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# Crossing Borders:

**Legal, Security and Health Perspectives  
on Pandemic Influenza**

Friday 23 November 2007  
9:00am - 4:00pm

Faculty of Law  
University of Sydney  
173-175 Phillip Street  
Sydney

# Program

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8.30-9.00 Registration

9.00-9.10 **Welcome**  
Professor Gillian Triggs, Dean, Faculty of Law, University of Sydney

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## **Global Perspectives on Pandemic Influenza**

Chair: Associate Professor Belinda Bennett  
Director, Centre for Health Governance, Law and Ethics, Faculty of Law, University of Sydney

9.10-10.00 Keynote Address: The Role of Law in Pandemic Influenza Preparedness in Europe  
Professor Robyn Martin

10.00-10.30 Pandemic Influenza and a Model Pacific Public Health Law  
Ms Genevieve Howse

10.30-11.00 Pandemic Planning and Response: the National Perspective  
Dr Jenean Spencer

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11.00-11.30 Morning Tea

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## **Public Health and Security Challenges in Pandemic Influenza**

Chair: Associate Professor Roger Magnusson  
Faculty of Law, University of Sydney

11.30-12.00 Epidemics and Pandemics in Australia – Signposts, Lessons and Challenges  
Professor Peter Curson

12.00-12.30 The Virology of Influenza Guides Pandemic Responses  
Dr Dominic Dwyer

12.30-1.00 Pandemic Influenza as a Security Challenge  
Dr Christian Enemark

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1.00-2.00 Lunch

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## **Legal, Ethical, Health and Community Responses to Pandemic Influenza**

Chair: Dr Christian Enemark

Deputy Director, National Centre for Biosecurity, Australian National University

2.00-2.30	Pandethics Dr Michael J Selgelid
2.20-3.00	Community Perspectives on Pandemic Influenza Dr Jackie Street
3.00-3.30	Disease Control Strategies for Pandemic Influenza Professor Raina MacIntyre
3.30-4.00	Legal Rights During Pandemics Associate Professor Belinda Bennett

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4.00	Conference Close
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## **Global Perspectives on Pandemic Influenza**

**Chair: Associate Professor Belinda Bennett**  
**Director, Centre for Health Governance, Law and Ethics, Faculty of Law,**  
**University of Sydney**

### **The Role of Law in Pandemic Influenza Preparedness in Europe**

**Professor Robyn Martin**

This paper will examine national European laws to determine the extent to which it will be possible to formulate a Europe-wide legal response to a pandemic of human influenza. The paper will consider the differing approaches to law and to the balance between public good and private right across the range of European states, and the implications of European Union laws for border control measures. The paper will also examine the potential impact of the International Health Regulations 2005 for European public health laws.

**Robyn Martin**, BA, LLB, MURP, FRIPH is Professor of Public Health Law in the Centre for Research in Primary and Community Care, based in the University of Hertfordshire, and Visiting Professor of Public Health Law, The Chinese University of Hong Kong. She is co-ordinator of the European Union funded PHLawFlu project, examining national laws across Europe which support or constrain pandemic human influenza preparedness, and Director of the European Public Health Law Network. She trained in philosophy, law, and urban and regional planning at the University of Adelaide, Australia. She is a fellow of the Royal Institute of Public Health. Before taking up her current posts she worked with the government of South Australia, the University of Hong Kong, and University of Bristol. In recent years her research has focused on the ways in which law might be used in control of communicable and non-communicable diseases. She has worked with the Nuffield Trust, Yonsei University Seoul, and the Schools of Law and Public Health, Chinese University of Hong Kong to develop understanding of the potential of law as a public health tool. She sits as a lay member on the UK Board of the Faculty of Public Health, and as an expert reviewer for the assessment of EU funded projects. Her current research examines the different ways law might support public health across legal cultures to determine the efficacy of global public health initiatives.

### **Pandemic Influenza and a Model Pacific Public Health Law**

**Ms Genevieve Howse**

Public health laws provide important legal infrastructure for the strengthening of Pacific health systems. These laws set out powers for management of public health risk from small nuisances through to outbreaks of communicable disease. They also regulate immunisation; some local government functions; set standards for accommodation; and other activities to protect and promote public health. In summary, such laws create the powers and protections necessary to enable a nation state to protect the public health of its people in a framework of respect for the rights of individuals.

There have been enormous shifts in thinking about public health laws and legislation since these laws were drafted. There have also been enormous advances in management of communicable and chronic disease and the threats to public health in the Pacific in the early 21<sup>st</sup> century are quite different from those considered in legislation based on thinking in the early 20<sup>th</sup> century. For a modern, flexible, Pacific approach, academic literature and legislative approaches both internationally and regionally, would need to be considered and analysed with a strong Pacific perspective and a strong development perspective.

Most Pacific public health laws are 30 to 50 years old. It is highly unlikely that resources will

become available to every Pacific country to undertake the necessary work to review its health act over the next ten years. This would be a high cost specialist job which would take several years, assuming the specialist expertise could be found and resources made available.

Sovereign nations in the Pacific do not always welcome solutions to local issues created in developed countries as a "one size fits all" approach. This is clearly understood and respected. It should be emphasized that uniform legislation is not the proposed outcome. A model will be drafted which allows for different responses to different issues based on the politics, infrastructure and preferences of each sovereign nation. In some areas, alternative approaches can be chosen and slotted into the model as preferred by individual nations. Therefore the legislation which is ultimately enacted will be similar, but not the same. However, the existence of such a model law, together with supporting documentation would make it significantly easier for Pacific countries to address the currently acute problem of very outdated legislation which is failing to support current approaches to communicable disease, data collection and sharing and the implementation of global agreements such as the International Health Regulations.

A project of this nature also offers an unprecedented opportunity to take a consistent approach. The legislation could be drafted in a way that, at least, creates no impediment to Pacific wide communication and cooperation in information sharing and data collection should there be a willingness to attempt a joint approach.

Pandemic influenza as a threat to public health of regional or international significance would be within the contemplation of this model. The presentation will also address how the proposed model law might address such a threat.

**Genevieve Howse** is an internationally recognised lawyer and specialist consultant, working in the area of public health law and legislation development. She is Principal of the Law Firm Howse Fleming Legal, an Adjunct Senior Lecturer in Public Health Law at La Trobe University and teaches the subject "Public Health Law" in the Master of Health and Medical Law at the University of Melbourne. She has developed and delivered courses in public health law, undertaken commissioned research, and been a strong and influential protagonist of debate about public health law throughout Australia and the Pacific region.

Her work as a solicitor, barrister, in-house government counsel and an academic has seen her undertake reviews of public health legislation in Australia, Papua New Guinea, Fiji and the Solomon Islands. She has been called upon to develop legislation policy, and to draft legislation, including creating and delivering the change management strategies which support its implementation.

## **Pandemic Planning and Response: the National Perspective**

### **Dr Jenean Spencer**

The Government has so far committed over \$623.4 million to pandemic preparedness. A whole-of-government approach has been taken to protect Australia against the threat of an influenza pandemic and support the Australian community should one occur. Preparedness and response is guided by a range of strategic and operational committees, across all sectors and at different levels of government.

The Council of Australian Governments (COAG) have endorsed the National Action Plan for Human Influenza Pandemic which sets out responsibilities, lines of authority and cooperative arrangements between Commonwealth, State, Territory and local governments. The overarching goal of pandemic preparedness across all sectors is to protect Australians and to reduce the impact of a pandemic on social function and the economy.

The Australian Health Management Plan for Pandemic Influenza (AHMPPI) released in May 2006

sets out a layered strategy for protecting Australian in the event of a pandemic. The goal of the health sector response is to minimise the impact of an influenza pandemic on health. The AHMPPI is currently being revised in light of the outcomes of our first pandemic influenza exercise, Cumpston'06.

The presentation will cover areas of planning including governance and ethical considerations, legislation, surveillance and disease control activities, border control, mitigation strategies to slow transmission and public communications.

**Jenean Spencer**, B.Sc. (Hons), Ph.D. M.Appl.Epi. completed her Bachelor of Science, with First Class Honours in Microbiology at the University of Sydney. She then undertook a Doctor of Philosophy in the Department of Infectious Diseases, Faculty of Medicine, at the University of Sydney, working on transmission of hepatitis C from mother to child. Dr Spencer is a qualified epidemiologist. In 1999 Dr Spencer was accepted into the Master of Applied Epidemiology (MAE) run by the National Centre for Epidemiology and Population Health (NCEPH) at the Australian National University. Her field placement was at the National Centre in HIV Epidemiology and Clinical Research. Since 2001 she has worked in the Department of Health and Ageing, in a variety of roles including Director of the Surveillance Section, Epidemiological Advisor for *Exercise Cumpston 06*, and Strategic Advisor for the Office of Health Protection. She is currently the Director of Pandemic Preparedness Section in the Office of Health Protection. Her key achievements include:

- Leader in the development of a proposal for a National Biosecurity Surveillance System, to improve national communicable disease surveillance IT infrastructure;
- Senior Epidemiologist co-ordinating of national response to SARS;
- Short term consultant in the SARS Team, World Health Organization, Western Pacific Regional Office, Manila;
- Development of the scenario for *Exercise Cumpston '06*.

## **Public Health and Security Challenges in Pandemic Influenza**

**Chair: Associate Professor Roger Magnusson**  
**Faculty of Law, University of Sydney**

### **Epidemics and Pandemics in Australia – Signposts, Lessons and Challenges**

**Professor Peter Curson**

Outbreaks of infectious disease have been a familiar and inescapable feature of life in Australia over the last two centuries and a regular reminder of the insecurity of life and the ubiquitous presence of death and disease. Although such epidemics were often short-lived and for the most part not great demographic crises, they nonetheless had tremendous impact and their effects were wide-ranging. Looking back on the history of epidemics is important for a number of reasons. In the first place such disease outbreaks were often the prime instigator of public health reform. Plague and smallpox played the role in Australia that cholera had done in England some years before. They focused public attention on the living and working conditions of the poor in towns and cities and resulted in important public health interventions both with respect to the management of epidemics and the reconfiguration of the physical environment. Secondly, many of these epidemics were great psycho-social crises. They captured public attention and were responsible for great outpourings of fear, panic and hysteria. Thirdly, they put to the test and challenged government's comprehension and management of extreme natural events. Finally, they place in sharp perspective the internal workings of Australian society and reveal us as we truly are – fearful of infection and contagion, fearful of 'outside' threats, sceptical of the government's ability to protect us, and always searching for someone to blame. This paper reviews a number of critical epidemics in Australian history and in particular highlights some of the lessons and challenges from such events that are relevant to understanding epidemic crises today and in the future.

**Peter Curson** is currently Emeritus Professor in Medical Geography at Macquarie University and Professor of Population & Security in the Centre for International Security Studies at the University of Sydney. An historical demographer/medical geographer by background, he is a former Dean of Environmental & Life Sciences at Macquarie University. He is the author/editor of a number of books on infectious disease; plague and climate change and human health. His particular interest is in epidemics of infectious disease and human behaviour.

## **The Virology of Influenza Guides Pandemic Responses**

### **Dr Dominic Dwyer**

Any discussion of the impact and management of a pandemic requires an understanding of the biological characteristics of the virus. The natural hosts of influenza viruses are waterbirds, but the virus may cross over into humans and other animals. The influenza viruses cause both annual winter outbreaks of disease and major pandemics. The annual seasonal outbreaks are due to human strains that show 'antigenic drift', where mutations in the RNA genetic structure render the virus less susceptible to the immune system. Pandemics occur when new strains emerge to which humans have no immunity, either when viruses swap genetic material ('antigenic shift') or cross into humans directly from birds. This genetic variability complicates effective vaccine development. The current worldwide outbreak of avian influenza due to the influenza A H5N1 strain has raised concerns about a possible pandemic.

Influenza is an acute febrile respiratory illness with major morbidity and mortality, especially in the elderly and in those with chronic diseases. With both seasonal and pandemic influenza, there is social and economic disruption through workplace absenteeism and hospital admissions. The 1918-19 pandemic was particularly severe, with estimates of 50 million deaths worldwide, often in otherwise healthy people. Although influenza management is easier with new antiviral drugs, vaccines and improved laboratory diagnostic methods, other factors (such as travel, population density) make a pandemic a real concern.

**Dominic Dwyer** is a medical virologist and infectious diseases physician at the ICPMR, Westmead Hospital, Sydney. He trained at St Vincent's and Westmead Hospitals in Sydney, and undertook postgraduate research at the Institute Pasteur in Paris, France. He has a clinical and research interest in viral diseases of public health importance eg HIV, influenza (the ICPMR is a WHO National Influenza Centre) and arboviruses, antiviral drugs and drug resistance. He assisted the World Health Organisation in Beijing during the SARS outbreak in 2003. He is Chair of the Public Health Laboratory Network, and a member of various other Commonwealth and State committees including the Communicable Diseases Network of Australia and the Australian Health Protection Committee.

## **Pandemic Influenza as a Security Challenge**

### **Dr Christian Enemark**

The prospect of pandemic influenza excites the political imaginations of individuals and governments in ways that set this disease apart from the many others that may be regarded simply as health issues. In addition to causing illness and death on a large scale, the effects of a pandemic would descend in a swift and unfamiliar manner. This has the potential to generate levels of societal dread, internal disruption and economic loss vastly disproportionate to the likelihood that any given individual would become infected and die. For these reasons, some governments have chosen to frame pandemic influenza as a problem so grave as to be relevant to national security. One benefit of 'securitizing' a human health issue is that this could attract much-needed additional resources, but it could also involve the implementation of emergency responses beyond what would normally be politically acceptable. In addressing pandemic influenza as a national security issue, the policy challenge is to respond in a manner consistent with public health and without

generating additional security concerns.

**Christian Enemark** is Lecturer in International Security at the University of Sydney and Deputy Director of the National Centre for Biosecurity at the Australian National University. A PhD graduate from the ANU Strategic and Defence Studies Centre, he worked previously in the NSW Attorney General's Department and as Lecturer in Global Security at the Australian Defence Force Academy. Christian has published in a variety of international journals on the security implications of infectious diseases, and on the laws and ethics of armed conflict. His latest book is entitled *Disease and Security: Natural Plagues and Biological Weapons in East Asia* (Routledge, 2007).

## **Legal, Ethical, Health and Community Responses to Pandemic Influenza**

**Chair: Dr Christian Enemark**

**Deputy Director, National Centre for Biosecurity, Australian National University**

### **Pandethics**

**Dr Michael J. Selgelid**

This paper outlines the primary ethical issues associated with pandemic disease, and sketches a “moderate pluralistic” approach to addressing such issues. While the most prominent ethical and political philosophy frameworks usually prioritize utility, liberty, or equality, the approach of “moderate pluralism” aims to strike a balance between them without giving absolute priority to any one in particular. The values of liberty and utility are especially prone to conflict in the context of infectious disease, where public health care measures (that may lead to the greater good of society in the way of public health) threaten widely accepted human rights and liberties. I explore the question of how a balance between liberty, utility, and equality should be struck in the context of quarantine in particular. Among other things, I conclude that special protections (against interference from public health authorities) should be provided to socially marginalized, worst-off members of society; that compensation should be provided to those subjected to coercive public health care measures; and that pre-emptive measures should be taken prevent situations calling for liberty-infringing public health measures from arising in the first place.

**Michael J. Selgelid** earned a BS in Biomedical Engineering from Duke University and a PhD in Philosophy from the University of California, San Diego. He is a Senior Research Fellow in the Centre for Applied Philosophy and Public Ethics (CAPPE) and the Menzies Centre for Health Policy at the Australian National University, where he is a founding and Executive Board member of the National Centre for Biosecurity. He was previously the Sesquicentenary Lecturer in Bioethics at the University of Sydney, where he is currently an Honorary Lecturer in the Centre for Values, Ethics and the Law in Medicine (VELIM). His research focuses on ethical issues associated with infectious disease and genetics; and he recently co-edited *Ethics and Infectious Disease* (Blackwell, 2006).

### **Community Perspectives on Pandemic Influenza**

**Dr Jackie Street, Associate Professor Annette Braunack-Mayer, Associate Professor Wendy Rogers**

Historical experience with pandemic influenza (PI) has shown that disease spread may be rapid and the consequences, in terms of mortality and morbidity, severe. Community acceptance of public health interventions such as social distancing (e.g. quarantine) and resource allocation will be essential to mitigate the spread of PI. Effective communication to the community of the nature and underlying rationale for interventions will require community participation for ethical decision making.

We held four focus groups - two with citizens aged 18+ and two with school students aged 15-18 –

to gauge community views on the National Pandemic Influenza Management Plan. The focus groups were recorded, transcribed and analysed thematically using descriptive codes derived from the data and from prompt questions used. A review of the literature was used to inform analysis of the ethical issues in pandemic influenza management and communication identified by the focus groups.

The research participants identified key areas of concern in ethical management of PI including the importance of early communication of public health interventions and effective strategies to support volunteers, community morale, vulnerable population sectors and communication with younger age groups. The focus groups provided insight into community priorities and the underlying values which inform those priorities. The groups also suggested a number of innovative measures to improve community compliance in the event of PI.

This ethical analysis has implications for the successful implementation of public health interventions in the event of PI and provides insight into the underlying values that need to be protected. Understanding of community concerns about public health interventions can support improved ethical decision making and increased efficacy in designing public health interventions for PI mitigation.

**Jackie Street**, PhD BSc Grad. Dip. PHC, is a Lecturer in the Discipline of Public Health, University of Adelaide. Jackie is project manager for a research project designed to engage community views on pandemic influenza management plans. The project is a joint venture of the University of Adelaide, Department of Health SA and Flinders University and will include two citizens' juries in 2007. In a previous life, Jackie was a research biochemist but her more recent research has focussed on community participation in policy and practice including health technology assessment and Indigenous research.

## **Disease Control Strategies for Pandemic Influenza**

### **Professor Raina MacIntyre**

The established zoonoticity of H5N1 avian influenza globally is a serious threat to human health because of the risk of emergence of a human pandemic strain. Measures to control an emergent pandemic include early surveillance, antivirals, vaccines, quarantine and border control, social distancing and non-pharmaceutical measures. Quarantine and border control is particularly of significance for Australia, an island nation.

Anticipated shortages of antiviral drugs and delays in vaccine development, as well as inadequate supplies for the entire population, make non-medical interventions such as quarantine, social distancing, border control, face masks, handwashing and infection control important disease control strategies.

This paper will review the available pharmaceutical and non-pharmaceutical disease control strategies, their place and likely impact on an emergent pandemic.

**Raina MacIntyre** is Professor of Paediatrics and Child Health, with cross-appointments to Medicine and Public Health, at the University of Sydney. She is Senior Principal Research Fellow at the National Centre for Immunisation Research and Surveillance of Vaccine-Preventable Diseases, Children's Hospital at Westmead. Her research program in infectious diseases spans clinical trials, epidemiology, mathematical modelling, special risk groups and health economics. She is on several national expert committees in various areas of infectious diseases, has over 90 peer reviewed publications and over \$4 million in research grants.

## **Legal Rights During Pandemics**

### **Associate Professor Belinda Bennett**

In contemporary Australian society freedom of movement and individual autonomy are taken for granted. Responses to pandemic influenza may challenge these values, particularly in terms of restrictions and limitations being placed on the movement of people and/or the imposition of quarantine measures. Public health laws play an important role in negotiating and articulating rights and duties for individuals and communities. This paper analyses the legal framework for responding to pandemics in Australia, the intersections between federal and state laws, and the role for public health laws in establishing appropriate frameworks for individual and community rights and duties.

**Belinda Bennett** is an Associate Professor in the Faculty of Law, University of Sydney specialising in health and medical law. She is Director of the Faculty's Centre for Health Governance, Law and Ethics. She has held positions in the Faculty as Pro-Dean (Teaching Programs), Associate Dean (Postgraduate Coursework) and Director of Teaching Development. Her research explores legal regulation of biomedicine and the interface between health law and globalisation. She is the co-editor with George Tomossy of *Globalization and Health: Challenges for Health Law and Bioethics* (Springer 2006) and editor of *Health, Rights and Globalisation* (Ashgate 2006) and *Abortion* (2004). Her book *Health Law's Kaleidoscope: Health Law Rights in a Global Age* will be published by Ashgate Publishing in early 2008.

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