

Public Health and Wellbeing Act 2008

Local Government Bulletin 1 - June 2009

New public health and wellbeing laws will operate in Victoria from 1 January 2010

This is the first in a series of information bulletins to provide local government with information about implementation of the *Public Health and Wellbeing Act 2008* (PHWA).

The PHWA was developed following the review of the *Health Act 1958* and was passed by the Victorian Parliament in August 2008. Most provisions of the PHWA are scheduled to come into operation on **1 January 2010**.

The Act can be downloaded from the Victorian Government's legislation website:
<http://www.legislation.vic.gov.au/>

The new legislation has been designed to strengthen Councils' traditional public health roles and to deal proactively with contemporary public health concerns and emerging risks. It deals with subjects including:

- State and municipal planning for public health and wellbeing;
- Investigation and resolution of nuisances;
- Regulation of certain businesses and accommodation for the protection of public health;
- Management and control of infectious disease;
- Management of public health emergencies; and
- Functions and powers of state and local government and their authorised officers.

How will the new laws affect Local Government?

Councils will retain the same core public health functions and responsibilities that they hold under the *Health Act 1958* including nuisances and regulation of certain businesses and accommodation for the protection of public health – for example hairdressers and beauty therapists, colonic irrigation practices (new), tattooists and body piercers, aquatic facilities, hotels, motels, hostels and rooming houses.

The main changes are to the legal tools available to councils and council officers to administer their public health and wellbeing functions and responsibilities. Following are a few of the more significant changes:

Powers to enter premises

The powers of authorised officers to enter premises have been modernised, making allowance for timely response to risks to public health. The Act sets out the circumstances in which premises may be entered without the consent of the occupier (for example regulated premises when open to the public and premises on which an officer has reasonable grounds to believe there is an immediate risk to public health) and where consent, or a search warrant will be required (for example private residential premises where there is no indication of an immediate risk to public health).

Infringement Notices

A small number of offences under the new Act will be able to be dealt with by way of Infringement Notice – a notice served by an authorised officer on a person who is believed to have committed a prescribed offence. The alleged offender may then pay the penalty specified in the notice or elect to have the matter dealt with by a court.

Prohibition and Improvement Notices

Councils will be empowered to issue Prohibition and Improvement Notices to deal with situations where non-compliance with the Act is continuing or likely to re-occur. Widely used in other regulatory fields, these tools will support the work of council officers particularly in relation to nuisances.

Reviews and Appeals

Under the new Act Councils will be obliged to provide avenues of internal review for persons aggrieved by decisions made under it. Some matters will also be subject to review by the Victorian Civil and Administrative Tribunal (VCAT). The Ombudsman Victoria will continue to have power to investigate the decisions and activities of any person authorised under the Act.

Delegations, authorisations, forms and templates

Councils will need to make some governance and administrative preparations. These changes include ensuring that council powers under the PHWA are delegated to the appropriate council officer/s and that Environmental Health Officers and other authorised officers are properly appointed and provided with the necessary identification.

Councils are encouraged to make room in executive and council agendas so that these matters can be addressed well in advance of 1 January 2010.

Under the new legislation Councils are empowered to approve their own forms for the registration, renewal and transfer of business and accommodation registrations, although certain particulars must be collected in accordance with the regulations. Councils may wish to consider delegating the power to approve such forms to an appropriate position within the Council to facilitate this process.

In preparation for administrative changes, Councils should also identify for review any communications materials – paper or web based – that relies on or refers to the *Health Act 1958*.

The MAV in consultation with the Department are considering the development of guidance material to support councils in implementing these changes.

Have your say on proposed new regulations

The PHWA will repeal the *Health Act 1958* and the ten sets of regulations made under it:

- *Health (Infectious Diseases) Regulations 2001*
- *Health (Immunisation) Regulations 1999*
- *Health (Legionella) Regulations 2001*
- *Health (Pest Control) Regulations 2002*
- *Health (Prescribed Accommodation) Regulations 2001*
- *Health (Registration of Premises) Regulations 2002*
- *Health (Exempt Businesses) Regulations 2005*
- *Health (Seizure) Regulations 2003*

- *Health (Consultative Council on Obstetric and Paediatric Mortality and Morbidity) Regulations 2002*
- *Health (Prescribed Consultative Councils) Regulations 2002*

A single set of regulations is being drafted to replace the current ten and a Regulatory Impact Statement (RIS) assessing the potential costs and benefits of the proposed regulations is being prepared.

The draft regulations, together with the Regulatory Impact Statement, will be published in August/September 2009. Stakeholders will then be invited to provide comments on the draft regulations and all comments will be considered, and responded to, as part of the process of developing the final regulations. At this stage, it is expected that the proposed regulations will come into operation with the PHWA on 1 January 2010.

The RIS process provides a mechanism for stakeholder input into the development of new regulations. Its purpose is to ensure that the Government and the community are satisfied that the benefits of the proposed regulations will exceed the costs and that alternatives have been considered.

When the draft regulations and RIS are released, advertisements will be placed in the Community Noticeboard and Public Notices sections of the *Herald Sun* newspaper and information will also be placed on the PHWA website at <http://www.health.vic.gov.au/phwa>. Interested parties will be invited to provide comments, with comments due 28 days after release.

Further information

For further information in regards to the PHWA, the draft regulations or the Regulatory Impact Statement, please visit <http://www.health.vic.gov.au/phwa>, email phwa.enquiries@dhs.vic.gov.au or phone (03) 9096 2843.

The material in this publication is intended only to provide a summary and general overview on implementation of the Public Health and Wellbeing Act 2008. It is not intended to be comprehensive nor does it constitute legal advice.