

Our Reference: PH/vs
46/01/01



6th December, 2004

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

129 Mollison Street,
Kyneton, Vic. 3444

Dear Dr. Goodall,

Re: Health Act Review

PO Box 151,
Kyneton, Vic. 3444

I write to advise that Council recently considered a report on the review of the Health Act and resolved to provide comments as set out in the attached table.

Council's comments are mostly concerning those sections which impact directly on Local Government.

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Should you require clarification of any matter please contact me on ☎ 5429 9663.

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Yours sincerely,

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REVIEW OF THE HEALTH ACT 1958 – COMMENTS

<p>Section 4.4 Municipal Public Health Plans</p>	<p>Issues for comment:</p> <p><i>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?</i></p> <p><i>Should the new Act require that municipal councils set out how they intend to fulfil their statutory functions in their MPHPs?</i></p> <p><i>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?</i></p> <p><i>What should be the local government reporting requirements, if any, under the new Act? For example, should the new Act retain the requirement to report annually, and at other times as directed by the Secretary? Should there be a requirement to submit MPHPs? If so, what would be the expected value of such reporting requirements?</i></p> <p><i>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?</i></p> <p>Officer comments (Director of Community Services)</p> <p>Macedon Ranges Shire Council's Health and Wellbeing Plan includes clear actions, timelines and accountabilities. Council is of the opinion that any effective strategy must include these parameters and that there be a commitment to implement the plan. To monitor implementation Macedon Ranges Shire Council requires an annual progress report on all its strategies, including the MPHP, be submitted to council. As evidenced by its own practice, Council therefore supports an emphasis on actions rather than just development of a document.</p> <p>Council does recognize however that many Councils do not have either the resources or expertise to develop an adequate health planning framework and oversee its implementation. This can be exacerbated by the numerous other demands expected of Local Government to prepare various plans (e.g. disability action plans, early years plans, MSS etc) or implement Government requirements at the operational level with no or minimal additional resources. Council does however recognize the excellent VicHealth initiative 'Leading the Way' that aimed to inform councils of an integrated health planning framework. Council also notes the continuing overlap and confusion of MPHP with the Community health Plans required to be developed by PCP's of which Councils are a member.</p>
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To achieve improved implementation it is suggested that:

- DHS takes a more active and proactive role in supporting LGA's in both the preparation and implementation of the MPHP. Whilst the requirement to submit an annual report on progress of implementation is already specified the lack of interest and response by relevant Govt. Departments has resulted in this requirement not being taken seriously. A strong partnership approach is required.
- Continuing education of senior staff and Councillors on the role of the MPHP, importance of implementation etc.
- Development plan to assist those staff responsible for developing MPHP develop their strategic planning skills
- Further clarification of how the MPHP sits alongside the myriad of other strategic plans and how they can be linked. This may include the existing framework that indicates the high level of the MPHP alongside the MSS but then explains how it links/feed down to other plans e.g. disability action plans, early years plans, aged & disability strategy, housing strategy, leisure strategy, bicycle strategy etc.

To ensure that MPHP's are effective and actioned. It is important they have a structure that includes actions, timelines and accountabilities.

Yes, but DHS must be more proactive and provide support to LGA's as required, and preferably on an ongoing basis.

It is important the LGA's are accountable for their responsibilities however unless the relevant Govt. Departments shows an active interest in health planning in local government then it is difficult to justify submission of the plans or annual reporting. There is not much point sending off a report or plan knowing well that it will just be filed. Health plans can inform Govt. on local health priorities and thus be an excellent source of information to the State. Historically they have not been well used (partly of course due to the MPHP quality).

It is essential that a clear framework exists that clearly explains the links and inter-relationships between the Council Plan and other strategic plans. The community, staff and Councillors currently are often confused about the myriad of plans and how they relate. In addition Council plans should reflect the council Vision and Mission and fit a similar framework to ensure they all reflect a consistent long term direction. It would be sensible, once a clear overarching framework is developed to align the development of the Council Plan, MSS & MPHP.

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<p>Section 4.5 Medical Officers of Health</p>	<p>Issue for comment:</p> <p><i>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?</i></p> <p>Officer comments</p> <p>At the present time Council has an agreement with the Central Highlands Division of General Practice who provide a doctor to undertake the role of the MOH. There is no present reason why this satisfactory arrangement could not continue if the Act was not amended.</p> <p>However, the health officer is aware that many Councils have difficulty in attracting doctors to undertake the role and have to pay a premium to fill the position.</p> <p>The health officers are able to develop good relationships with local doctors as well as being able to access specialized advice through the Department. Accordingly the role of the MOH is now not as relevant as it once was and the Act could be amended to remove the requirement on Councils.</p>
<p>Section 4.6 Environmental Health Officers</p>	<p>Issues for comment:</p> <p><i>Should an EHO who is appointed by a council automatically be an authorised officer for the purposes of the Act?</i></p> <p><i>Should the new Act require specific qualifications and/or experience for appointment as an EHO?</i></p> <p>Officer comments</p> <p>Yes, automatic authorization of EHO's has benefits such as administrative efficiencies and clears legality issues.</p> <p>Qualifications or competency standards need to be set by the Secretary of the Department and not be placed in the Act.</p>
<p>Section 4.7 Authorised Officers</p>	<p>Issues for comment:</p> <p><i>Should the new Act require that authorised officers have qualifications and/or experience prescribed by the Secretary?</i></p> <p><i>Alternatively, should the Act provide that councils may only authorise persons appropriately competent? This</i></p>

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	<p><i>approach would reflect the approach used in the Food Act 1984 (Vic). Section 4 (1) of the Food Act provides that an EHO appointed under the Health Act is an 'authorised officer' for the purposes of the Food Act.</i></p> <p>Officer comments</p> <p>Competency based assessments of Authorised officers should apply.</p>
<p>Section 7.2 A General Statutory Duty</p>	<p>Issues for comment:</p> <p><i>Should the new Act include a general statutory duty of care? If so, what should be the scope of the duty? If adopted, should the duty be positive or only negative? 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? Should failure to comply with the duty be the basis on which costs are recovered? Should compliance with the duty provide a defence against some offences under the Act? How might the duty of care work in practice?</i></p> <p>Officer comments</p> <p>If amendments are made to introduce a duty of care it must be approached with caution as it could easily lead to a broadening of the investigative role of the EHO and an increased expectation in the community that Council can intervene in issues.</p> <p>The scope of the duty could be limited to nuisance and prevention of disease.</p> <p>The duty could be either positive or negative depending upon the areas that it is applied.</p> <p>The consequences of a breach of duty should only result in the exercise of administrative powers.</p> <p>Yes, failure to comply should be the basis for cost recovery.</p> <p>Yes, compliance with the duty should provide a defence for selected offences.</p> <p>The Department should provide details of how they see the duty working in practice.</p>
<p>Section 7.3 Duty to Abate a Nuisance</p>	<p>Issues for comment:</p> <p><i>Should a general statutory duty of care, if adopted, 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?</i></p> <p><i>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?</i></p>

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	<p><i>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?</i></p> <p>Officer comments</p> <p>The nuisance section of the Act has been in place for many years. It has been amended from time to time and it has been a useful tool for the officers.</p> <p>The nuisance section has been used in court on many occasions across the State and a considerable body of case law has been built up.</p> <p>The health officer is of the view that the nuisance section should be retained but focused on potential and actual public health risks. Annoying could be removed. Sections dealing with vexatious and frivolous complaints should be retained.</p> <p>Councils should retain the responsibility for acting to abate nuisances but might benefit by expanding the tools available. Eg improvement notices, prohibition notices, & on the spot fines.</p>
<p>Section 7.5 Risk Management Plans</p>	<p>Issues for comment:</p> <p><i>Should RMPs have a role in the regulation of public health risks under the new Act?</i></p> <p><i>Who should be required to prepare RMPs:</i></p> <ul style="list-style-type: none"> • <i>persons undertaking a registrable or licensable activity by way of a condition of registration/licence?</i> • <i>persons required to do so by an improvement notice?</i> <p>Officer comments</p> <p>Risk management plans may be a good approach for some sectors but there would be a resourcing issue for local government to manage the process. Model plans would need to be developed. It is possible that this approach would lead to higher costs to the sector.</p>
<p>Section 7.6 Registration and Licensing</p>	<p>Issues for comment:</p> <p><i>What criteria should be used in deciding which activities should be subject to the requirement of registration or licensing?</i></p> <p><i>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?</i></p>

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	<p><i>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?</i></p> <p><i>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?</i></p> <p><i>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?</i></p> <p>Officer comments</p> <p>The criteria for the requirement for registration should be based on potential for risk and be flexible enough to pick up other premises that are found needing to be monitored (reflecting community needs). Need to consider swimming pools (public), solariums and other industries with evidence based risks. Requirements should include RMPs, registration, incident notification. Event notification should be mandated but the type of event should be defined. There is debate about the ongoing need to register hairdressers which could be controlled in other ways. Eg best practice guidelines and industry accreditation.</p>
<p>Section 7.7.1 Improvement and Prohibition Notices</p>	<p>Issues for comment</p> <p><i>Should the new Act contain a procedure for the issuing of improvement and prohibition notices by authorised officers?</i></p> <p><i>Should notices cover:</i></p> <ul style="list-style-type: none"> • nuisance? • licensable or registrable public health risk activities? • where the activity may otherwise contravene the Act? <p>Officer comment</p> <p>Yes, procedures and protocol documents would need to be developed. Yes, with further clarification of offences.</p>

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Section 8.8 Immunisation	Issue for comment: <i>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'?</i> Officer comment The role of local government as a key provider of immunisation should be recognised.
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