



## Special Issue

## Formulating a model public health law for the Pacific: programme methods

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## SUMMARY

Health indicators are low in most Pacific countries. Modern legal infrastructure to support a modern approach to prevention of disease and health promotion is important. Emerging infectious diseases, advances in research and changes in thinking about human rights have meant that legislating in public health has shifted from the approach in the mid 20th Century when most Pacific public health laws were drafted. This paper describes a project to develop a model public health law for the Pacific. Collaboration between researchers, a regional donor, regional organizations, and the ministries and departments of health of 14 countries will create a model public health law for the Pacific, including options for a regional approach. The resource will then be made available to individual Pacific countries and to a region, which will decide individually and collectively how that resource is used.

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## Introduction

Developing countries face problems created by a lack of resources, capacity and poor infrastructure. In health, this can manifest itself in areas such as lack of a trained health workforce, little capital development or upkeep of sites to deliver health services, inadequate supply of essential drugs and medical equipment, and inadequate surveillance and data collection.<sup>1</sup> Many developing countries also have inadequate public health laws.

Public health laws provide a legal and administrative structure under which public health programmes are run, health promotion is supported, communicable and chronic diseases are managed, data are collected, health emergencies are addressed, and the rights and responsibilities of individuals and communities are made clear. In the area of health, approaches to legislation in both developed and developing countries have shifted enormously in the last century.<sup>2–4</sup> Developing countries that lack the capacity and resources to undertake regular update and review of legislation may find that their public health laws are extremely outdated, do not take account of emerging communicable diseases and social trends, and do not support a modern approach to public health governance.

Even where modern laws exist, the rights and responsibilities of citizens and public health officials are often not fully understood, or are implemented by understaffed and often overwhelmed health

department personnel. Laws introduced by colonial powers are also often poorly understood and accepted by indigenous people, who may have a very different approach to social organization.<sup>5</sup>

The implementation of rights and responsibilities created in laws requires an understanding of those responsibilities, and the human capacity and resources to implement, support and prosecute breaches of the laws. Countries also need the capacity to continue to update laws and subordinate instruments as the broader political, social, scientific and economic environment changes. These capacities and resources are often lacking in developing countries.

In 2008, the Australian Agency for International Development funded a project to develop a model public health law for the Pacific Island region. The project will examine existing Pacific public health laws and consult with nation states to ascertain how the current laws are working at present. The final result will be the creation of a model law in a modular format, capable of being adopted in whole or in part by individual nation states. In addition to the domestic governance of public health, the model law will also provide opportunities for regional approaches to public health management where consultation and research indicate that a regional approach would be useful. The project covers the 14 members of the Pacific Island Forum: the Cook Islands; Federated States of Micronesia; Fiji; Kiribati; Nauru; Niue; Palau; Papua New Guinea; Republic of Marshall Islands; Samoa; Solomon Islands; Tonga; Tuvalu; and Vanuatu. This article outlines the rationale, method and expected outcomes of the project, since the model that this project embodies may be useful to other, region-wide approaches to public health law reform outside the Pacific basin.

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## Rationale for a region-wide approach to public health law reform

Public health laws are an important part of the social and legal infrastructure supporting the health system of a nation state. These laws set out powers for management of public health risk from small nuisances through to outbreaks of communicable disease. They also enable a variety of activities to promote health and prevent disease. These may include data collection and disease surveillance, the regulation of immunization, and the authorization of local government activities for sanitation and environmental health. Public health laws may also set various types of standards, including those for accommodation, food hygiene and potable water.

Most Pacific public health laws are 30–50 years old and very out of date. Some of the laws were drafted on the basis of British public health legislation of the early 20th Century and remain in force today, such as the Public Health Act 1936 (Fiji), Public Health Ordinance 1926 (Kiribati), Notification of Infectious and Contagious Diseases Ordinance 1923 (Nauru), and the Public Health Ordinance 1926 (Tuvalu). Some of these public health laws contain references to matters completely irrelevant to Pacific communities, such as the regulation of fellmongery, arsenic recovery works and explosives manufacture [Public Health Act 1936 (Fiji) s90, schs 2]; and the regulation of raw opium, indian hemp and coca leaf [Dangerous Drugs Act 1941 (Solomon Islands)].

Laws in many island states are drafted in a style that emphasizes the rights of government or government agents to compel individuals with communicable diseases to undergo treatment or to be quarantined from the community. In line with the British public health acts, there is no requirement of proportionality in the state's response, nor any staged approach to the exercise of coercive rights, nor any rights of appeal. This is inconsistent with the tendency of more modern public health laws in some developed countries, and with the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights.<sup>6</sup> One example is the Public Health Act 1936 (Fiji), which gives extensive powers to the Permanent Secretary, subject to the approval of the Minister, to make arrangements to prevent the spread of an infectious disease. This includes taking possession of vehicles and premises, requisitioning goods, isolating and detaining people, and compulsorily treating them. No rights of appeal are given from these powers, nor are they required to be time limited or proportional to the risk presented by the threat of an outbreak of infectious disease. Similar powers are found in other Pacific public health acts. The Notification of Infectious and Contagious Diseases Ordinance 1923 (Nauru) requires persons suffering from venereal disease to submit themselves for appropriate treatment to a medical officer, and to be detained for treatment with detention to continue until the patient is certified by a medical practitioner as free from danger of infecting others, or until the patient leaves to embark on board ship for the purpose of leaving Nauru.

While Pacific public health laws have been amended from time to time to address specific issues [HIV/AIDS Management and Prevention Act 2003 (Papua New Guinea), Tobacco Control Act 1998 (Fiji), Tobacco Control Act 2000 (Tonga)], many have not been reviewed comprehensively. For example, reviews of public health legislation have been undertaken recently in Tonga, Cook Islands, Tuvalu and Niue due to the need to implement the International Health Regulations (IHR) (2005). The reviews have shown that the existing legal frameworks are outdated, and hence new public health legislation has been necessary in order to implement the IHR. These reviews have focused on the content of the IHR rather than subjecting the laws to a comprehensive process of reform. Of these countries, only Tonga has passed recent legislation.

It is highly unlikely that resources will become available to every Pacific country to undertake the necessary work to review its public health legislation within the next 10 years. This would be a high-cost, specialist task that would take many years, assuming the specialist expertise could be found and resources made available. A model law developed for the Pacific context, in modules with advice about the necessary preconditions and advice about what might be required for implementation, could be of genuine practical value to a region which lacks resources and capacity in this area.

## Methods for the development of a model public health law for the Pacific

The project will be undertaken by two project investigators based at La Trobe University in Melbourne, Australia. Their work will be overseen and guided by an independent expert panel (IEP) that will provide technical feedback and advice on the draft research conclusions and the draft model law. Communication with the IEP will be via e-mail and telephone, and the IEP will also meet face to face in the Pacific on two occasions to discuss and review the work of the project investigators. The IEP consists of people with experience in public health law and/or public health, and most have worked in the Pacific Island region. All 14 countries in the Pacific Island Forum are included in the project. Of these countries, three lead countries will be consulted in greater detail and visited twice each by the project investigators during the life of the project. Papua New Guinea and Fiji have been selected as lead countries for their relative size and complexity, and to help test the applicability of the model. A third country – a small island state – will also be chosen as a lead country as the project progresses.

### Stage 1

Stage 1 of the project involves several key steps.

### Literature review

A literature review will map the existing public health laws of the 14 Pacific Island countries. It will review relevant international models of health legislation and seek to identify best practice approaches to the development of public health legislation, as well as recommendations for how these approaches can best inform the task of public health law reform in the Pacific. The literature review will encompass development literature on legislation reform and governance generally and in the Pacific region.

The literature review will attempt to answer the following questions:

1. How well do public health laws in the Pacific Islands address the public health challenges of the 21st century?
2. How well do they protect and promote health in the Pacific?
3. Do they provide a modern legal infrastructure to assist the management of communicable disease, the gathering of data and the protection of the rights of those affected by the legislation?
4. Are the existing rights and responsibilities they create adequately implemented?
5. Do they enable regional communication and cooperation in the management of public health risks or emergencies of regional significance?
6. Do they fit with the current work of the World Health Organization (WHO) to implement the recent amendments to the IHR?
7. What is best practice legislation development in health regionally and internationally, and has this been applied to the Pacific context coupled with a strong Pacific and development perspective?

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