



CITY OF MONASH

AW: HLTH 9

16 November 2004

Dr Jacqueline Goodall  
Legislation & Policy Officer  
Legislation Review  
Public Health  
Department of Human Services  
GPO Box 1670N  
MELBOURNE 3001

Dear Ms Goodall

#### **REVIEW OF THE HEALTH ACT 1958**

On behalf of the City of Monash I would like to make the following submission regarding the review of the Health Act 1958.

#### **Guiding Principles**

*Should the new Act contain a provision specifying guiding principles, and, if so, what principles should be included?*

**Comment** - Yes – guiding principals provide for transparent decision-making and provide a framework for public health officers to make decisions. Principals that have been suggested in the discussion paper are: -

- Provision of evidence-based decision making
- Precautionary principal
- Principal of Accountability
- Principal recognizing the community interest in public health
- Principal of preventing unnecessary encroachment on individual rights
- Polluter Pays principal recognizing that the promotion and protection of public health is a collaborative and intersectoral effort

## **Functions of Councils**

*Should the new Act retain the functions for Councils as set out in the current Act?*

*Should the new Act recognize Council's role in: -*

- *Planning, advocating and providing organized public health programs*
- *Developing and implementing strategies to protect and improve public health, and promote community health and well being*

**Comment** – Yes - the current Act sets out the roles and responsibilities of Council, which is to seek to prevent disease, prolong life and promote public health. These provisions have worked well without being overly prescriptive and are still relevant. The Act should recognize that other Council plans and strategies have a role in protecting Public Health such as the Council Plan and Municipal Strategic Statement.

*Should the concept of partnership between State and Local Government, and between government and non-government, be addressed in the new Act.*

**Comment** – Yes - Partnerships with Local Government, State Government and with the community in the area of public health is important. The protection and promotion of public health is a collaborative and intersectoral effort. A partnership approach is used in the development and implementation of our MPHP currently, which we believe is a strong component of the successful outcomes of the MPHP. It is important that partnerships are included in the Health Act but it is not desirable that the parameters of these partnerships be prescribed.

## **Municipal Public Health Plans (MPHP)**

*Should the new Act provide greater emphasis on implementing the MPHP and achieving its outcomes?*

**Comment** – Yes – The emphasis in the Health Act is currently on preparing the MPHP. Good public health outcomes should be the focus.

*Should the new Act set out how Council intends to fulfill the statutory functions in the MPHP?*

**Comment** – Yes – this would provide a stronger link between the functions of Council under the Health Act and the MPHP.

*Should the new Act retain the requirement to prepare MPHP's at set intervals?*

**Comment** - Yes – and this time frame should be linked to the Council Plan i.e. every 4 years. Councils are currently required to develop a Municipal Strategic Statement that is linked to the Council Plan and this provision should be replicated in the new Act for MPHP's.

*Should the new Act retain a requirement to report annually to DHS?*

**Comment** – No – this provision is currently not actively complied with by Local Government and it is likely that the monitoring of such a requirement would be beyond the resources of DHS.

### **Medical Officer's of Health**

*Should the new Act remove the requirement that every Council appoint a MOH, and instead rely on non-legislative mechanisms for ensuring municipal Councils have access to medical expertise*

**Comments** – No – Council currently employs a Medical Officer as required by the Act to provide infant immunization and provide assistance to Council on health matters when necessary. This system works well and allows for expert medical knowledge to be available to Council at all times.

### **Environmental Health Officers**

*Should an EHO who is appointed by Council automatically be an authorized officer for the purposes of the Act?*

**Comment** – Yes – Automatic authorization has administrative efficiencies and clears up any legality issues.

*Should the new Act require specific qualifications and/or expertise for appointment as an EHO or an authorized officer?*

**Comment** – No – The current Act requires EHO's to hold qualifications nominated by the Secretary (DHS). Any requirement to nominate qualifications under the Act would require amendment to the Act when new or varied qualifications are developed.

### **Nuisances**

*Should a general duty of care, if adopted, replace the separate nuisance provisions and, if so, should Councils retain responsibility for dealing with public health risks similar to nuisances in their municipalities*

**Comment** - It has been suggested that a general duty of care replace the existing nuisance provisions in the Act similar to the following: -

“ A person must not undertake any activity that may result in harm to health of another person unless that person takes all reasonable and practical measures to eliminate that possibility of that harm occurring”.

A duty of care may extend Council's statutory duty beyond traditional sanitation and environmental boundaries into lifestyle issues that could lead to a very broad

responsibility on Council. The scope of a duty of care would need to be kept within workable and realistic bounds.

*If separate nuisance provisions are retained should nuisance be defined so as to focus on public health risks and, if so, does removing the term 'annoying' from the definition of 'offensive' achieve this.*

**Comment** - There is a strong argument that the term 'nuisance' should be better defined to give council officers more guidance. The current nuisance provisions deal with nuisances which are, or liable to be dangerous to health as well as those that are offensive. 'Offensive' can mean 'noxious, annoying or injurious to personal comfort'. Some redrafting may be required to concentrate nuisances on what are public health risks rather than on annoying or irritating matters. Regard will have to be given to the fact that Council will still be the recipient of complaints that fall into the annoying/irritating category and ratepayers will still require action. Other dispute resolution measures may need to be introduced to solve these more 'minor' nuisances.

### **Registration and Licensing**

*Should the current system of licensing and registering certain premises be maintained, expanded, improved or deleted.*

**Comment** – Yes - The current Act requires the registration, licensing and inspection of a range of premises which, without certain standards of hygiene and cleanliness being observed, there is an increased risk of transmission of disease. Premises that fall into this category are, tattooists, ear and body piercers, beauty parlours, hairdressers and shared public accommodation. The current system of licensing has worked well and has enabled conditions in those premises mentioned, to be maintained to a high standard.

### **Enforcement Powers**

*Are the current enforcement powers in the Act appropriate to allow authorized officers and EHO's to carry out their duties.*

**Comment** – No- in most cases the current powers are adequate however the discussion paper has suggested that a system of improvement and prohibition notices could be added in the new Act. This would increase the ability of Council to respond to public health concerns by enabling them to: -

- Address a potential public health risk rather than only when a nuisance exists
- Be more proactive

This approach is worthy of support.

**Immunisation**

*Should the new Act state the role of Councils in relation to immunization?*

**Comment** – No – The current Act provides sufficient flexibility for those Councils who wish to involve themselves directly in immunization while still providing the opportunity to opt out if they are satisfied immunization is being adequately provided in the municipality by others.

I would like to thank you for the opportunity to comment on this important legislation and would appreciate being kept informed of the progress of the review.

Yours sincerely



DAVID CONRAN  
Chief Executive Officer

