2            | Public and Environmental Health Act 1987 | HIV, AIDS and viral hepatitis are CNDs.  |
| Notification                         | s 30                  | Public and Environmental Health Act 1987 | <p>Where a doctor or person prescribed by regulation believes a person is suffering from a notifiable disease, he or she must inform the Department within 3 days.</p> <p>If after receipt of the report the Department believes the person poses an immediate threat to public health it must notify the council for the Local Government area in which the person resides.</p>                                   |
| Order testing                        | s 31                  | Public and Environmental Health Act 1987 | <p>Where the South Australian Health Commission believes a person has a CND, it can require by written notice that the person be examined for that disease.</p> <p>If the person refuses to be tested, a magistrate may issue a warrant requiring apprehension and examination.</p>  |
| Quarantine                           | s 32                  | Public and Environmental Health Act 1987 | <p>Where a medical practitioner has certified that a person has a CND and the Commission believes that person poses a risk to public health, a magistrate may issue a warrant for detention at a place of quarantine.</p> <p>The order is only to be for 3 days and after that time must be renewed by a magistrate up to a maximum of 6 months.</p> <p>The Supreme Court can extend an order beyond 6 months.</p> |
| Behaviour                            | s 33                  | Public and Environmental Health Act 1987 | The Commission may give appropriate directions to a person suffering from a CND to reside at a specified place, refrain from performing specified work, submit to an examination or other directions in order to limit the spread of that disease.   |
| Report to Councils                   | s 35                  | Public and Environmental Health Act 1987 | The Department shall on a monthly basis provide reports to Local Councils as to the occurrence of notifiable diseases in its area and the threat, if any, they pose.   |
| Actions to prevent spread of disease | s 36                  | Public and Environmental Health Act 1987 | The Commission may take any action necessary to prevent the spread of a notifiable disease.  |
| Prostitution                         | s 13<br>s 21<br>s 25A | Summary Offences Act 1953                | It is an offence to consort with prostitutes, occupy premises frequented by prostitutes or engage in procurement for prostitution.   |

| Offences                |              |  |  |
|-------------------------|--------------|--|--|
| Preventing transmission | s 37         | Public and Environmental Health Act 1987 | A person with a CND will take all reasonable steps to prevent transmission of the disease to others.   |
| Causing harm            | s 23<br>s 24 | Criminal Law Consolidation Act 1935      | It is an offence to cause harm or serious harm to another person with intent to cause harm or serious harm.<br><br>Physical harm includes infection with a disease (s 21). |
| Non-discrimination      | Part 5       | Equal Opportunity Act 1984               | Part 5 prohibits discrimination on the basis of 'mental or physical impairment'.   |

## Tasmania

| Subject                 | Section | Act                            | Notes / Summary  |
|-------------------------|---------|--------------------------------|--|
| Notifiable disease      | Table 1 | Notifiable Diseases Guidelines | HIV, AIDS and viral hepatitis are notifiable diseases.   |
| Notification            | s 48    | Public Health Act 1997         | The Director may require any person or class of person, agency or public authority to notify the Director of the presence of any notifiable disease in a sample of tissue, substance or secretion.   |
| Information from doctor | s 50    | Public Health Act 1997         | If a doctor believes that a person he or she is attending has a notifiable disease, he or she must provide that person with any information about the transmission and prevention of the disease.  |
| Order for examination   | s 41    | Public Health Act 1997         | The Director may require that a person he or she believes to have a notifiable disease undergo a medical examination.  |
| Directions              | s 42    | Public Health Act 1997         | Director may make the following directions to someone who has or is suspected to have a notifiable disease: <ul style="list-style-type: none"> <li>• That the person be placed in isolation</li> <li>• That the person be placed in quarantine</li> <li>• That the person be placed under supervision</li> <li>• Further medical examination be conducted</li> <li>• That the person provide the name and address of any person she or he might have transmitted the disease to</li> <li>• Preventing the person from performing specified work</li> <li>• That the person do or not do anything as the Director determines</li> </ul> |
| Warrant                 | s 43    | Public Health Act 1997         | Director may apply to a magistrate for a warrant to enforce any order made under s 42.   |
| Order by magistrate     | s 46    | Public Health Act 1997         | A person arrested under a s 43 warrant must be brought in front of a magistrate as soon as practicable.<br><br>The magistrate may order the person to comply with the Director's order and may also vary, add to or make any other order.  |
| Appeal to Supreme Court | s 47    | Public Health Act 1997         | Any person subject to an order under s 45 may appeal that order to the Supreme Court.  |
| Period of detention     | s 44    | Public Health Act 1997         | Detention is not to exceed 48 hours without magistrate approval or 6 months without Supreme Court approval.  |

|   |      |                                       |   |
|---|------|---------------------------------------|---|
| Report to Council   | s 49 | Public Health Act 1997                | Director must provide a report to a council on the occurrence of any notifiable disease in its area.  |
| Transmission  | s 51 | Public Health Act 1997                | A person who is aware of having a notifiable disease must take all reasonable measures and precautions not to transmit it to any other person and must not knowingly or recklessly place another person at risk. A penalty exists for breach of this section.   |
| Investigation   | s 52 | Public Health Act 1997                | The Director may carry out any investigation or inquiry into any occurrence of any notifiable disease.  |
| Preventing spread   | s 53 | Public Health Act 1997                | The Director may require any person to take any action to stop the spread of any notifiable disease.  |
| Correctional settings   | s 30 | Corrections Act 1997                  | Prison director may require a prisoner to undergo a test for HIV or other blood-borne disease.  |
| <b>Offences</b>   |      |                                       |   |
| Intentionally or recklessly placing another at risk of becoming infected with HIV | s 20 | HIV/AIDS Preventive Measures Act 1993 | A person must take all reasonable measures to prevent the transmission of HIV. It is an offence for a person who is aware of being infected with HIV to knowingly or recklessly place another person at risk of becoming infected with HIV unless that person knew and voluntarily accepted the risk of being infected. |
| Non-discrimination  | s 16 | Anti-discrimination Act 1998          | Must not discriminate on the basis of disability which includes 'the presence in the body of organisms causing or capable of causing disease or illness' (s 3).   |

## Victoria

| Subject  | Section    | Act   | Notes / Summary  |
|--|------------|---|--|
| Infectious disease                               | Schedule 2 | Health (Infectious Diseases) Regulations 2001 | HIV, AIDS and viral hepatitis are infectious diseases.   |
| Notifiable disease                               | Schedule 3 | Health (Infectious Diseases) Regulations 2001 | HIV and AIDS are notifiable diseases.  |
| Order for test when spread by or to a care giver | s 120A     | Health Act 1958                               | If the Secretary reasonably believes that an incident has occurred in which an infectious disease could have been transmitted while a care-giver or custodian is acting in that capacity and any of those people to whom the disease could have been transmitted have been counselled about the risk of transmission of the disease, the Secretary may make an Order requiring the person named in the Order to be tested for the disease. |
|  | s 120AB    | Health Act 1958                               | These powers can also be exercised by a senior medical officer at a hospital.  |
|  | s 120B     | Health Act 1958                               | If the circumstances in s 120A apply and a specimen of the person's blood is available, that may be tested rather than making an order to have the person tested.  |
|  | s 120D     | Health Act 1958                               | When advising a person that he or she needs to be tested, the Secretary or authorised officer must not divulge the name of the person from whom the disease originated.  |

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| General orders            | s 121 | Health Act 1958 | <p>Secretary can order in writing a person to be tested if he or she reasonably believes a person is infected or has been exposed to infection, the person is likely to transmit the disease and there is a serious risk to public health.</p> <p>If test is positive, Secretary can order counselling if appropriate.</p> <p>If counselling is unsuccessful, Secretary can impose restrictions on the person's behaviour or movements.</p> <p>If restriction is insufficient, Secretary can order detention.</p>                                      |
| Appeals                   | s 122 | Health Act 1958 | Person subject to an order under s 121 may appeal to the Supreme Court.  |
| Emergency powers          | s 123 | Health Act 1958 | Governor in Council can declare a state of public health emergency for the purpose of stopping, limiting or preventing the spread of an infectious disease.  |
|                           | s 124 | Health Act 1958 | <p>If the Governor so declares, the Secretary can make orders requiring that persons of a specified class be prevented from leaving or entering a prescribed area, or that they be arrested without warrant and detained in the proclaimed area.</p> <p>Can also order any building or land to be seized, disinfected or destroyed if it is contributing to the spread of infection.</p>   |
| Testing for HIV           | s 127 | Health Act 1958 | <p>Doctor must not test for HIV unless he or she is satisfied that the person has received sufficient information on the medical and social consequences of a positive diagnosis.</p> <p>The person must not be advised of a positive test except in person by a doctor.</p>   |
| Privacy                   | s 128 | Health Act 1958 | Any person who discovers that another has been tested for or has tested positive for HIV must take all steps to develop and implement systems to protect the privacy of that person. A penalty exists for breach of this section.  |
| Records                   | s 130 | Health Act 1958 | <p>Pathology laboratories must keep records of the number of HIV tests, the number of people tested who fall into each prescribed category and any other information required by the regulations.</p> <p>Prescribed categories are:</p> <ul style="list-style-type: none"> <li>(i) homosexual male contact;</li> <li>(ii) coagulation factor recipient;</li> <li>(iii) injecting drug user;</li> <li>(iv) transfusion recipient;</li> <li>(v) heterosexual contact;</li> <li>(vi) occupational contact;</li> <li>(vii) screening recipient.</li> </ul> |
| Blood and tissue donation | s 136 | Health Act 1958 | A donor must not make a false statement regarding HIV/AIDS infection when donating blood or tissue. A penalty exists for breach of this section.   |

|   |       |   |  |
|---|-------|---|--|
| Powers in the event of an infectious disease outbreak | r 15  | Health (Infectious Diseases) Regulations 2001 | If the Secretary believes that an outbreak of infectious disease has occurred or may occur, the Secretary may: <ul style="list-style-type: none"> <li>enter any premises without a warrant and search for and seize any goods</li> <li>in writing require any person who may have been in contact with an infected person to provide information about the contact</li> <li>in the case of a premises where the disease may be spread: <ul style="list-style-type: none"> <li>inspect the premises</li> <li>direct the proprietor to disinfect the premises and dispose of anything</li> </ul> </li> <li>close a school</li> <li>give reasonable directions to a person to take any action that she considers necessary to prevent or limit the spread of the infectious disease.</li> </ul> |
| Correctional settings                                 | s 29  | Corrections Act 1986                          | Principal medical officer of a prison can direct a prisoner to submit to medical tests.<br><br>In making decision medical officer is to consider the safety of everyone in the prison.   |
| Offences  | s 120 | Health Act 1958                               | It is an offence to knowingly or recklessly infect another person with an infectious disease.<br><br>It is a defence if the person placed at risk knew of the condition and voluntarily accepted the risk.   |
| Prostitution  | r 28  | Health (Infectious Diseases) Regulations 2001 | A proprietor must ensure that condoms are used in a brothel.   |
|   | r 29  | Health (Infectious Diseases) Regulations 2001 | Proprietor must not force a prostitute to provide service if he or she has refused on the basis that he or she suspects the client has an infectious disease or because the client has refused to wear a condom.   |
| Prostitutes infected with an STI                      | s 19  | Prostitution Control Act 1994                 | The manager of a brothel must not allow a prostitute to provide services when the prostitute has an STI.   |
|   | s 20  | Prostitution Control Act 1994                 | A prostitute must not provide services if he or she is infected with an STI.   |
| Non-discrimination                                    | s 6   | Equal Opportunity Act 1995                    | Prohibits discrimination on the basis of 'impairment' which includes 'the presence in the body of organisms that may cause disease'.   |

## Western Australia

| Subject                  | Section | Act   | Notes / Summary   |
|--------------------------|---------|---|---|
| Notification by doctor   | s 276   | Health Act 1911                                 | Obligation of notification to the Executive Director, Public Health rests with clinician, nurse practitioner and responsible pathologist or pathology laboratory.   |
|                          | s 289   | Health Act 1911                                 | Doctor, nurse practitioner and responsible pathologist of pathology laboratory who notify of an infectious disease incur no civil liability and are taken not to have breached duty of confidentiality.                                       |
| Notification by employer | r 2.5   | Occupational Health and Safety Regulations 1996 | Employer must notify the Commissioner if a person contracts HIV or viral hepatitis in the course of work which involves 'exposure to human blood products, body secretions, excretions or other material which may be a source of infection.' |

| <b>Employment</b>               |                                     |   |  |
|---------------------------------|-------------------------------------|---|--|
| Employment - food handling      | s 246X                              | Health Act 1911                                       | <p>A person with an infectious disease commits an offence if he or she is engaged or employed in the handling, packaging etc of food.</p> <p>A medical officer can require a person engaged in food handling to submit to a test for an infectious disease.</p>  |
| Employment - apparel            | s 279                               | Health Act 1911                                       | An owner or occupier of a factory, workshop or place from which work is given commits an offence if he or she allows a person with an infectious disease to make wearing apparel on the premises unless he or she could not reasonably be aware that the person had an infectious disease.   |
| <b>Infectious Diseases (ID)</b> |                                     |   |  |
| HIV/AIDS is a dangerous ID      | Schedule 1                          | Health (Dangerous Infectious Diseases ) Notice 2000   | HIV and AIDS are each declared to be dangerous infectious diseases.  |
| ID – removal to hospital        | s 263                               | Health Act 1911                                       | Medical Officer of Health may order any person suffering an infectious disease removed to hospital for treatment in any case where it is considered in the interest of public health to do so.   |
| ID - exposure                   | s 264                               | Health Act 1911                                       | A person suffering an ID commits an offence if she exposes herself in a public place (or public vehicle) without precaution as to infecting others   |
| Non-discrimination              | s 66A                               | Equal Opportunity Act 1984                            | Prohibits discrimination on the basis of 'impairment' which includes 'any defect or disturbance in the normal structure or functioning of a person's body' (s 4)   |
| Venereal disease                | s 248                               | Health Act 1911                                       | The Governor may declare any infectious disease to be a dangerous infectious disease for the purposes of the Act. Venereal disease is not an infectious disease for the purposes of the Act.   |
| Giving blood                    | Schedule 1                          | Blood and Tissue (Transmissible Diseases) Regulations | <p>Person giving blood must provide declaration that blood is free from HBV, HCV and HIV.</p> <p>All blood taken for transfusion is tested for HBV, HCV and HIV and if it tests positive, the person will be notified.</p>   |
| Prostitution                    | s 8                                 | Prostitution Act 2000                                 | Condom must be used to prevent the transmission of bodily fluid from one person to another.  |
| Correctional settings           | s 95D                               | Prisons Act 1981                                      | Medical officer can force a prisoner to undergo any medical treatment or testing deemed necessary.   |
| Offences                        | s 294(8) or 297 as read with s 1(4) | Criminal Code   | Sections 294 (8) and 297 make it an offence to do any act that is likely to result in a person having a serious disease or to cause grievous bodily harm to another. S.1(4) provides that any reference to causing or doing bodily harm to a person includes a reference to causing a person to have a disease which interferes with health or comfort or to have a serious disease. |
| Non-discrimination              | s 66A                               | Equal Opportunity Act 1984                            | Prohibits discrimination on the basis of 'impairment' which includes 'any defect or disturbance in the normal structure or functioning of a person's body' (s 4).  |

## Guardianship and enduring powers of attorney

If there is a possibility that a patient may become incompetent, health care practitioners should advise their patients to consider options that might include 'enduring powers of attorney' or 'enduring powers of guardianship'. The laws that apply to substituted decision-making can be quite complex and vary between States. Patients should be referred to the relevant authorities in their jurisdiction for assistance.

| Name   | State | Street Address   | Postal Address   | Phone numbers   | Emails                                |
|--|-------|--|--|---|---------------------------------------|
| Public Advocate of the ACT                     | ACT   | Level 3<br>12 Moore St<br>Canberra City 2601   | PO Box 1001<br>Civic Square<br>ACT 2608  | Tel:<br>(02) 6207 0707<br>Fax:<br>(02) 6207 0688  | pa@act.gov.au                         |
| Guardianship & Management of Property Tribunal | ACT   | Magistrates Court,<br>4 Knowles Place,<br>Canberra ACT 2601.   | GPO Box 370<br>CANBERRA CITY ACT<br>2601   | Ph: (02) 6217 4281<br>Ph: (02) 6217 4282<br>Fax: (02) 6217 4505   | tribunals@act.gov.au                  |
| Office of the Public Guardian                  | NT    | 2nd Floor, Casuarina<br>Plaza<br>Darwin<br><br>Darwin Public<br>Guardian<br><br>Alice Springs Public<br>Guardian   |  | Ph: (08) 8922 7343<br>Ph: (08) 8922 7304<br><br>Ph: (08) 8922 7116<br><br>Ph: (08) 8951 6739  |                                       |
| Guardianship Tribunal                          | NSW   | Level 3<br>2a Rowntree Street<br>Balmain NSW 2041  | Guardianship Tribunal<br>Locked Bag 9<br>Balmain NSW 2041  | Ph: Toll free 1800<br>463928<br>Main switch:<br>(02) 9555 8500<br>Telephone<br>typewriter:<br>(02) 9552 8534<br>Fax:<br>(02) 9555-9049  | gt@gt.nsw.gov.au                      |
| Office of the Public Guardian                  | NSW   | Sydney office:<br>Level 15, 133<br>Castlereagh St<br>Sydney NSW 2000<br><br>Blacktown office:<br>Level 2D, 15-17 Kildare<br>Rd<br>Blacktown NSW 2148<br><br>Gosford office:<br>Suite 3, 40 Mann St<br>Gosford NSW 2350 | Sydney office:<br>PO Box A231 Sydney<br>South NSW 1235<br>DX 1335 Sydney<br><br>Blacktown office:<br>PO Box 168 Blacktown<br>NSW 2148<br>DX 8132 Blacktown<br><br>Gosford office:<br>PO Box 487 Gosford<br>NSW 2350<br>DX 7229 Gosford | Sydney office:<br>Ph: (02) 9265 3184<br>Fax: (02) 9283 2645<br><br>Blacktown office:<br>Ph: (02) 9671 9800<br>Fax: (02) 9671 9804<br><br>Gosford office:<br>Ph: (02) 4320 4888<br>Fax: (02) 4320 4818 |                                       |
| The Office of the Adult Guardian               | QLD   | Level 3<br>Brisbane Magistrates<br>Courts Complex<br>363 George Street<br>Brisbane Qld 4000  | PO Box 13554<br>George Street<br>Brisbane Qld 4003   | Ph: (07) 3234 0870<br>Outside Brisbane<br>1300 653 187<br>Fax: (07) 3239 6367   | adult.guardian@<br>justice.qld.gov.au |

## Guardianship and enduring powers of attorney *continued*

|   |     |  |  |  |                                     |
|---|-----|--|--|--|-------------------------------------|
| Guardianship and Administration Tribunal    | QLD | Level 9<br>259 Queen Street<br>Brisbane Qld 4000                       | GPO Box 1639<br>Brisbane Qld 4001  | Ph: (07) 3234 0666<br>Outside Brisbane:<br>1300 780 666<br>Fax: (07) 3221 9156   | guardianship@justice.<br>qld.gov.au |
| Office of the Public Advocate               | SA  | Level 7, ABC Building<br>85 North East Road<br>Collinswood 5082        | Level 7, ABC Building<br>85 North East Road<br>Collinswood SA 5081                           | Ph: (08) 8269 7575<br>Toll Free Number<br>(for country South<br>Australia only) 1800<br>066 969<br>Fax: (08) 8269 7490 | OPA@agd.sa.gov.au                   |
| Guardianship Board                          | SA  | Level 8, ABC Building<br>85 North East Road<br>Collinswood 5082        | Guardianship Board<br>PO Box 138<br>Prospect SA 5082   | Toll Free Number<br>(for country South<br>Australia Only) 1800<br>800 501<br>Ph: (08) 8368 5600<br>Fax: (08) 8368 5699 | guardianshipboard@<br>agd.sa.gov.au |
| Office of the Public Guardian               | TAS | Level 3, 15 Murray<br>Street<br>Hobart Tas 7000                        | GPO Box 825<br>Hobart Tas 7001   | Ph: (03) 6233 7608<br>Fax: (03) 6233 4882  | public.guardian@info.<br>tas.gov.au |
| Guardianship and Administration Board       | TAS | First Floor<br>54 Victoria Street<br>Hobart 7000                       | The Registrar<br>Guardianship and<br>Administration Board<br>GPO Box 1307<br>Hobart Tas 7001 | Ph: (03) 6233 3085<br>Fax: (03) 6233 4509<br>After hours<br>emergency service:<br>(03) 6233 3085                       | guardianship@justice.<br>tas.gov.au |
| Victorian Civil and Administrative Tribunal | VIC | 55 King Street,<br>Melbourne, Victoria<br>3000, Australia<br>DX 210576 |  | Guardianship List:<br>Tel- (03) 9628 9911 or<br>1800 133 055<br>Fax- (03) 9628 9932                                    | vcats@vcats.vic.gov.au              |

**Guardianship and enduring powers of attorney *continued***

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|--------------------------------|-----|---|--|---|-----------------------------------|
| Office of the Public Advocate  | VIC | 5th Floor<br>436 Lonsdale Street<br>Melbourne Victoria 3000 |  | Tel 1300 309 337<br>Fax (03) 9603 9501<br>TTY (03) 9603 9529<br>ACE 133677 (03) 9603 9500 | publicadvocate@justice.vic.gov.au |
| Office of the Public Advocate  | WA  | Level 1<br>30 Terrace Road<br>EAST PERTH WA 6004            |  | Tel: (08) 9278 7300<br>Country Freecall: 1800 807 437<br>Fax: (08) 9278 7333              |                                   |
| State Administrative Tribunal. | WA  | Level 4<br>12 St Georges Terrace<br>PERTH WA 6000           |  | Tel: (08) 9219 3111<br>or 1300 306 017 (for regional STD callers)<br>Fax: (08) 9325 5099  |                                   |