


4th November 2004

Dr J Goodall
Legislation and Policy Officer, Legislation Review
Public Health, Department of Human Services
GPO Box 1670N
Melbourne
Victoria 3001

Dear Dr Goodall

re Review of the Health Act 1958

Please find attached my submission for this review. Many of the issue questions relate to the present Act with a focus on the communicable diseases. An answer has been provided to an issue when I could do so, and my answers are based on the tenet that modern public health is now much more comprehensive than prevention of communicable disease.

In the Discussion Paper Section 2 *Background and policy context*, there is only a brief introduction to the role of public health in supporting the health of the population.

In the new Act this concept requires further development, recognition, and incorporation. The natural, built, social and economic environments are vital in supporting a positive approach to the basic hierarchy for necessities of life (air, water, food for nourishment) and general safety as well as equity, freedom of speech and freedom from discrimination. These are all core public health issues which require articulation in the new Act.

I will be pleased to answer any questions you may have about this submission.

Yours sincerely



Dr Beverley Wood
Consultant in Food, Nutrition and Dietetics

c.c. Dr R Hall
Ms V Graham

Review of the Health Act 1958-August 2004

List of issues for comment

Issue	Section reference
1 Should the Act be renamed and, if so, what name would best reflect the role and purpose of the new Act?	3.1
<u>Comment:</u> <u>Yes</u> <u>Rename to Public Health Act</u>	
2 Are there matters that are currently dealt with by other legislation that should be included in the new Act?	3.2
<u>Comment:</u> <u>The new Act should empower the positive promotion of Public Health by ensuring that adequate attention is given by governments to the factors supporting the heirarchy for the basic necessities of life which are affected by the natural, built, economic, social and cultural environments.</u>	
3 Should the new Act recognise the importance of promoting public health, and, if so, how should the new Act aim to achieve this?	3.2
<u>Comment:</u> <u>Yes, it should recognise the basic heirarchy in the necessities of life (air, water, food for nourishment) and general safety, equity, freedom of speech, and freedom from discrimination. It should promote them through a public health framework. The new Act can aim to achieve this through effective collaboration and partnerships between whole of government Public Health Policy and Planning-integrated federal, state, and municipal public health planning.</u>	
4 Should the new Act recognise the need to address inequalities in the health and wellbeing of disadvantaged communities and, if so, how should the Act aim to achieve this?	3.2
<u>Comment:</u> <u>Yes, definitely</u> <u>Through inclusion of equity in support for the basic heirarchy in the necessities of life (air, water, food for nourishment) and general safety, and promote them through a public health framework, as well as equity, freedom of speech, and freedom from discrimination.</u>	
5 What objects provisions would represent the public health objectives, values and outcomes that the new Act should be aiming to achieve?	3.3

Issue

**Section
reference**

Comment:

Whole of government Public Health Policy and Planning objectives for meeting the basic hierarchy in the necessities of life (air, water, food for nourishment) and general safety through:

- 1) Promotion of public health and wellbeing through natural, built, social, cultural and economic environments.
- 2) Assist in reducing the health inequalities of disadvantaged communities.
- 3) Assist in protecting public health and prevention of disease, illness, injury, disability and premature death.
- 4) Provide for adequate monitoring and surveillance and information to the public about the health of the population.

- 6 Should the new Act contain a provision specifying guiding principles, and, if so, what principles should be included? 3.4

Comment:

Yes

General principles should be espoused, based on Comment in 5. above, and particularly promotion of the necessity to meet the basic hierarchy in the necessities of life (air, water, food for nourishment) and general safety through promotion of public health and wellbeing through natural, built, social, cultural and economic environments.

- 7 Should the new Act include a statement that the function of the Secretary is to implement policies and programs to achieve the objects of the Act? 4.1

Comment:

- 8 Should the new Act include a power for the Secretary to conduct inquiries into matters of public health concern and, if so, who should have the power to direct that an inquiry be conducted? 4.1

Comment:

- 9 Should the new Act retain the functions for municipal councils as set out in the current Act? 4.2

Comment:

- 10 Should the new Act recognise municipal councils' role in: 4.2
- Planning, advocating and providing organised public health programs?

Issue	Section reference
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- > Developing and implementing strategies to promote and improve public health and promote community health and wellbeing?

Comment:

Yes, definitely these should receive more emphasis in the future Act-so that the natural, built, social cultural and economic environments support the health of the population and does not act as a barrier to the health of the population

In partnership with State Government, Primary Health Care sector, NGO's, and through Municipal Public Health Plans.

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| 11 | Should the concept of partnership between state and local government, and between government and non-government, be addressed in the new Act? | 4.3 |
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Comment:

Yes, to reduce activities which may conflict with each other.

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| 12 | Should the new Act place greater emphasis on implementing the MPHP and achieving its outcomes, rather than just developing a document, and if so, how could this be achieved? | 4.4 |
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Comment:

Yes

Outcomes can be achieved through development of inter-sectoral policy and strategic planning and accountability through MPHPs.

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| 13 | Should the new Act require that municipal councils set out how they intend to fulfil their statutory functions in their MPHPs? | 4.4 |
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Comment:

Yes

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| 14 | Should the new Act retain the requirement to prepare MPHPs at set intervals and to review MPHPs annually in consultation with the Department of Human Services? | 4.4 |
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Comment:

The new Act should retain the requirement to prepare MPHPs at set intervals.

Annual review is too often to achieve public health change.

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| 15 | What should be the local government reporting requirements, if any, under the new Act? For example, should the new Act retain the | 4.4 |
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Issue

**Section
reference**

requirement to report annually, and at other times as directed by the Secretary? Should there be a requirement to submit MPHPs at set intervals? If so, what would be the expected value of such reporting requirements?

Comment:

Change requirement to future report four yearly.

Assistance from State Government with monitoring and surveillance of Public Health would be needed if objective data is to be part of reporting requirements.

- 16 Should the new Act link the requirement to prepare a MPHP to other planning processes within local government, such as the Council Plan? For example, should the requirement be to prepare MPHPs every four years? 4.4

Comment:

Yes, definitely, if the required inter-sectoral action to improve public health is to be achieved.

- 17 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? 4.5

Comment:

Yes.

A Public Health Officer (in addition to an Environmental Health Officer) should be appointed by every Council to address public health in a positive health promotion-community development model, with access to a Medical Officer on a required basis.

- 18 Should an EHO who is appointed by a council automatically be an authorised officer for the purposes of the Act? 4.6

Comment:

- 19 Should the new Act require specific qualifications and/or experience for appointment as an EHO? 4.6

Comment:

No

- 20 Should the new Act require that authorised officers have qualifications and/or experience prescribed by the Secretary? 4.7

Issue

**Section
reference**

Comment:

Yes, Public Health Officers should have Public Health knowledge and expertise which are much wider than those of an EHO.

- 21 Alternatively, should the Act provide that councils 4.7
may only authorise persons appropriately
competent?

Comment:

No

- 22 Are the current powers of the Secretary under the 5.1
Health Act with respect to the collection of health
information adequate to ensure access to
comprehensive and reliable data necessary to
monitor and assist in the protection of public
health?

Comment:

Don't know. Probably not as the monitoring data listed in 23. below is not available.

- 23 Should the new Act make more explicit the forms 5.1
which such collection of comprehensive data may
take? For example, should the new Act provide for
the Secretary to establish registers, databases and
other collections of public health information and to
state some of the uses of that information?

Comment:

Yes, but the State Government would need to provide resources to enable Local Governments to achieve it.

Information is required at the Local Government level from the Victorian Population Survey in the relation to the non-communicable diseases- failure to thrive, infant weights and heights, infant mortality and morbidity, breast feeding duration, adult height and weight, physical activity, basic dietary data, community and individual food security, healthy food access basket (food cost), additives and pesticides in foods and drinks.

- 24 Should the provisions regarding consultative 5.3
councils be consolidated in the new Act to provide:
- > General provisions regarding establishment and functions of all consultative councils?
 - > Standard provisions regarding the establishment of sub-committees?
 - > A power to make recommendations in

Issue	Section reference
<ul style="list-style-type: none"> relation to investigations or inquiries? > An obligation to produce an annual report? 	

Comment:

Yes

A Consultative Council on Public Health Food and Nutrition is urgently required.

25 What sort of information might each of the consultative councils need to ensure that they can carry out their functions effectively?	5.3
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Comment:

26 Should the new Act contain more specific provisions requiring: <ul style="list-style-type: none"> > Reporting to consultative councils on specified incidents? > Regular provision of specified information relevant to the statutory functions of consultative councils? > Preparation, by medical practitioners, of a report for the Council in relation to a matter that it is investigating? 	5.3
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Comment:

27 Should Victoria continue to rely on a legislative requirement for HIA in EIA legislation?	6.2
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Comment:

28 Alternatively, should a separate requirement for HIA be introduced in the new Act and, if so, in what circumstances should HIA be conducted and what should be the threshold for triggering it?	6.2
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Comment:

In the new Act, Health Impact Assessment should include the basic hierarchy of the necessities of life (air, water, food for nourishment) and general safety as well as equity, freedom of speech and freedom from discrimination.

Public Health Officers at all government levels should be required to report on all of these matters at periodic intervals.

	Issue	Section reference
29	Should the new Act support and enhance the practice of risk management?	7.1
	Comment:	
30	Should the new Act include a general statutory duty of care?	7.2
	Comment: Yes	
31	If so, what should be the scope of the duty?	7.2
	Comment: <u>The scope of the duty should be a general one which supports the basic hierarchy in the necessities of life (air, water, food for nourishment) and general safety as well as equity, freedom of speech, freedom from discrimination.</u>	
32	If adopted, should the duty be positive or only negative?	7.2
	Comment: <u>Positive</u>	
33	What should follow from being in breach of the duty: criminal and/or civil liability or should the consequences of breach be limited to administrative powers?	7.2
	Comment:	
34	Should failure to comply with the duty be the basis on which costs are recovered?	7.2
	Comment:	
35	Should compliance with the duty provide a defence against some offences under the Act?	7.2
	Comment:	
36	How might the duty of care work in practice?	7.2
	Comment: <u>Demonstration at intervals through outcomes of the Municipal Public Health Plan, with adequate monitoring and surveillance</u>	
37	Should a general statutory duty of care, if adopted	7.3

Issue

**Section
reference**

replace the separate nuisance provisions and, if so, should municipal councils still retain responsibility for dealing with public health risks similar to nuisances in their municipalities?

Comment:

A general statutory duty of care about the basic necessities of life (air, water, food for nourishment) and general safety should replace separate nuisance provisions.

- 38 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? 7.3

Comment:

- 39 If the obligation on municipal councils to abate nuisance in their municipality is retained, should the abatement provisions be removed and municipal councils instead rely on general enforcement provisions under the new Act? 7.3

Comment:

- 40 Should best practice standards continue to have a role in the regulation of public health risks? 7.4

Comment:

There should be some way of achieving improvement in public health across the State through improved compliance with standards of practice and guidelines.

Best practice standards require development and implementation to support the basic necessities of life and hierarchy of human needs (air, water, food for nourishment) and general safety and for prevention of non-communicable diseases at all levels of government.

- 41 Should RMPs have a role in the regulation of public health risks under the new Act? 7.5

Comment:

- 42 Who should be required to prepare RMPs: 7.5
- persons undertaking a registrable or licensable activity by way of a condition of registration/licence?

Issue	Section reference
<ul style="list-style-type: none"> ➤ persons required to do so by an improvement notice? 	
Comment:	
43 What criteria should be used in deciding which activities should be subject to the requirement of registration or licensing?	7.6
Comment:	
44 What regulatory parameters for registration/licensing would provide a more up-to-date, flexible, graduated and responsive approach to the level of public health risk?	7.6
Comment:	
45 Are there any other public health risk activities that should be regulated under the new Act through the system of registration or licensing and, if so, what specific requirements should be imposed on those activities?	7.6
Comment:	
46 Should there be a positive obligation on persons conducting activities subject to registration/licensing to notify authorities in event of certain types of incidents occurring?	7.6
Comment:	
47 Should there be an obligation placed on proprietors of non-registered premises (for example, swimming pools and brothels) to notify authorities where there has been an incident that might present a risk to public health?	7.6
Comment:	
48 Should all enforcement powers be brought together in one part of the Act?	7.7
Comment:	

Issue	Section reference
49 Should the enforcement provisions of the Health (Infectious Diseases) Regulations 2001 be broadened to cover other public health threats not involving infectious diseases?	7.7

Comment:

Yes, definitely

50 Are the enforcement powers in the Health Act appropriate to allow authorised officers and EHOs to carry out their duties?	7.7
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Comment:

51 In addition to the power to take samples and make copies of seized documents, are there any other additional powers that should be included in the new Act?	7.7
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Comment:

52 Should the power to search for and seize goods without a warrant be widened to allow the Secretary to search for and seize things other than goods, such as records, biological agents or other items?	7.7
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Comment:

53 Should the new Act contain a procedure for the issuing of improvement and prohibition notices by authorised officers?	7.7
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Comment:

54 Should notices cover: <ul style="list-style-type: none"> <li data-bbox="409 1685 623 1710">➤ nuisance? <li data-bbox="409 1735 1144 1800">➤ licensable or registrable public health risk activities? <li data-bbox="409 1825 1144 1878">➤ where the activity may otherwise contravene the Act? 	7.7
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Comment:

Issue	Section reference
55 Should the new Act establish general criteria for issuing notices?	7.7
Comment:	
56 Should the new Act set out an inclusive list of the types of work a person subject to an improvement notice could be required to perform?	7.7
Comment:	
57 What method of review should apply to improvement and prohibition notices?	7.7
Comment:	
58 Should emergency powers be general for 'public health emergencies' or be specific to infectious diseases?	7.8
Comment:	
59 Should the proclamation of an emergency be extended to four weeks, with renewal periods not exceeding two weeks, to a maximum of six months?	7.8
Comment:	
60 Should there be a fast-track mechanism for notifying a disease associated with a public health emergency?	7.8
Comment:	
61 Should the Secretary be given powers in a public health emergency to compel examination, testing, vaccination, treatment (including preventative treatment), isolation and quarantine?	7.8
Comment:	
62 Should the Secretary be given a 'catch all' power in	7.8

Issue	Section reference
a public health emergency such as 'any other order deemed necessary'?	
Comment:	
63 Should compliance with demands from the Secretary during an emergency or outbreak of an infectious disease be specifically exempted from confidentiality?	7.8
Comment:	
64 Should the Secretary's power to act when local government is in default be limited in any way?	7.8
Comment:	
65 Should the new Act include a provision for cost recovery where a person:	7.9
➤ has been convicted of an offence?	
➤ has contravened the Act, but there has been no conviction?	
➤ has caused a risk to public health?	
Comment:	
66 Should the new Act include a new offence of 'risk to health'?	7.10
Comment:	
67 If so, what should amount to a 'risk to health'?	7.10
Comment:	
68 If adopted, what should be the defences, if any, to the offence of 'risk to health'?	7.10
Comment:	
69 What should be the scope of the offence?	7.10

Issue	Section reference
Comment:	
70 Should the 'risk to health' offence subsume the offence for knowingly and recklessly infecting another person with an infectious disease?	7.10
Comment:	
71 Should the offence for knowingly or recklessly infecting another person with an infectious disease not be re-enacted due to the existence of the knowing and reckless offences in the <i>Crimes Act 1958</i> (that is, sections 22 and 23)?	7.10
Comment:	
72 Should the new Act introduce PERIN for suitable offences?	7.11
Comment:	
73 Should public health offences attract similar penalties to those attracted by offences under environment protection legislation?	7.12
Comment:	
74 Should the new Act allow for greater penalties where the offender is a body corporate?	7.12
Comment:	
75 Should the new Act include a statutory defence of due diligence?	7.13
Comment:	
76 What method of review should apply to administrative decisions made under the Act?	7.15
Comment:	

Issue	Section reference
77 Do the current provisions appropriately address the public health risk associated with hairdressing, beauty therapy and skin penetration?	8.1

Comment:

78 Should the brothels provisions be transferred to the Prostitution Control Regulations 1995, and Department of Human Services officers exercise their inspectorial powers in relation to infection control issues under the <i>Prostitution Control Act 1994</i> ?	8.1
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Comment:

79 Do the current provisions appropriately address the public health risk associated with prescribed accommodation (for example, hotels, motels, hostels and holiday camps)?	8.2
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Comment:

No

There is currently absence of any requirement to support individual food security through adequate provision of food preparation facilities in rooming houses and boarding houses.

80 Should an additional guiding principle for provisions in relation to the management and control of infectious diseases be that, wherever practicable, the least coercive power should be used first?	8.3
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Comment:

81 Should the new Act clearly set out the action that may be taken when contact tracing is authorised and the protections provided to individuals that may be required to provide personal information under these provisions?	8.3
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Comment:

82 Should the Secretary to the Department of Human Services have the power to authorise an autopsy where they believe there is a risk to public health and the Coroner does not have jurisdiction over the	8.3
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Issue	Section reference
body?	
Comment:	
83 Should the new Act continue to outline the procedures for non-consensual testing orders where consent for testing has been refused?	8.4
Comment:	
84 Should the new Act introduce a system for the authorisation of non-consensual testing where consent cannot be given to testing?	8.4
Comment:	
85 Should the provisions in the new Act be extended to beyond the care giver or custodian situation and, if so, to what situations?	8.4
Comment:	
86 Should public health orders under the new Act apply to any infectious disease or condition where there is a serious risk to public health?	8.5
Comment:	
87 Should the new Act provide a power for involuntary testing with reasonable use of force? If so, should it be exercised by 'an authorised officer', a delegate of the Secretary and/or the police?	8.5
Comment:	
88 Should the Act contain a list of the types of restrictions that may be imposed by an order of the Secretary?	8.5
Comment:	
89 Should the new Act introduce a power to order that a person undergo treatment where treatment is refused? If so, what limits should be placed on the use of the power?	8.5

Issue	Section reference
Comment:	
90 Should there be time limits imposed on orders and, if so, what time limits should apply?	8.5
Comment:	
91 Should any or all public health orders require court/tribunal confirmation?	8.5
Comment:	
92 Should there be a power for the police to apprehend a person who fails to comply with a public health order, rather than merely the ability to provide 'assistance' to the medical officer? If so, should there be a requirement to obtain a warrant to apprehend the person?	8.5
Comment:	
93 Should the new Act continue to provide that it is an offence for a person to fail to comply with an order?	8.5
Comment:	
94 What appeal and external review processes should be made available under the new Act?	8.5
Comment:	
95 Should the new Act provide for introducing new notification requirements by an Order of the Governor in Council where it is necessary to respond quickly to new and emerging diseases?	8.6
Comment:	
96 Should the new Act require that hospitals have processes in place to ensure that notification requirements under the Act are met?	8.6
Comment:	

Issue	Section reference
97 Should the term 'notifiable disease' be replaced with the term 'notifiable condition'?	8.6
Comment: <u>Yes</u>	
98 Would alternative non-regulatory mechanisms (for example, best practice guidelines) be effective in ensuring pre-and post-test information and counselling for infectious diseases (other than HIV) is provided by appropriately qualified health care professionals?	8.7
Comment:	
99 Should the new Act rely on the privacy framework for all health records, rather than include specific privacy provisions?	8.7
Comment:	
100 Should the new Act retain the provision specifying that the court may be closed when evidence is presented concerning any matter related to HIV?	8.7
Comment:	
101 Should the new Act provide for a court to be closed when evidence is presented concerning other diseases?	8.7
Comment:	
102 Should the Act include a regulation-making power to ensure participation in current quality assurance programs and supply of data for epidemiological analyses by HIV testing laboratories?	8.7
Comment:	
103 Should the new Act state the role of municipal councils in relation to immunisation as 'co-ordinating and providing immunisation services to children living or being educated within the municipal district'?	8.8

Issue	Section reference
Comment:	
104 Should provisions regarding recording the immunisation status of children at children's services be retained in the Children's Services Regulations 1998 (rather than included in the new Act)?	8.8
Comment:	
105 Should the new Act require school principals of primary schools to make reasonable efforts to seek an ISC in respect of every child enrolled in the school, and an immunisation update on re-enrolment?	8.8
Comment:	
106 Should the new Act introduce an obligation on parents to supply evidence of immunisation on enrolment of their child into secondary school and an obligation on school principals to make reasonable efforts to seek immunisation records in respect of every child enrolled in the school?	8.8
Comment:	
107 Should the new Act introduce an obligation on tertiary students to supply evidence of immunisation on enrolment and an obligation on tertiary facilities to make reasonable efforts to seek immunisation records in respect of every student enrolled in the facility? If so, for which diseases should immunisation records be required?	8.8
Comment:	
108 Should the new Act provide for different forms of evidence of immunisation? If so, what should they be?	8.8
Comment:	
109 Should the new Act introduce a penalty for failure on behalf of a parent or guardian to produce	8.8

Issue	Section reference
immunisation records on secondary school entry?	
Comment:	
110 Should the new Act require the principal teacher or person in charge of the school to take reasonable steps to ensure that immunisation records are maintained, and to allow inter-school transfer of ISCs?	8.8
Comment:	
111 Should the new Act facilitate consistency with the NHMRC schedule for immunisation?	8.8
Comment:	
112 Should school principals and persons in charge of children's services be required to seek advice from the Department of Human Services before excluding children during an actual or suspected outbreak of an infectious disease?	8.9
Comment:	
113 Should there be a power in the new Act for the Secretary to waive or alter the prescribed periods in individual cases?	8.9
Comment:	
114 Should the requirement for a parent to inform the principal or a person in charge of a school or children's services centre be limited to where their child has a vaccine preventable or excludable disease?	8.9
Comment:	
115 Should the new Act facilitate consistency with the NHMRC <i>Guidelines on the Recommended Minimum Periods of Exclusion from School, Preschool and Child Care Centres of Infectious Disease Cases and Contacts</i> ?	8.9

Issue	Section reference
Comment:	
116 Should provisions dealing with offensive waterways not be included in the new Act?	9.1
Comment: <u>Disagree, needs to be broadened to include contaminated and offensive air and land.</u>	
117 Should public health risks related to rats, mice, vermin, pests or other animals suspected of having a disease capable of transmission to humans be dealt with by the issue of an improvement notice?	9.1
Comment:	
118 Should Parts 5A and 5B of the <i>Building Act 1993</i> be transferred to the new public health Act?	
Comment:	
119 Are there other amendments that should be made to provisions currently in Parts 5A and 5B of the Building Act that would improve the effectiveness of the legislative scheme?	
Comment:	
120 Should the new Act re-enact provisions relating to meat supervision?	9.3
Comment:	
121 Should the offence under the <i>Food Act 1984</i> in relation to the sale of 'unsafe food' be broadened to include food that cannot be sold for human consumption under section 34(1) of the <i>Meat Industry Act 1993</i> ?	9.3
Comment:	
122 Who should be required to hold a licence to use pesticides under the new Act?	9.4
Comment:	

Issue	Section reference
123 Does the new Act need to deal with the use of pesticides not associated with a commercial enterprise? If so, what non-commercial activities should be regulated and how should these be regulated?	9.4

Comment:

124 Are there any areas of overlap or duplication between the regulation of the use of pesticides under the Health Act and the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> ?	9.4
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Comment: