

**For information  
on 28 February 2008**

**Bills Committee on the  
Prevention and Control of Disease Bill**

**Emergency Powers in Legislation of other Jurisdictions**

**PURPOSE**

This paper summarizes the Government's powers in a public health emergency provided under the legislation of other jurisdictions, including the United States (US)<sup>1</sup>, United Kingdom (UK)<sup>2</sup>, Canada<sup>3,4</sup>, Australia<sup>5,6</sup>, New Zealand<sup>7</sup>, Singapore<sup>8</sup> and Macao Special Administrative Region (SAR)<sup>9</sup>.

**THE LEGISLATION SELECTED**

2. There are a few points to note about the legislation selected –
  - (a) For Canada and Australia, each province / territory / state has its own legislation for dealing with prevention and control of infectious diseases. This paper selects the provincial legislation of Alberta and Quebec of Canada, and the territorial / state legislation of the Australian Capital Territory and Victoria of Australia for illustration purpose because these provinces / territory / state have designated legislation on public health matters (including infectious disease control) with provisions relating to public health emergency.
  - (b) The Model State Emergency Health Powers Act of the US was developed by the collaborative effort of a group of experts in public health law and government agencies at the request of the Centers for Disease Control and Prevention of the US. The Model Act provides

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<sup>1</sup> Model State Emergency Health Powers Act 2001, US

<sup>2</sup> Civil Contingencies Act 2004, UK

<sup>3</sup> Public Health Act 2002, Alberta, Canada

<sup>4</sup> Public Health Act 2004, Quebec, Canada

<sup>5</sup> Health Act 1958, Victoria, Australia

<sup>6</sup> Public Health Act 1997, Australian Capital Territory, Australia

<sup>7</sup> Public Health Bill 2007, New Zealand

<sup>8</sup> Infectious Diseases Act 1977 and Draft Infectious Diseases (Amendment) Bill 2007, Singapore

<sup>9</sup> Prevention, Control and Treatment of Infectious Diseases Law 2004, Macao Special Administrative Region

state authorities with the powers they need to detect and contain bio-terrorism or a naturally occurring disease outbreak. Legislative bills based on the Model Act have been introduced in over half of the states.

- (c) Although the Public Health (Control Of Disease) Act 1984 of the UK provides for matters relating to public health and infectious disease control, it does not have provisions relating to public health emergency. The relevant powers are provided for under the Civil Contingencies Act.
- (d) The New Zealand Government introduced the Public Health Bill to their Parliament in end 2007 to update the local public health legislation. The Bill has yet to be passed by the Parliament.
- (e) The Singapore Government is preparing an amendment bill to amend the existing Infectious Diseases Act. Clauses of the bill quoted in this paper come from the draft Infectious Diseases (Amendment) Bill published for consultation in September 2007. The Bill has not yet been introduced into the Parliament.

### **SCOPE OF CLAUSES EXTRACTED**

3. Relevant clauses (some of which are paraphrased) from the selected legislation on the following items relating to a public health emergency are set out at the **Annex**. The Prevention and Control of Disease Bill also contains provisions in these areas.

- A. Definition of public health emergency
- B. Declaration of a state of public health emergency
- C. Control of information
- D. Control of land, buildings, areas or properties
- E. Control of medical / health care supplies
- F. Ensuring surge capacity of health care personnel
- G. Compensation
- H. Penalty level

**Food and Health Bureau**  
**February 2008**

**Extract from legislation in other jurisdictions  
relating to public health emergency<sup>10</sup>**

**A. Definition of Public Health Emergency**

**1. US Model State Emergency Health Powers Act s104(m)**

A “public health emergency” is an occurrence or imminent threat of an illness or health condition that:

- (1) is believed to be caused by any of the following:
  - (i) bioterrorism;
  - (ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin;
  - (iii) a natural disaster;
  - (iv) a chemical attack or accidental release; or
  - (v) a nuclear attack or accident; and
- (2) poses a high probability of any of the following harms:
  - (i) a large number of deaths in the affected population;
  - (ii) a large number of serious or long-term disability in the affected population; or
  - (iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

**2. UK Civil Contingencies Act s19**

- (1) “Emergency” means—
  - (a) an event or situation which threatens serious damage to human welfare in a place in the United Kingdom,
  - (b) an event or situation which threatens serious damage to the environment of a place in the United Kingdom, or
  - (c) war, or terrorism, which threatens serious damage to the security of the United Kingdom.
- (2) For the purposes of subsection (1)(a) an event or situation threatens damage to human welfare only if it involves, causes or may cause—
  - (a) loss of human life,
  - (b) human illness or injury,

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<sup>10</sup> Clauses extracted from the Prevention, Control and Treatment of Infectious Diseases Law 2004, Macao Special Administrative Region are translated from the Chinese original.

- (c) homelessness,
- (d) damage to property,
- (e) disruption of a supply of money, food, water, energy or fuel,
- (f) disruption of a system of communication,
- (g) disruption of facilities for transport, or
- (h) disruption of services relating to health.

### **3. Alberta Public Health Act s1(hh.1)**

“Public health emergency” means an occurrence or threat of

- (i) an illness,
  - (ii) a health condition,
  - (iii) an epidemic or pandemic disease,
  - (iv) a novel or highly infectious agent or biological toxin, or
  - (v) the presence of a chemical agent or radiological material
- that poses a significant risk to the public health.

### **4. Quebec Public Health Act s118**

A serious threat to the health of the population, whether real or imminent, that requires the immediate application of certain measures provided for in the Act to protect the health of the population.

### **5. Singapore Infectious Diseases (Amendment) Bill s10**

An outbreak or imminent outbreak of an infectious disease that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability in Singapore.

### **6. Macao SAR Prevention, Control and Treatment of Infectious Diseases Law s23**

Emergency situation means:

- (1) an outbreak or epidemic of an infectious disease, or threat of an outbreak or epidemic of an infectious disease;
- (2) an outbreak or epidemic of a source of disease not listed in the Schedule to this Law or with an unknown cause but suspected of being infectious, or the threat of an outbreak or epidemic of such disease.

## **B. Declaration of a state of public health emergency**

### **1. US Model State Emergency Health Powers Act s401**

A state of public health emergency may be declared by the Governor upon the occurrence of a public health emergency.

### **2. UK Civil Contingencies Act ss20 and 22**

Her Majesty or a Senior Minister of the Crown may by Order in Council make emergency regulations if satisfied that the prescribed conditions are satisfied. Emergency regulations may make any provision which the person making the regulations is satisfied is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made.

### **3. Alberta Public Health Act ss52.1and 52.2**

The Lieutenant Governor in Council or the regional health authority may make an order declaring a state of public health emergency relating to all or any part of Alberta or the health region respectively if he is satisfied that a public health emergency exists or may exist, and prompt co-ordination of action or special regulation of persons or property is required in order to protect the public health.

### **4. Quebec Public Health Act s118**

The Government may declare a public health emergency in all or part of the territory of Quebec where a serious threat to the health of the population, whether real or imminent, requires the immediate application of certain measures provided for in the Act to protect the health of the population.

### **5. Victoria Health Act s123**

The Governor in Council may proclaim an emergency for the purpose of stopping, limiting or preventing the spread of an infectious disease.

### **6. Australian Capital Territory Public Health Act s119**

The Minister may, in writing, declare a public health emergency if satisfied that it is justified in the circumstance.

### **7. New Zealand Public Health Bill, ss259 and 263**

The Minister of Health by notice in Gazette or the Governor-General by order

in Council, may declare a health emergency if he has reasonable ground to believe that there is throughout New Zealand or in any place or area of New Zealand a serious risk to public health and the exercise of power in this subpart (on emergency) will help to prevent, reduce, eliminate or manage that risk.

#### **8. Singapore Infectious Diseases (Amendment) Bill s10**

The Minister of Health may, if it appears necessary or expedient for the securing of public health or safety during a public health emergency, by order published in gazette and presented to Parliament declare the whole of or such area in Singapore to be restricted zone and may in such order restrict, whether absolutely or subject to such conditions as he thinks fit the entry and stay of persons in any place, building or other premises (whether public or private) within the restricted zone; and the holding of, or the attendance of persons at, any public meeting, reception, procession or other gathering within the restricted zone.

#### **9. Macao SAR Prevention, Control and Treatment of Infectious Diseases Law s24**

The Chief Executive may, by instruction published in the *Official Gazette of the Macao Special Administrative Region*, decide to apply or declare to cease to apply all or some of the temporary and exceptional emergency measures for preventing the occurrence or spread of infectious diseases during an emergency situation.

### **C. Control of Information**

#### **1. US Model State Emergency Health Powers Act s607**

Protected health information can be accessed by those who have legitimate need to acquire or use the information, such as those who –

- provide treatment to the data subject,
- conduct epidemiological research, or
- investigate the cause of transmission.

Protected health information can be disclosed to appropriate federal agencies or authorities pursuant to federal law without the need for individual written, specific informed consent.

**2. Quebec Public Health Act s123**

The Government or the Minister of Health and Social Services, if he or she has been so empowered, may, without delay and without further formality, to protect the health of the population, order any person, government department or body to communicate or give to the Government or the Minister immediate access to any document or information held, even personal or confidential information or a confidential document.

**3. New Zealand Public Health Bill s273**

A medical officer of health may by notice in writing require any person to give to him information that in the opinion of the medical officer of health reasonably necessary for the management of the emergency or the epidemic.

**D. Control of land, buildings, areas or properties****1. US Model State Emergency Health Powers Act s502**

The public health authority may, for such period as the state of public health emergency exists, procure, by condemnation or otherwise, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. Such materials and facilities include, but are not limited to, communication devices, carriers, real estate, fuels, food, and clothing.

**2. UK Civil Contingencies Act s22**

Emergency regulations may provide for or enable the requisition or confiscation of property (with or without compensation).

**3. Alberta Public Health Act s52.6**

On the making of an order declaring a state of public health emergency relating to all or any part of Alberta or health region and during the state of public health emergency, the Minister responsible for the Act or the regional health authority may, for the purpose of preventing, combating or alleviating the effects of the public health emergency and protecting the public health, acquire or use any real or personal property.

**4. Victoria Health Act s124**

The Secretary to the Department of Health Services may make an order that

land, buildings or things in the proclaimed area may be seized to be used in connection with stopping, limiting or preventing the spread of infectious diseases.

#### **5. New Zealand Public Health Bill s271**

A medical officer of health may, by requisition in writing served on the owner, occupier or other person for the time being in charge of it, take possession of, occupy and use any land or building that in his opinion is required for the accommodation, assessment, treatment, care of persons, or for the storage or disposal of bodies.

A medical officer of health may, by requisition in writing served on the owner, or other person for the time being in charge of it, take possession of and use any vehicle or craft, or other things that in his opinion is required for transportation of persons, medical personnel, medicine, medical equipment, devices, etc.

If the owner, occupier or the person in charge of the property that is to be requisitioned cannot be immediately found, the medical officer of health may immediately take possession of it and use the requisitioned property. A notice has to be given to the owner, occupier or the person no later than 7 days after the property is taken into possession.

#### **6. Singapore Infectious Diseases Act s55**

For the purpose of investigating into any outbreak or suspected outbreak of an infectious disease or for the purpose of preventing the spread of any such infectious disease, the Director of Medical Services or any Health Officer authorised by the Director may requisition, for such period as the Director or Health Officer thinks necessary –

- (i) any premises which, in his opinion, is suitable for the isolation and treatment of persons who are or are reasonably suspected to be cases or carriers or contacts of the infectious disease; and
- (ii) any conveyance which, in his opinion, is suitable and necessary for use in connection with the prevention of the spread of the infectious disease.

#### **7. Singapore Infectious Diseases (Amendment) Bill s32**

Amend the Requisition of Resources Act to provide that a competent authority



may, if it appears to that authority to be necessary or expedient for the defence of the country, for the securing of public safety (which includes the safety of human life and health in the event of a public health emergency), or for the maintenance of supplies and services essential to the life of the community, take or authorise in writing the taking of possession of any land and may give such directions as appear to be necessary for taking and maintaining possession of such land and for the eviction of any person who is, enters or remains on such land without the consent of the competent authority.

## **8. Macao SAR Prevention, Control and Treatment of Infectious Diseases Law s25**

When an emergency situation exists, the Chief Executive may order the requisition of property or services, exemption from part of the legal formalities for a public entity to acquire the necessary property or services, etc.

### **E. Control of medicine / health care supplies**

#### **1. US Model State Emergency Health Powers Act ss502 and 505**

The public health authority may, for such period as the state of public health emergency exists, require a health care facility to provide services if such services are necessary to respond to a public health emergency. The facility may include transferal of management and supervision of the health care facility to the public health authority.

If the public health emergency results in shortage of supplies of health care products, the public health authority may control, restrict, and regulate the use, sales, dispensing, distribution, or transportation of the product. In the supply and distribution decision, the public health authority may give preference to health care providers, disaster response personnel, and mortuary staff.

#### **2. New Zealand Public Health Bill ss271 and 278**

A medical officer of health may, by requisition in writing served on owners of other person for the time being in charge of it, require that medicines and any other things that he considers necessary for the treatment of persons be delivered to him, and requisition any thing that in his opinion is reasonably necessary to preserve human life or manage the emergency or epidemic.

The Director-General may require any person administering, dispensing,

prescribing, or supplying medicines to comply with the priorities and any conditions as stated in the notice in Gazette.

### **3. Macao SAR Prevention, Control and Treatment of Infectious Diseases Law s25**

When an emergency situation exists, the Chief Executive may order the requisition of property or services, exemption from part of the legal procedures for a public entity to acquire the necessary property or services, etc.

## **F. Ensuring surge capacity of health care personnel**

### **1. US Model State Emergency Health Powers Act s608**

The public health authority may, for such period as the state of public health emergency exists, require in-state health care providers to assist in the performance of vaccination, treatment, examination or testing as a condition of licensure, authorization or ability to function as a health care provider in this state.

The public health authority may appoint and prescribe duties of out-of-state emergency health care providers and waive any or all licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for health care providers from other jurisdictions to practice in this State.

### **2. Alberta Public Health Act s.52.6**

On the making of an order declaring a state of public health emergency relating to all or any part of Alberta or health region and during the state of public health emergency, the Minister responsible for the Act or the regional health authority may, for the purpose of preventing, combating or alleviating the effects of the public health emergency and protecting the public health, authorize or require any qualified person to render aid of a type the person is qualified to provide and authorize the conscription of persons needed to meet an emergency.

### **3. Quebec Public Health Act s123**

The Government or the Minister of Health and Social Services, if he or she has been so empowered, may, without delay and without further formality, to

protect the health of the population, require the assistance of any government department or body capable of assisting the personnel deployed.

#### **4. Singapore Infectious Diseases (Amendment) Bill s32**

Amend the Requisition of Resource Act to provide that a competent authority may, if it appears to him to be necessary for any works or operations to be carried out to deal or cope with a disaster or public health emergency, direct any person to carry out or assist in any such works or operations.

#### **5. Macao SAR Prevention, Control and Treatment of Infectious Diseases Law s25**

When an emergency situation exists, the Chief Executive may order to waive the recognition of professional qualifications required for those who have come to the Macau Special Administrative Region and who are professionally qualified in their own places to engage in the relevant activities.

### **G. Compensation**

#### **1. US Model State Emergency Health Powers Act ss506 and 805**

The State shall pay just compensation to the owner of any facilities or materials that are lawfully taken by a public health authority for its temporary or permanent use during a state of public health emergency. The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to non-emergency eminent domain procedure.

Compensation shall not be provided for facilities or materials that are closed, evacuated, decontaminated, or destroyed when there is reasonable cause to believe that they may endanger the public health.

#### **2. Alberta Public Health Act s52.7**

Where the Minister responsible for the Act or a regional health authority acquires or uses real or personal property, or where real or personal property is damaged or destroyed due to the exercise of any powers under the Act during the state of public health emergency, the Minister or regional health authority shall pay reasonable compensation in respect of the acquisition, use, damage or destruction. If any dispute arises concerning the amount of compensation payable, the matter is to be determined by arbitration, and the *Arbitration Act* applies in such a case.

### **3. Quebec Public Health Act ss71 and 137**

The Government shall, by regulation, determine the conditions that must be met by a person claiming compensation for bodily injury caused by a vaccination imposed during a public health emergency.

### **4. Victoria Health Act s125**

Any person affected by a seizure of any land, building or thing is entitled to compensation for that seizure unless the need for that seizure arose from some action or fault on the part of that person.

The Secretary to the Department of Health Services must determine the amount of compensation. The amount of compensation payable in respect of a seizure is that amount which represents the loss suffered by the person as the result of seizure. A person whose interests are affected by a decision of the Secretary may apply to the Victorian Civil and Administrative Tribunal for review of the decision.

### **5. Australian Capital Territory Public Health Act s122**

A person may apply to the Minister for compensation in relation to any loss or damage suffered by him as a result of anything done in the exercise of a function under public health emergency, being a function exercised while an emergency declaration was in force. Compensation is payable by the Territory to an eligible person in an amount the Minister considers appropriate, having regard to the loss or damage suffered by the person.

Compensation is not payable to a person —

- (a) in relation to any loss or damage suffered because of the action or inaction of the person who suffered the loss or damage; or
- (b) in relation to any loss or damage that caused or contributed to the public health emergency.

### **6. New Zealand Public Health Bill s363**

Reasonable compensation is payable, on application by any person having an interest in the property, for any loss or destruction of or damage to property if a person exercising powers under the Act requisitions any property from any person or destroys or damages any property. Compensation is not payable to any person who caused or contributed substantially to the emergency or other circumstances that brought about the requisition or destruction or damage.

Any dispute as to the entitlement of any person to compensation or as to the amount of compensation must be determined by a court of competent jurisdiction.

## **7. Singapore Infectious Diseases Act s55**

Where any premises or conveyance is requisitioned under the Act, the owner or occupier of the premises or the owner or person having control and possession of the conveyance shall be entitled to a reasonable compensation for the occupation of the premises during the period of requisition, or for the use and detention of the conveyance.

## **8. Macao SAR Prevention, Control and Treatment of Infectious Diseases Law s25**

If the legitimate rights or interests of any person or private entity are jeopardized as a result of the requisition of property or services in an emergency situation, the person or private entity is entitled to a compensation, the amount of which shall be determined according to the actual damages caused.

## **H. Penalty level**

### **1. Alberta Public Health Act s73**

A person who contravenes the Act or the regulations is, if no penalty in respect of that offence is prescribed elsewhere in the Act, liable to a fine of not more than CAN\$2,000 in the case of a first offence and CAN\$5,000 in the case of a subsequent offence. Where a person is convicted of an offence under this Act, the judge, in addition to any other penalty the judge may impose, may order the person to comply with the provision of this Act or the regulations or the order for the contravention of which the person was convicted.

### **2. Quebec Public Health Act s139**

Any person who, within the scope of application of the provisions on powers of public health authorities and the Government in the event of a threat to the health of the population, including a public health emergency, impedes or hinders the Minister of Health and Social Services, the national public health director, a public health director or a person authorized to act on their behalf, refuses to obey an order they are entitled to give, refuses to give access to or

communicate the information or documents they are entitled to require, or conceals or destroys documents or other things relevant to the exercise of their functions is guilty of an offence and is liable to a fine of CAN\$1,000 to CAN\$6,000.

### **3. Australian Capital Territory Public Health Act s120**

A person shall not, without reasonable excuse, fail to comply with a direction given while an emergency declaration is in force.

Maximum penalty:

- (a) for a person who is not a utility—50 penalty units; or
- (b) for a utility—2,000 penalty units.

(One penalty unit is equivalent to AUD\$110)

### **4. New Zealand Public Health Bill s279**

Every person commits an offence who contravenes, or permits a contravention of, a direction in relation to the general emergency power and closure of premises / restriction of association is liable on summary conviction -

- (a) in the case of where the contravention or other action was intentional or reckless, to imprisonment for a term not exceeding 3 months or to a fine not exceeding NZD\$50,000, or to both; or
- (b) in any other case, to a fine not exceeding NZD\$20,000.

### **5. Singapore Infectious Diseases Act s58**

Any person who wilfully neglects or refuses to carry out or obstructs the execution of any emergency measure formulated and implemented by the Director of Medical Services shall be guilty of an offence and shall be liable on conviction to a fine not exceeding SGD\$10,000 or to imprisonment for a term not exceeding 6 months or to both.

### **6. Macao SAR Prevention, Control and Treatment of Infectious Diseases Law s30**

Any person who fails to comply with the temporary and exceptional measures taken by the Chief Executive to prevent the occurrence or spread of infectious diseases shall be liable to a maximum penalty of imprisonment for 2 years or a fine of up to 240 days. (Under the Penal Code of the Macao SAR, daily fine ranges from MOP 50 to MOP 10,000, to be determined by the court having regard to the economic and financial situation of the convicted and his personal incumbencies.)