

HORSHAM RURAL CITY COUNCIL

Address Communications to:
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Our Reference: 07/01/014:AMM:alc
Your Reference:
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3rd November, 2004

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

Dear Dr Goodall

Review of the Health Act 1958

Please find enclosed Horsham Rural City Council's submission to the review of the Health Act 1958.

Yours faithfully

ANGELA MURPHY
General Manager Community & Enterprise Services

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REVIEW OF THE HEALTH ACT 1958

As previously reported to Council the Health Act 1958 is subject to a major review promulgated by the Department of Human Services. The discussion paper was released in August 2004 and submissions from stakeholders are expected to be submitted by 5 November 2004.

Public health is a dynamic field and although historically public health has been associated with controlling communicable diseases and improving unsanitary and unsafe conditions in the community, public health now encompasses the broader dimensions of social health, health promotion and health advancement. It is vital that we maintain the health of our community seeking to reduce the incidence of disease, premature death and disability. The Act provides protection for individuals immediate health threats but also the health status of the general population. The review document provides a broad overview of the role of public health legislation and the principles guiding the review of the Health Act.

The writer sees the Health Act as a legal instrument that has over the years provided resolution to often complicated and difficult problems that prescriptive legislation could not provide. In recent years it has also utilised a pro-active approach to public health concerns and supports public health strategies aimed at promoting and preventing illness and injury and disability in our community. The review seeks comments from stakeholders on approximately 124 separate issues. The aim of this report is to concentrate comments on these areas that would affect this Council and drawing upon experiences in key areas in the document. The report will aim to draw on experience rather than commenting and putting a point of view on each individual aspect raised by the report.

1. Sectorial Relationships

The current Act sets out the many sections relating to the functions of municipal councils. This involves general public health expectations using Council as the overseers of their community and also the development of municipal Public Health Plans to identify and access actual public health dangers in the municipal district. Although the review document concentrates on partnerships there is no prescriptive role for the State Government and the Department of Human Services. It is vital that the State Government is as accountable as Local Government with its role working towards achieving better health outcomes. In fact all stakeholders even community groups and individuals should receive some recognition in the processes expected to develop healthy communities.

(a) Medical Officers of Health

The review asks whether Local Government should rely on non-legislative mechanisms for ensuring municipal councils have access to medical expertise. It is felt that this should not be by choice and Councils should in fact seek to appoint and have the legislative requirements to appoint a Medical Officer of Health. This Council has an energetic and motivated Medical Officer of Health and it is felt that this Officer has a critical role in the events of an emergency relating to food or disease out break or other emergency within the community. Councils should not have a choice in this matter and should be required to nominate a suitably qualified general practitioners into the public health stream.

(b) Environmental Health Officers

Councils are asked for an opinion on whether and EHO should receive automatic authorisation for the purpose of the Act. This proposal is supported and is already the case under the Tobacco legislation.

(c) Statutory Duties, Powers, Offensives and Defences

The discussion paper has introduced a new approach to public health regulators based on risk management principles. It is felt that this new practice of risk management should be supported to make all parties accountable for their actions. It would permit pro-active responses to public health risks. Newly emerging and re-emerging diseases pose threats to public health in Australia (such as flu pandemics) represent potential emergency risks and the legislation needs to reflect a flexible and timely response to these health risks.

To reflect current thinking the proposal to introduce a statutory duty of care is included in the review. This will apply to all whose actions may adversely affect the public's health. A good example is the case of crop dusting where a pilot should comply with relevant agricultural licensing requirements/regulations and codes of practice to avoid a public health threat due to chemical spray drift. And heavy penalties are proposed.

This key concept should be supported by the Council.

2. Duty to Abate a Nuisance

This is a very delicate area of law, however is very useful tool to resolve difficult situations that are not often covered by prescriptive legislation. The writer believes that the nuisance provisions should be maintained and the term 'annoying' in the definition of 'offensive to public health' should be retained to maintain the broad scope of nuisance law. Any existing legislation should remain to create a preventative and pro-active approach for conditions that are liable to become a public health threat.

Regulations supporting this section of the Act would be encouraged and further investigation into more effective methods of dealing with a wide range variety of threats and existing nuisances provisions should be evaluated.

Enquiry should be developed towards improving mechanisms for continuing offenders (possibly even jail sentencing for repeat offenders). Council EHOs spend a large amount of time investigating, listening, interpreting and developing strategies to solve neighbourhood disputes that are of a public health or environmental nature. It is a corner stone of public health legislation and deserves to be treated in a manner that will develop more efficient methods to assist Councils with better outcomes using legislative and enforcement provisions under a new Act.

The concept of knowingly, recklessly causing a 'risk to health' is supported as one new initiative in this area of public health law.

3. Standards of Practice and Guidelines and Codes of Practice

Such documents play an important role as a benchmark for the conduct of commercial activities to measure compliance and educate the businesses. They therefore should be recognised in legislation and legislation and should provide appropriate support for Councils ensuring operators conform to these guidelines, eg unclean, unsafe,

unhygienic practices are still a problem within the industry and need to be dealt with at times by using enforcement to protect the community and the commercial industry.

4. Risk Management Plans

Risk Management Plans (RMPs) have been introduced in the Food Act eg Food Safety Programs. Should this proposal be introduced into other commercial activities, such as skin penetration and accommodation businesses under the Health Act, the Government should be mindful of the extra workload and commitment to resources to ensure the compliance and implementation of such a concept. If they are introduced it is suggested that they must be enforceable when a public health risk exists.

5. Registration and Licensing

It is the writer's opinion that registration of hairdressers and other premises including accommodation and beauticians and skin penetration business, is essential. Appropriate legislation to control non-conforming proprietors is vital and registration provides some control against back yard activities. Deregulation opens up opportunities for unscrupulous operators without some level of surveillance by health professionals.

6. Immunisation

For many years Councils have provided immunisation to children and adults within our community and is an essential public health function that should be reflected in the new Act. The Councils role is a vital intervention service and it is considered that Council should continue to provide this service for its residents.

It is considered that Councils position in relation to changes under this section of the review should be as follows:

No obligation by secondary schools and parents to introduce a tertiary school immunisation certificate should be introduced. However every effort should be made to encourage schools to facilitate the transfer of records from school to school within the education system.