



H.092

01.03.002

04/04260

BP:JB

27th October 2004

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

Dear Madam

Re: Health Act Review

The following comments are made relevant to some of the issues raised for comment in the discussion paper.

The numbers in the brackets indicate the particular issue.

1. (1) There is no useful purpose in renaming "the Act". "Health Act" is recognised and understood by the general public. Role and purpose can best be described in the Act.
2. (2, 3, 4, 5 & 6) There seems little point in consolidating the legislation, its working why change?
3. (3, 4, 5 & 6) These will set the scene for health in the future.
4. (9 & 10) The Act should set out Council functions while recognising Councils role in planning and implementing strategies to improve public health and promote community health & well-being.
5. (11) If there is to be a partnership there needs to be some equity. Currently local government has plenty of responsibility but receives little funding for preventative health services. A classic example is immunisation funding where local government receives \$6 for an immunisation, a General Practitioner – up to \$68.20.
6. (12, 13, 14, 15 & 16) Municipal Public Health Plan's may be a good idea but have not been particularly effective in achieving outcomes. Three yearly rewrites are too frequent, its just taking funds that could be used to implement the plan. Five yearly would be appropriate. Money is what it's all about and many plans are ambitious beyond available funding. Linking to Council's corporate plan is essential.

7. (17) Remove the requirement for an MOH. Medical expertise is readily available and when required can be from a specialist source.
8. (18, 19, 20 & 21) There are benefits to automatically authorise an EHO appointed by Council for the purpose of the Act such as administrative efficiencies and clears legality issues. Environmental Health Officers should have suitable qualifications and/or experience as declared by the Secretary.
9. (30, 31, 32, 33, 34, 35 & 36) Duty of care already exists and does not require further legislation to enforce. It is not possible to quantify and specify to cover all issues. It would only provide fodder for the legal profession.
10. (37, 38 & 39) A general statutory duty of care would be no substitute for the current nuisance provisions of the Act. The nuisance provisions are the most frequently used sections of the Act by local government and with the abatement provision are extremely effective in dealing with all types of complaints. There is a wealth of precedent law relating to nuisance cases and any meddling with these provisions will only serve to weaken the ability to deal with what is best described as nuisance. All parts of Part III should be left intact without any fiddling.

To deal with the concerns of the "Right to Form" compliance with appropriate codes of practice, best practice and all other legislation could be a defence for a nuisance offence.
11. (40) Standards of practice have an important role but need to be enforceable similar to the Food Safety Standards.
12. (41 & 42) Risk management plans could be an option for high-risk activities. Maintaining paper trails is proving a considerable burden for small low risk food premises with food safety plans.
13. (43, 44, 45, 46 & 47) Registration should be required for all premises where a risk to public health may occur. Swimming pools should be included.
14. (50) Sections 403, 404 & 404A are the most obscure, obtuse legal clauses ever produced. The exceptions related to Council officers needs to be removed.
15. (53, 54, 55, 56 & 57) There is already plenty of power to issue notices. It doesn't need to be duplicated.
16. (65) The Act should provide for cost recovery where an offence is committed.
17. (72) There are few offences suitable for PERIN.
18. (73 & 74) Maximum penalties should increase to reflect the seriousness of an offence similar to Environment Protection Act and Food Act Offences by corporate bodies should attract higher penalties.
19. (79) Current regulations don't effectively deal with animals other than assistance animals in accommodation premises.

20. (103) Councils play an important role in immunisations. The Act should continue to state that role.

While the Act still retains the title "Health Act 1958" it has been continually updated and amended with the removal of food, building & environmental protection. Enormous changes in infectious disease control have been added. Water, meat supervision and pest control should be moved out to those industry specific acts.

Public health will continue to evolve with increasing emphasis on social health, health promotion and health advancement, which needs to be addressed in the new / amended Act but controlling communicable diseases and improving unsanitary conditions remain issues for public health.

Keep what is good in the Act (particularly the nuisance provisions) and add the new directions as a complement.



Yours faithfully

Bruce Pollard
ENVIRONMENTAL HEALTH OFFICER