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Our Ref: HealthReview/04

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Dear Dr Goodall

**A City of Ballarat Submission to the  
VICTORIAN HEALTH ACT REVIEW 2004**

Thankyou for the opportunity to discuss matters pertaining to the review of this important piece of Victorian legislation. Having previously made submissions to former government reviews we trust that there will be changes that will enable greater efficiencies in the management of public health for all Victorians.

The context of the review and the focus on current approaches to Public Health (PH) are welcomed. Whilst not forgetting the historical basis of PH it is important to push the boundaries particularly in the areas of social health as well as health promotion and advancement.

The new Health Act must reflect these changes and provide the framework to achieve the principles guiding the review.

This response will not address each of the issues raised but will provide you with some of the information necessary to consider the benefit of any proposed change.

1. We do not believe the name is of vital importance but in order to reflect the proposed principles it could be called the Public Health Act or more specifically the Public and Environmental Health Act. The addition of Environment in the title reflects the role that often links the protection of PH with the environment.
2. Over the years many functions of the Health Act have been hived off to other Acts and it would seem pointless to consolidate them again.  
Some exceptions are the management of onsite wastewater in unsewered areas and asbestos. This currently sits within the Environment Protection Act and the EPA have unfortunately steadily reduced resources and provided little leadership towards minimising risks in this growing industry. Other State government PH departments are responsible for managing onsite wastewater the major reasons being to reduce transmission of enteric pathogens and protect water supplies.

Increasingly the removal of asbestos from domestic premises poses immediate risks to the community that are not readily addressed by any existing legislation. Worksafe and Environment Protection legislation do not thoroughly deal with these matters while local government is left with a rather cumbersome Nuisance notice system. The West Australian department of health regulations are cited as an example of the necessary legislative support needed to effectively manage domestic or uncontrolled instances of inadequate handling of asbestos.

3. The promotion of public health is important particularly around lifestyle diseases and this could be achieved as part of the duties of government and councils with the Municipal Public Health Plan provisions.
4. The ability to access public health services to address inequalities is probably best served by the political process but the need to maximise opportunity could be included in the objects of the Act as well as the duties of government and Council.
5. The objects of the Act should reflect the principles espoused in Section 2.3 and should be clear as to the scope of the Act but need not be drafted as statutory obligations.
6. The pre-ambule could include the principles of the Act and not necessarily stand alone within the Act. The principle of collaboration must be included. Within those principles could be included responsibilities for individuals as well as the community in relation to their behaviour that may impact on the health of others. The protection of PH is both an individual and collective responsibility that must be clearly pointed out in the legislation.
7. It is important to recognise the roles and responsibilities of each sector although this could be a part of the principles. An emphasis on outcomes and how to achieve the strategic functions would be useful.
8. The Secretary role in itself should include the power to conduct enquiries and these could be set up at the discretion of the Minister or Secretary. Criteria should be set for this power.
9. The functions of council should be clearly defined otherwise councils are likely to argue that they do not have a role. Health Planning research and analysis should have a greater emphasis than is currently the case and could then become an integral component of any educational/promotion activity adopted as State or LG policy. Of course there should not be an imposition to manage health issues that are already done so by other regulatory authorities as they should be similarly held responsible where a health impact exists or is threatened.
11. This is an obvious way to deal with the numerous issues impacting on public health but may not necessarily be addressed as the 'collaborative principle' could encompass this.
- 12-16 MPHP's are a valuable document and are worthwhile when taken seriously. The lack of sanctions has caused many Councils to either ignore them or pay lip service. Councils must report on their progress and when found wanting in activity the Council is brought to task. The MPHP is the only pure health focused document and should be a cornerstone of the Corporate Plan along with the Municipal Strategic Statement. This would enable help to encourage planning and corporate decision making take into consideration potential health impacts of those decisions.

17. There are many problematic issues concerning the appointment of a MOH such as unable/unavailability to appoint, lack of interest, best value, and, knowledge/skills. The position could be replaced by a requirement to advise how they will best access appropriate advice such as from the medical director of the nearest hospital. There may be problems for Councils utilising Nurse Vaccinators as they are required to have access to appropriate advice in the event of an incident that is beyond their expertise.
18. Automatic appointment of EHO's is supported as it provides administrative and legal benefits in ensuring enforcement. Without the ability to appoint an EHO there is a loss in capacity for councils to determine the individual functions of staff.
19. Qualifications should remain at the discretion of the Secretary and must be such that the responsibilities required of Council can be adequately addressed.
20. Authorised officers should have competencies in relation to their duties as liability issues could be brought against Council and their officers. The Secretary could prescribe these.
21. Appropriate competencies are necessary for various classes of work. These are in some cases established but not necessarily in all work activities.
- 27-28. There are thresholds that dictate EIA and therefore HIA. A more formal stand alone approach in assessing health impact should be in place so that proposals/policies/programs that may have an impact can be properly addressed through such a process. There would be great benefit in establishing guidelines for HIA that address potential amenity issues and specific health issues from a proposal. This may involve a more defined approach to assessment principles, education, prevention and monitoring/evaluation systems. Fluoridation of water supplies, changes in food processing techniques, mandatory detention and new vaccines are cases in point. HIA will help support and provide justification to the proposal or decision being made.
29. Risk management is recognised as the most useful tool for developing programs/policies/practices that reduce risk. The Act should therefore support and enhance the practice of risk management.
- 30-36. Any statutory duty of care must be fair in that it could be reasonable to expect that the action/s or inaction of others are known to be a risk to public health. If the scope of duty of care is left open there may be no end to the issues that will need to be investigated and resolved further burdening individuals/organisations.

The guidance provided in the review is supported. The wider approach detailed does raise questions over the extent and interpretation of unsafe and this should be qualified. Council is regularly presented with scenarios that are not readily resolved some of which will be discussed in the next section. It therefore has limited capacity to effectively deal with the ever expanding range of health issues that present themselves. A narrow view is consequently not supported.

The positive/negative argument is unclear as there are many benefits to positive (promotion) of public health. Whatever direction is taken it should be consistent at both an organisational and individual level. Duty clearly needs to be able to address both existing and pre-empt any future threat to health so both potential scenarios are catered for.

Should there be a breach administrative law should suffice.

Where it can work can cause issues as it is our experience that other statutory remedies are not necessarily enforced by the relevant body and this can pose outcomes that may not be supported by that body or court. The EPA and PrimeSafe are cases in point where commercial and retail premises are unable to be efficiently regulated. We are wary that this provision may be recommended to be used by centralised regulatory agencies as a stop gap, as is nuisance currently. There is some concern that although the Health Act should be used to cover activities that are not regulated that the scope could be better defined to avoid duplication of roles and responsibilities.

37-39. Council is not supportive of any duty of care replacing the nuisance provisions. Nuisance does have significant case law that guides decision making and assists in achieving suitable outcomes. Responsibility should still lie with municipal councils to efficiently deal with local issues.

Defining nuisance to only focus on public health is considered to be inappropriate. It is the City of Ballarat's experience that the amenity and annoying provisions were invaluable in nuisance actions where it was not possible to prove a risk to health. Extensive fly trapping and resultant testing failed to confirm flies were carriers of notifiable diseases.

The City of Ballarat conducted a major nuisance action culminating in a plea of guilty for causing excessive numbers of lesser house flies to breed in an intensive poultry (egg) farm. The Magistrate issued a COURT ORDER for the Proprietor to comply with a Fly Control Management Plan (Risk Management Plan).

The Proprietor then sold the property so under Section 427 the Order was binding on the new Proprietor. A 'plain version' Fly Control Management Plan prepared detailed control steps to manage flies as well as the records to keep. The levels of fly breeding on the poultry farm has significantly reduced. Section 427 should remain in the new Act. The implementation of a 'Management Plan' to abate nuisance in this situation is a successful example of how RMP could be used to abate public health risks.

However, the deletion of 'annoyance' from the definition of 'offensive' is **NOT** supported. In this instance it could not be proven beyond reasonable doubt that the high populations of lesser house flies or the excessive spraying of fly repellents were dangerous to health. Surprisingly, a sample of flies taken from a complainants property for salmonella was negative.

In evidence, Council's EHO accepted that the 'hovering' behaviour of this fly species and the continual waving of flies away from the faces of the complainant's, and the inability to have Bar-B-Qs without attracting large fly populations, was annoying to the complainants because they had suffered intolerable interference to their enjoyment and amenity of their dwelling and property.

The summons prepared stated the Proprietor caused an annoying **activity** due to poultry farming from the wet, damp or moist **state** of manure; and the **condition** of excessive lesser house fly breeding on the property. This was accepted by the Proprietor and the Magistrate. If annoying was removed from the definition Council would not have been able to abate this nuisance with any confidence.

Public Health nuisance is sufficiently clear. In determining a nuisance regard must not be had to the number of persons affected or that may be affected by the state, condition or activity. Also under S 421 (2) "The provisions of this Act as to nuisances shall be

deemed to be in addition to and not to prejudice abridge or affect any right remedy or proceeding under any other provisions of this Act or of any other Act or at common law.”

While the nuisance administrative powers could be applied to the general public health duty, nuisance as described in Section 39A and Section 40 ( 1 ) **must** be retained in the new Act. This is because nuisance as described has been interpreted over 150 years in common law. It is difficult enough to prove nuisance with commonly applied precedent, let alone apply a test of what constitutes a nuisance as with a public health duty. This would be a solicitors 'goldmine'.

There is also considerable difficulty in addressing poor housing conditions. We strongly support the use of prohibition notices and infringements as a tool for resolving nuisance conditions since the demise of regulation relating to sub-standard housing.

Where it may be possible to control activities on the land there are more problematic issues concerning the condition and activities conducted within the dwelling. Residents do raise concerns over their neighbours and the impacts they have on the reasonable enjoyment of their land. Odours from poor animal and house keeping are issues that occasionally reach the media yet the impact to health cannot be proved. The risk of fire and exposure to odour can have a potential impact on neighbours that needs a mechanism for it to be addressed. There is obviously a duty of care on Council to attempt to abate any risk of fire and the emission of odours but the issues cannot be dealt with under other Acts of Parliament such as the Building or Residential Tenancies Act. Local laws can be used for the adverse affect of activities on the land but is much more difficult to apply in enforcement of undefined habitation standards.

40. Yes this is supported

41-42. Management plans have a proven role as previously discussed and should be able to be imposed at any time an activity or condition needs to be managed. It appears though, as with Food Safety Plans, that there is a likelihood that an additional cost and administrative burden could be imposed on the persons/business and local government in managing compliance without the additional resources. This is particularly so for the creation and verification of such documents. A cost benefit analysis may provide justification for any RMP requirement, particularly for licensable activities.

43-47. The registration and licensing of certain businesses such as hairdressers but not solaria, water carters, pool operators etc is inconsistent. Risk to public health should equally apply to all transmission of disease and protection of public health generally. The overall cost may out way the benefits and this aspect should be considered for all activities and based on best available evidence.

Nearly all of the industries have professional bodies with some providing more support than others in standard setting and self regulation. Each of the industries would benefit from being assessed against the level of risk they pose to the community and this should form the basis for whether they do or do not need:

- Registration/licensing;
- Annual inspections or other appropriate frequency; and
- RMP's.

Similarly operators that demonstrate they pose a lesser risk due to their compliance history should be rewarded by a lower risk categorisation or alternatively a higher risk categorisation. A 3 tier (low, medium, high) system should be adopted to encourage compliance. The reward being less frequent inspection and licensing costs. Consistency

in licensing fees and inspection regime would also help the industry with appropriate audit/assessment tools.

Overly complicated eligibility requirements for registration/deregistration or licensing is not supported. This is currently the case under the Food Act and becomes an administrative nightmare for local government and has led to increased fees. Conditional licensing, determination of fit and proper person or revoking/suspending licenses is simply open to interpretation and serious inconsistencies. Competency based standards and supporting documentation must be in place so a repeat of the mayhem created by the Food Act is not repeated.

Currently operators of public pools and spas are not required to be licensed along with solariums. It is our opinion that pool and spa operators must be competent in pool operation and maintenance. This could be corrected as a risk management requirement or amendment to the Regulations. This would be consistent with other States. It should also be considered whether provisions should be made to require RMP's or specifically Emergency Management Plans for event organisers. Many events attract large numbers of people within confined areas. Examples are the Royal Agricultural Show, Sovereign Hill, racecourse carnivals etc. Such plans are essential to minimise the threat to public health from small to large scale disasters such as fire, subsidence, earthquake or structural collapse. A 'population at risk' definition is recommended to trigger the necessity for such Plans.

An obligation to notify authorities when a risk to public health is threatened because of an incident is problematic in detail. Public pool operators should be registered in contrast to hairdressers who pose a lesser risk. Once again this needs definition. PIN's are supported for any offence. Licence cancellations should be the only option with licence reissuing requiring the imposition of a new fee.

Non registered premises that may pose a risk to public health should notify authorities. Powers of authority should cover these activities

- 48-52. It would seem logical to incorporate enforcement powers in the one Part. Provisions should cover the broad range of public health threats to cater for unknown future issues. This may have implications for the compulsory provision of samples for MDU analysis as part of ID outbreak investigation where at the moment there is no compulsion to provide such samples. There may also be a need to make these offences under the Act if compliance with a request is denied. In addition to taking samples and making copies of documents it is recommended that there is an ability to close premises particularly where premises are not in compliance with the Regulations under Part 5, 6 & 7. The secretary should have at least equal powers.
- 53-57. For consistency and legality there should be procedures but there should also be offence/defence provisions also.  
Yes for all 3 dot points  
Yes this should be in the form of a schedule.  
A list of types of work is seen to be potentially restrictive.  
The method of review may include an ability to appeal to Council with/without representatives from relevant State authorities.
- 58-64. General emergency powers is our preference. Any proclamation of an emergency should be renewable but there are potential longer term incidents such as with radiological contamination that should be considered. The faster the better for obvious reasons.

There must be the ability to compel examination and a "Catch all Power" can only assist in protecting the community against all circumstances.

Confidentiality has no place when the issue has major ramifications for the wider community and is overwhelmingly in the public interest.

The power to act when LG is in default should be limited by LG executive taking responsibility for defaulting on their obligations. A test of the reasonableness of the decision making should be assessed.

65. Cost recovery can assist in encouraging compliance and integrity in both investigation and resolution. An ability to recover costs will be at the discretion of Council so cost recovery is supported.
66. A "Risk to Health" offence is encouraged as are the examples of the 2 levels of seriousness described by the definitions. Some elaboration to the definition may be warranted. A statement clarifying reasonableness or risk to health could amount to "exposure to substance/s to which person/s are not normally exposed".
70. No
71. This offence should be left and re enacted.
72. PERIN's are supported
73. Penalties should be more flexible for seriousness of offence and capacity to pay.
74. Body corporate should incur higher penalties.
75. The defence of due diligence is supported.
76. VCAT although this may be fraught with delays.
77. Guidelines for Personal Care & Body Art are inherently difficult to promote. The Regulations provide the only tool to enforce standards of hygiene. Regulation 24 has inherent difficulties in enforcement as there is no explicit requirement, in the Guideline or Regulation, to maintain sterilisation records that may assist in demonstrating compliance or steriliser integrity. There is also an argument to be made concerning the statement made in paragraph 8.1.2 "The rationale for these exemptions is sound and should be applied consistently to all health professionals who are .... " Skin penetration practitioners should be trained in IC given the high risk nature of the business but there still remains a lesser standard of training for the industry, eg use of non sterile gloves. As discussed earlier there is little support for the registration of hairdressers as the risks are minimal in proportion to the risks associated with the tanning industry, water carters or swimming pool operation, that remain unlicensed activities.
78. Yes
79. No because it is lacking in detail and the definition is poor and ambiguous. There is debate as to the meaning of self contained and/or exclusive occupation. A motel is self contained and exclusively occupied yet a caravan is not. Would appreciate this matter being clarified further as a dwelling with or without laundry facilities may be "self contained" for the purpose of managing the risk to PH. It is our experience that complaints concerning accommodation standards are predominantly made towards hotels, boarding houses, supported residential facilities, caravan parks and pools, or more generally, where facilities are shared.
80. Unclear as to the purpose of this as it contradicts earlier powers discussed. Would this not be the common sense approach as a management method/procedure.
81. And again, umhh. Very ambiguous.

82. Yes

83. Outline the procedures.

84. Yes

85. ? A dubious care giver is provided as an example

86-94. We do not see LG having a particularly significant role in this. We would encourage a thorough yet fair approach be taken based on risk.

95-97. We support the term 'notifiable condition' as it will help to respond to 'emerging conditions' more rapidly.

98-102. Not a significant LG role for comment.

Immunisation should be strengthened in the new Act and the performance of LG be recognised.

103. The assertion is supported in that Councils may choose to opt out ( with a subsequent PH impact) if it is not made clear that they have a responsibility to protect the health of the community.

104. This is part of the function of people in charge of a childrens service centre and therefore should be in legislation they deal with.

105. This is supported.

106. This is supported and if necessary Regulations relating to the enrolment process into secondary school should be amended to include this requirement.

107. This is not supported as it would be too difficult to enforce in the more casual attitude of a tertiary institution. In addition the more comprehensive immunisation program at younger ages is going to make the proposal redundant in the not too distant future.

108. The new Act could authorise a small number of forms of evidence but to avoid confusion the format should be standard and they should only be supplied by a small number of providers eg LG and ACIR.

109. The only penalty should be non enrolment.

110. Yes but privacy issues need to be considered.

111. Absolutely and the NH&MRC schedule should reconsider whether it recommends vaccines that are not on the free list.

112. This requirement could delay the ability of school principals to deal with an outbreak. Principals should be able to act first and then be required to follow up with an approach to OH&S for further advice on actions.

113. This should only be on the advice of the Chief Health Officer.

114. No. This should be extended to any infectious condition including headlice.

115. Yes. The guidelines should be called up in the Act to allow enforcement.

116. Offensive waterways are not readily dealt with by the Environment Protection Authority. There is some argument to continue with this provision as Councils are often the initial referral authority and where serious problems needing immediate corrective action occur there is at least some scope for regional/remote councils to deal with these matters. Alternatively new proposed provisions of 'Improvement Notices' may be suitable but we cite the recent issue at South Gippsland where dairy effluent contaminated drinking water supplies
117. The City of Ballarat still has cause to use this section of the Act. Its specificity may not be necessary and improvement notices may suffice but we do have issue with the definition of "pest animal" in that the Catchment & Land Protection Act is very limiting in its application and is applied only in relation to impacts on primary production.
- 118-119. The Building Act 1993 always seemed to be at odds with the Act's original objects other than that provided for in S4(a) & (fa).  
We agree that Legionella control is a PH issue and the transfer to the new Act would be appropriate.

Part 5A appears to be specific to the owner of the land applying to register the cooling tower system. It is our experience that cooling tower systems can be transported for the purpose of, for example, establishing temporary ice skating rinks. We question whether the cooling tower itself should be registered rather than the land on which it is situated as the owner of the CT system may be failing to advise the owner of the land of their obligations under S75BA & 75CA. The risk will always be influenced by the operation and maintenance of the tower by its owner not the land. The location can be controlled by the tower being registered to operate at a given location.

- 120-121. The re-enactment of provisions relating to meat supervision is supported.  
PrimeSafe does not have the capacity to adequately enforce S 34 (1) of the Meat Industry Act due to the limitations of their regulatory regime.

- 122-124. There needs to be clarity on the application of pesticides by council employees particularly where wasp nests are treated on public land. Should wording of this section preclude council officers from applying pesticides without an appropriate licence an additional burden may be placed on Councils to efficiently deal with pest issues.

In summary the City of Ballarat's EH Service is of the opinion that nuisance provisions should continue to have a part in the new Act even though we support the proposal to include prohibition orders and improvement notices. There will continue to be "emerging conditions" that will bring with them more complex risks to PH and the need for what could possibly become more complex risk management approaches in protecting PH.

There are also regulatory approaches by other agencies that can often leave Council having to deal with immediate concerns where specificity in approach to tackling those concerns may be left wanting. These in particular may involve amenity issues where a risk to PH cannot readily be proven. The strengthening of the Health Act is supported but not at the expense of a cost effective and the timely delivery of positive public health outcomes

The City of Ballarat's Environmental Health Service appreciates the opportunity to provide input to the Health Act review process. We would be happy to further elaborate on any of the matters raised should there be a lack of clarity in the examples demonstrated.

Should you wish to contact the following management team by phoning Ned Beslagic or Alex Serrurier on 5320 5702 or by emailing

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Yours sincerely

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