



**Submission to the
Victorian Department of Human Services
Review of The Health Act 1958**

Contact:

Nick Matteo
Manager Community Planning and Advocacy
Maribyrnong City Council
PO Box 58
Footscray 3011
Email: nick.mattteo@maribyrnong.vic.gov.au
Phone: 9688 0211

Below are responses to issues raised in the *Review of the Health Act 1958: Discussion Paper*.

	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
Comment: The Public Health Act is an appropriate name to reflect the key purposes of the Act.		
2	Are there matters that are currently dealt with by other legislation that should be included in the new Act?	3.2
Comment: Parts 5A and 5B of the Building Act dealing with cooling towers and warm water systems (Legionella). These provisions deal with the management systems in place to prevent infectious diseases and are more suited to the new Act.		
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
Comment: Yes. The importance of promoting public health should be reflected in the Objects and guiding principles in the Act. However the Act should also attempt to define and differentiate between public health and population health (health promotion) outcomes.		
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

	Issue	Section reference
	<p>Comment: The Act should recognize growing inequalities in health in a global sense (Perhaps as an introduction to the Act). The nature of this inequality needs to be defined more explicitly within the scope of the Act (eg Socio economic factors of health that are beyond the scope of public health and enter into the area of health promotion / population health outcomes).</p> <p>The Act should continue to focus on universal public health outcomes and the contribution of public health to population health / health promotion outcomes rather than address issues around particular disadvantaged communities.</p>	
5	<p>What objects provisions would represent the public health objectives, values and outcomes that the new Act should be aiming to achieve?</p>	3.3
	<p>Comment: The objects of the Act should re affirm and strengthen the need to protect and prevent the whole community from disease, premature death and injury.</p> <p>Improving population health outcomes and addressing health inequalities of disadvantaged communities based on the social determinants of health is laudatory but ultimately unrealistic within the proposed scope of the Act. Even a cursory analysis of the new Act indicates that most of the effort and focus of the review is around traditional public health outcomes.</p> <p>The increasing burden of disease caused by emerging non communicable diseases and the associated financial and social costs would justify a significantly greater focus in the Act or a separate legislative framework.</p>	
6	<p>Should the new Act contain a provision specifying guiding principles, and, if so, what principles should be included?</p>	3.4
	<p>Comment: As well as the guiding principles identified in the discussion paper, there should be;</p> <ol style="list-style-type: none"> 1. Principle around Partnership 2. Principle of Cost sharing 3. Principle of prevention 	
7	<p>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?</p>	4.1

	Issue	Section reference
	Comment: No. Many of the policies and programs informed by the Act are a key function of local government. As such the Secretary should not have direct jurisdictional responsibility in these areas.	
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: Yes. The secretary should have the power to convene a panel of experts with an independent Chair to advise whether an inquiry is justified. The panel membership would reflect the nature of the issue under inquiry.	
9	Should the new Act retain the functions for municipal councils as set out in the current Act?	4.2
	Comment: The Act should retain only those functions currently set out in the Act. Further the requirement for Councils to prepare MPHP's should be removed from the legislation.	
10	Should the new Act recognise municipal councils' role in: <ul style="list-style-type: none"> ➤ Planning, advocating and providing organised public health programs? ➤ Developing and implementing strategies to promote and improve public health and promote community health and wellbeing? 	4.2
	Comment: No. The new Act should acknowledge the strong links between the objects of the Local Government Act and the Health Act in promoting community health and well being.	
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
	Comment: Yes. This is a key principle that should underpin the objects of the Act. Improved health requires a sustained whole of Governments / whole of community approach.	
12	Should the new Act place greater emphasis on implementing the MPHP and achieving its	4.4

	Issue	Section reference
	outcomes, rather than just developing a document, and if so, how could this be achieved?	
<p>Comment:No. The requirement of Council’s to develop an MPHP document should be removed from the Act.</p> <p>Under the Local Government Act Councils are required to prepare a City plan that outlines the economic, physical, environmental and social strategies to improve the well being of their communities.</p> <p>Since the introduction of compulsory MPHP’s a decade ago, Council’s annual plans have become more sophisticated and integrated documents and are the key vehicle to express Council’s approach for delivering improved well being for its diverse communities and a key driver for resource allocation.</p> <p>Given the lack of direct funding for MPHP’s and the more integrated and sophisticated Council plans and planning, the MPHP is becoming less relevant and influential.</p>		
13	Should the new Act require that municipal councils set out how they intend to fulfil their statutory functions in their MPHPs?	4.4
<p>Comment:No. Many Council’s develop a separate strategic plan for the statutory functions associated with public and environmental health.</p>		
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
<p>Comment:No. The Local Government Act prescribes the time intervals for the preparation of their annual plans. However Council would welcome the input of DHS into the annual review of Council’s annual plan.</p>		
15	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 at set intervals? If so, what would be the expected value of such reporting requirements?	4.4

	Issue	Section reference
Comment: No. See above		
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: No. The Local Government Act requires extensive consultation with all stakeholders in the preparation of their Council plans. The preparation of an MPHP is becoming an unnecessary duplication of effort.		
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. The appointment of a MOH has been an unnecessary requirement upon Councils' for a number of years.		
18	Should an EHO who is appointed by a council automatically be an authorised officer for the purposes of the Act?	4.6
Comment: Firstly the new Act should retain the requirement to appoint an EHO as this position has primarily been successfully responsible for the delivery of public health programs. The automatic authorisation of an EHO would be beneficial in terms of administrative efficiency and would remove any legal issues around the correct process of authorisation during a prosecution.		
19	Should the new Act require specific qualifications and/or experience for appointment as an EHO?	4.6

	Issue	Section reference
	<p>Comment: Given the increasing complexity of public health issues and in order for Councils to fulfil their statutory obligation, it is essential that EHO's have the requisite skills, therefore the new Act should continue to specify a minimum requirement for qualification or a range of qualifications and should be flexible to allow for changes when new qualifications are developed, otherwise the Act would require constant amending.</p> <p>The requirement for experience as an alternative to qualifications should be deleted.</p>	
20	Should the new Act require that authorised officers have qualifications and/or experience prescribed by the Secretary?	4.7
	<p>Comment: See response above.</p>	
21	Alternatively, should the Act provide that councils may only authorise persons appropriately competent?	4.7
	<p>Comment: The new Act should provide that only appropriately competent persons be authorised pursuant to the Act. Council's should be provided with a framework for assessing mandatory qualifications and experience against a developed competency standard.</p>	
22	Are the current powers of the Secretary under the 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?	5.1
	<p>Comment: The powers of the Secretary should be increased beyond the collection of data to include the analysis and regular publishing of health information to ensure effective evidence based planning.</p>	
23	Should the new Act make more explicit the forms which such collection of comprehensive data may take? For example, should the new Act provide for the Secretary to establish registers, databases and	5.1

	Issue	Section reference
	other collections of public health information and to state some of the uses of that information?	
	Comment: Yes. Robust evidence is fundamental to good decision making. This would include the proposed timing for publishing this information to assist local forward planning.	
24	<p>Should the provisions regarding consultative councils be consolidated in the new Act to provide:</p> <ul style="list-style-type: none"> ➤ General provisions regarding establishment and functions of all consultative councils? ➤ Standard provisions regarding the establishment of sub-committees? ➤ A power to make recommendations in relation to investigations or inquiries? ➤ An obligation to produce an annual report? 	5.3
	Comment:	
25	What sort of information might each of the consultative councils need to ensure that they can carry out their functions effectively?	5.3
	Comment:	
26	<p>Should the new Act contain more specific provisions requiring:</p> <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
	Comment:	
27	Should Victoria continue to rely on a legislative requirement for HIA in EIA legislation?	6.2

	Issue	Section reference
	Comment: No. HIA's as an exclusive function of the EIA legislation maybe too narrow.	
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
	<p>Comment: Yes. HIA's should be underpinned by the social determinants for health. HIA's could be conducted as part of Council's planning process especially for significant developments.</p> <p>The trigger threshold would depend on the context for the development or activity. For example establishing another take away food shop in an inner city area of high disadvantage may exacerbate local food insecurity and obesity problems. On green fields sites a single application for a take away food premises may be less problematic.</p> <p>There is a real policy tension between introducing HIA's without creating a negative impact on economic development in an area. This will require some additional work over time to ensure the right balance.</p>	
29	Should the new Act support and enhance the practice of risk management?	7.1
	<p>Comment: Clearly risk management approach is logical and appropriate for both public health and population health outcomes management and prevention. All activities put through a process of assessing their risk to public health and remedial/monitoring procedures would be adopted to their the risk of the activity. This may permit a more proactive response to public health and population health risks as well as allowing for reactive controls to be applied.</p>	
30	Should the new Act include a general statutory duty of care?	7.2

	Issue	Section reference
	<p>Comment: Yes. This provides an important overarching statement of intent. It also provides a mechanism for introducing additional checks and balances. The benefits of including a statutory duty of care in the new Act that it ;</p> <ol style="list-style-type: none"> 1. Can respond better to current public health issues 2. Reflects current community expectations; 3. Is flexible enough to cover emerging issues; and 4. Acts as a safety net by covering areas not adequately covered by other legislation. 	
31	If so, what should be the scope of the duty?	7.2
	<p>Comment:</p> <p>The scope of the duty should be broad to reflect the nature and complexity of public health but needs to be carefully considered to avoid ambiguity and again there needs to be clear differentiation between public health and population health outcomes.</p> <p>For example the definition of public health risks needs to be clear and consideration needs to be given to limiting it to public nuisance issues and prevention of infection (disease). This would enhance the existing powers available to EHO's to take action whilst not overwhelming Local Government with new responsibilities.</p> <p>The danger in not specifying the boundaries of the duty of care and providing a clear definition of public health risk is that Councils obligations will be unclear and Council's may be reluctant to become involved in certain areas.</p> <p>As such Council would urge some caution in this area, as Council's cannot afford the legal costs associated with clarifying the scope of 'duty of care' through a long and protracted case law process.</p> <p>This lack of clarity may also encourage a more litigious approach especially by more vexatious citizens.</p>	
32	If adopted, should the duty be positive or only negative?	7.2
	<p>Comment:</p> <p>In general terms a negative approach is more acceptable and applicable in meeting public health outcomes. Whereas a positive long term approach is more likely to get results with regard to those population health issues that are life style generated.</p>	
33	What should follow from being in breach of the	7.2

	Issue	Section reference
	duty: criminal and/or civil liability or should the consequences of breach be limited to administrative powers?	
	Comment: In general the nature of the breach should determine the nature of the action. Administrative powers should be pursued in the first instance where applicable. Further breaches could be dealt within a civil or criminal framework.	
34	Should failure to comply with the duty be the basis on which costs are recovered?	7.2
	Comment: Yes. This is a reasonable principle	
35	Should compliance with the duty provide a defence against some offences under the Act?	7.2
	Comment: Yes. This would function like the 'reasonable precautions' defence in Food Act offences. This would protect against consequences outside the control of persons/companies and would restrict unreasonable prosecutions.	
36	How might the duty of care work in practice?	7.2
	Comment: The duty of care provision should give Council's the necessary administrative powers to investigate in matters where, prima facie, public health might be compromised by an activity. It should act as a safety net to respond to problems not currently adequately covered and should complement the existing powers in relation to nuisance and infection control.	
37	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?	7.3

	Issue	Section reference
	<p>Comment: The general more holistic duty of care could replace the separate nuisance provisions only if the duty encompasses all typical nuisances currently covered in the existing Act.</p> <p>Although this provides some flexible to deal with emerging issues as well as acting as a safety net for public health risks not dealt with by other legislation, the scope of the duty needs to be manageable. This will require additional work by DHS prior to replacing existing nuisance provisions.</p>	
38	<p>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?</p>	7.3
	<p>Comment: If separate nuisance provisions are retained then removing the term 'annoying' from the definition of nuisance will not necessarily achieve a public health risk focus.</p> <p>The inclusion of the term 'annoying' and 'injurious to personal comfort' allows Council to deal with important issues such as noise. Although not necessarily a public health risk issue, noise can be injurious to personal health and wellbeing. Current EPA legislation dealing with noise only allows Council's to take action with noise emanating from private residences and only during prohibited times. The current definition of nuisance allows Council's to deal with noise from a residence during permitted times, noise from entertainment, commercial and industrial premises. Removing the term 'annoying' would create a vacuum for noise issues because traditionally the EPA request that Councils deal with all local noise issues with the nuisance provisions of the Health Act, and there is also community expectation that Councils resolve noise issues.</p> <p>It could be possible to introduce local laws to cover non public health risk issues included in the term 'annoying' but they require an evidence based approach as the term is subjective and requires a subjective decision by a Council Officer and therefore these issues are best suited to the nuisance procedures rather than an on the spot fine approach of local laws.</p> <p>A new definition of nuisance should focus more on current and future potential public health risks but should not reduce Council's obligation to deal with traditional nuisance issues currently managed.</p>	

	Issue	Section reference
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:

The obligation on Municipal Councils to abate nuisances should be retained and the current abatement procedures should also be retained. The same result could be achieved with the proposed 'duty of care' and the associated administrative powers.

By retaining these types of procedures Council has the flexibility to deal with issues without having to rely on Court action. However Council can choose to use the general enforcement action and take the matter to Court. The abatement procedures allow Council to carry out a thorough investigation and make a considered response. If the abatement procedures are removed then Council will need to rely only on the general enforcement provisions leading to more Court action which would be costly and time consuming.

It would also be useful to expand Section 44(9) of the current Act to allow Councils to enter the land and abate the nuisance and recover the costs/expenses without having served an abatement notice first. This would allow Council's to take action when a delay would pose a health risk to the public.

The abatement procedures could also be expanded to include a risk management plan (RMP) approach as an option.

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

Comment:

Best practice standards should be retained as they are an essential tool in educating operators of registrable businesses on their obligations to implement safe and hygienic practices. However they are a minimum standards and not strictly enforceable. It is difficult to deal with non-compliance due to burden of proof in proving public health risk.

Consideration should be given to binding them to regulation, however the new duty of care proposal may resolve any current difficulty.

Alternatively minimum standards could be included in regulations i.e prescribed accommodation and the codes of practice used a guide and an educative tool.

	Issue	Section reference
41	Should RMPs have a role in the regulation of public health risks under the new Act?	7.5
<p>Comment: The risk management plan approach should be carefully considered as the benefits would become evident over time. The system has worked in the food industry and building industry. Model RMP would need to be developed and to assist registrable businesses and to keep the costs to the industry low.</p> <p>Not all registrable businesses would benefit from RMP i.e. hairdressers where the risks to public health are negligible. However a risk approach where RMP could be imposed on these businesses where they are proven poor performers should be considered.</p> <p>The cost to business of any requirement for 3rd party audits needs to be considered and it would be better to follow the food industry model and waive the requirement if businesses adopt/implement a approved model RMP.</p>		
42	Who should be required to prepare RMPs: <ul style="list-style-type: none"> ➤ persons undertaking a registrable or licensable activity by way of a condition of registration/licence? ➤ persons required to do so by an improvement notice? 	7.5

	Issue	Section reference
	<p>Comment: RMPs should be a requirement for registration for all registrable businesses that conduct high risk procedures i.e. skin penetration. They should also be a requirement on other registrable business on a risk based approach i.e. businesses that are known poor performers.</p> <p>RMPs should also be a requirement for non registrable business with high risk procedures not carried out by a registered nurse or doctor such as colonic irrigation. Alternatively consideration should be given to the requirement that these businesses register with local Govt.</p> <p>An alternative to RMPs being a condition of registration is that any activity creating a public health risk can be controlled by issuing an improvement notice requiring that a RMP be implemented. This has merit and should be considered for low risk registrable businesses.</p> <p>The issuing of improvement notices to non registrable activities requiring RMPs might be difficult to enforce and could place undue strain on Council's resources. At least with registrable activities there is scope for partial cost recovery through registration fees.</p>	
43	What criteria should be used in deciding which activities should be subject to the requirement of registration or licensing?	7.6

	Issue	Section reference
	<p>Comment: Any activity (not subject to other legislation) where without certain standards of hygiene and cleanliness being observed, there is an increased risk of transmission of disease.</p> <p>The requirement for registration should at least continue to apply to activities that are currently required to be registered and consideration should be given to expanding this requirement to pools/spas, colonic irrigation, solariums and brothels.</p> <p>Consideration needs to be given to suitability of the persons who conduct the activity and linking a competency standard/qualification to a condition of the registration much the same as Food Safety Supervisors competency being a requirement for registration of a food business.</p> <p>Hairdressing is now considered a low risk activity and the need for registration of this activity is currently being debated. There is a danger that a lack of monitoring of these businesses might increase the risk to the public due to complacency of operators. Most hairdressers carry out some sort of activity that require disinfection of equipment i.e shaving. Councils uses the income from this registration to fund their activities in Health Act premises and a loss of this registration income may impact on their ability to proactively manage the risks associated with all these activities.</p>	
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

	Issue	Section reference
	<p>Comment: The criteria for registration should be risk based and flexible enough to pick up other premises that are found needing to be monitored (reflecting community needs). The general requirement for registration should be in the new Act with more detailed regulatory responses such as which specific activities require registration set out in subordinate regulations i.e Health (Infectious Disease) Regulations. The regulations could include a statement for a requirement for registration applying to 'any other activity as declared by the Secretary'. This would allow enough flexibility without amending legislation. The secretary would from time to time declare which activities should be registered based to up to date data on public health risks.</p> <p>The suitability of the persons who conduct an activity that requires registration is critical and there should be link to a competency standard/qualification as a condition of registration much the same as Food Safety Supervisors competency being a requirement for registration of a food business.</p>	
45	<p>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?</p>	7.6
	<p>Comment: Consideration should be given to regulate public pools/spas, solariums, colonic irrigation and brothels etc as they are high public health risk areas. The Secretary should have the ability to declare new activities requiring registration on an evidence based risk approach.</p> <p>Minimum specific requirements should be included in regulation so that we do not rely solely on Codes of Practice which are difficult to enforce but are useful i.e. prescribed accomodation</p> <p>Requirements should include a competency standard for operators, RMPs and an obligation to notify Councils of an incident that might present a public health risk.</p>	
46	<p>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?</p>	7.6

	Issue	Section reference
	<p>Comment: Definitively must be included, however need to specify the types of incidents that require notification to avoid any confusion. This requirement should form part of the RMP similar to Food Safety Programs.</p>	
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
	<p>Comment: There should be a legal obligation on proprietors of any non-registrable premises to notify authorities of any public health incident. This will allow for the incident to be investigated and ensure corrective actions are undertaken. It at the very least allows the authorities the opportunity to provide critical information to the operators of these premises.</p>	
48	Should all enforcement powers be brought together in one part of the Act?	7.7
	<p>Comment: Having all the enforcement powers in one part of the Act may be beneficial as it would be clearer and easier to follow. However there are also advantages in having specific enforcement powers located in the section of the Act relating to that specific activity i.e registration or nuisance.</p>	
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
	<p>Comment: Clearly the examples cited in the discussion paper warrant inclusion as they pose just as serious a public health risk as infectious diseases and need to be regulated/controlled.</p> <p>Alternatively the enforcement provisions of the new Act should encompass all public health risks and the administrative and enforcement provisions of the Act correlate to the provisions of the Regulations dealing with infectious diseases. It would be the same net result.</p>	
50	Are the enforcement powers in the Health Act appropriate to allow authorised officers and EHOs to carry out their duties?	7.7

	Issue	Section reference
	<p>Comment: Our experience is that the general enforcement powers of the Health Act are generally sufficient to allow authorized officers to take all the necessary action to investigate, gather evidence and enforce the provisions of the Act.</p> <p>Any erosion of the current powers would be detrimental and consideration needs to be given to increasing penalties (especially obstruction and refusing/giving false information) as Council's struggle to recover full costs during prosecution.</p> <p>Recommendations for on the spot fines do not take into account the evidence based nature of public health risks and the burden of proof required to prove an offence and may not be appropriate.</p> <p>The general powers of new Act should specify that Councils or authorised officers can request police assistance to investigate any breach of the Act and Police would be obligated to provide that assistance (see Section 21 (1)(d) of the Food Act 1984).</p> <p>In emergency situations it would be beneficial for councils to have the authority to enter land and abate nuisance/public health risks and recover costs/expenses without having to serve a notice prior to exercising this powers (Section 44 (9) of the Health Act).</p> <p>The new Act must retain the powers of cost recovery when the Council has carried out the work or abated the nuisance. It is important that this recovery is done by placing the charge on the property without obtaining a judgement/order (Refer to Section 413 of the Health Act). This allows Council the opportunity to recover costs without the additional cost of legal action.</p>	
51	<p>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?</p>	7.7

	Issue	Section reference
	<p>Comment: The power to take action in emergency situations without serving an abatement/improvement or prohibition notice when the condition state or activity is confirmed/substantiated. A simple example would be turning off alarms, but it could apply to Councils removing dangers from private property when a delay would pose a risk to the public.</p> <p>These powers also need to reflect changes in technology (computers) and acceptable forms of evidence (video).</p> <p>The power to inspect and seize as detailed in the discussion paper would complement existing powers and should be included.</p>	
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
	<p>Comment: This would improve the likelihood of gathering sufficient evidence and the likelihood that potentially hazardous material is seized. Records should include computers and these powers should be extended to include 'authorised officers' delegated by the Secretary' so that this power can be delegated during emergencies when it is more likely that authorised officers of Councils will be carrying out this function.</p>	
53	Should the new Act contain a procedure for the issuing of improvement and prohibition notices by authorised officers?	7.7
	<p>Comment: This would be critical to the successful implementation of any changes in the new Act and current procedures for issuing nuisance abatement notices are working successfully. The types of procedures discussed in the paper seem logical and should be included.</p>	
54	<p>Should notices cover:</p> <ul style="list-style-type: none"> ➤ nuisance? ➤ licensable or registrable public health risk activities? ➤ where the activity may otherwise contravene the Act? 	7.7

	Issue	Section reference
	<p>Comment: These types of notices should apply to all the above but generally to any persons/business causing or allowing to exist any activity, condition or thing liable to be a risk to public health.</p>	
55	Should the new Act establish general criteria for issuing notices?	7.7
	<p>Comment: This would be essential to achieving uniformity between authorities and would provide much needed guidance in a area that is complex and tends to be all encompassing.</p> <p>The examples cited in the Public Health Act 1997 (ACT) are a reasonable starting point for discussion but appear very broad and may need to be more specific.</p>	
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
	<p>Comment: These need to be included as an example but should be general to allow for the different and dynamic situations likely to be encountered.</p> <p>The examples in the Queensland discussion paper on their Health Act are logical and typical of likely situations to be dealt with, however some more general examples would be useful.</p>	
57	What method of review should apply to improvement and prohibition notices?	7.7
	<p>Comment: The review option (appeal) should not apply where the notice requires compliance with an existing obligation i.e. registered premises. This right should only apply when the notice requires a person to do something that they would otherwise not do and makes it an offence to fail to comply.</p> <p>In this case the method of review should be VCAT but due to the urgency of public health issues/risks, a separate tribunal system should be created with specified timeframes for appeal procedures. The Magistrate's Court option would be costly for all parties.</p>	

	Issue	Section reference
58	Should emergency powers be general for 'public health emergencies' or be specific to infectious diseases?	7.8
<p>Comment: Emergency powers should be general for public health emergencies as a consequence of;</p> <ol style="list-style-type: none"> 1. Emerging new or re emergent diseases 2. Threats from terrorism associated with chemical, biological or radiation agents; and 3. The expanding operational powers required to deal with the above. 		
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
<p>Comment: Yes.</p>		
60	Should there be a fast-track mechanism for notifying a disease associated with a public health emergency?	7.8
<p>Comment: Yes</p>		
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
<p>Comment: Yes</p>		
62	Should the Secretary be given a 'catch all' power in a public health emergency such as 'any other order deemed necessary'?	7.8
<p>Comment: Yes – with some caution and some prescription.</p>		
63	Should compliance with demands from the Secretary during an emergency or outbreak of an infectious disease be specifically exempted from confidentiality?	7.8
<p>Comment: Yes – with some caution and with some prescription that meets the requirements and spirit of the Privacy Act</p>		

	Issue	Section reference
64	Should the Secretary's power to act when local government is in default be limited in any way?	7.8
<p>Comment: Yes. The Secretary's power should be limited only to the recovery phase of the emergency.</p>		
65	Should the new Act include a provision for cost recovery where a person: <ul style="list-style-type: none"> ➤ Has been convicted of an offence? ➤ Has contravened the Act, but there has been no conviction? ➤ Has caused a risk to public health? 	7.9
<p>Comment: Cost recovery should apply in all of the above circumstances. Councils will need the ability for cost recovery to encourage enforcement of the provisions of the new Act.</p> <p>A conviction in the complex area of nuisance and public health risk requires an enormous amount of authorized officer time and the standard of evidence required is high and might require the use of expert witnesses in most cases. This is costly to Councils and the ability to recover costs is essential.</p> <p>In urgent cases it is impractical to prosecute and it is more prudent in terms of risk management for Councils to abate the nuisance themselves. The ability to recover the costs of abatement by placing the costs as a charge on the property (Section 413 of the Health Act) is critical and must be retained for Councils to continue to perform this function.</p>		
66	Should the new Act include a new offence of 'risk to health'?	7.10

	Issue	Section reference
	<p>Comment: The concept of reducing the 'risk to health' could be introduced as one of the objects of the Act. A more serious offence than those currently available are appropriate and in line with the risk based approach of the new Act and therefore should be included. The new offence of 'risk to health' as detailed in the discussion paper will very general and a more specific definition would give greater guidance.</p> <p>Quantifying or measuring the risk to health in an attempt to prove these offences will also be difficult and ways of achieving this should be specified.</p> <p>Is there overlap between the proposed 'duty of care' and the offence of 'health risk'?</p> <p>The 'more serious offence' examples in the Food Act as detailed in the discussion paper have worked well, as do the definitions and penalties of this Act. This has resulted in increased penalties being imposed by the Courts.</p>	
67	If so, what should amount to a 'risk to health'?	7.10
	<p>Comment: It is important to define the boundaries so that trivial risks are not included. The seriousness of the risk and its potential to adversely affect health need to be considered.</p> <p>Need to consider present or likely future change to person's health and wellbeing (social, emotional, mental and physical).</p> <p>Will the burden of proof require expert medical evidence?</p>	
68	If adopted, what should be the defenses, if any, to the offence of 'risk to health'?	7.10
	<p>Comment: Defenses would include compliance with 'best practice' and existing codes of practice, as well as taking all reasonable and practical precautions. The examples used in the discussion paper would be acceptable to the community and law enforcement agencies.</p>	
69	What should be the scope of the offence?	7.10

	Issue	Section reference
	<p>Comment: The offence should apply to any situation or activity that is likely to adversely affect a person's health and wellbeing (social, emotional, mental and physical). Is the number of persons affected relevant? Does it need to be a risk to the public or an individual? There is merit in both.</p> <p>It should at least apply to nuisances, registrable and non registrable health businesses and any persons that carrying out an activity posing a health risk that should have knowledge of the impact or should have reasonably enquired about the activity and it's impact.</p> <p>A risk matrix with level of risk specified may be useful</p>	
70	Should the 'risk to health' offence subsume the offence for knowingly and recklessly infecting another person with an infectious disease?	7.10
	<p>Comment: Yes. This would allow authorities to take action without having the onus of proof of infection, only proof of risk of infection. Action could be taken in situations where others are put at risk of contracting an infection rather than waiting till an infection is contracted (more proactive response)</p>	
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
	<p>Comment: The Crimes Act deals adequately with this matter.</p>	
72	Should the new Act introduce PERIN for suitable offences?	7.11
	<p>Comment: Most offences would be evidence based requiring subjective decision making by the authorized officers and it would be difficult to define which breaches would be suitable for this system.</p> <p>However the merit of the PERIN system is the efficiency of enforcement. It would only work if the breaches subject to PERIN are clearly defined.</p>	
73	Should public health offences attract similar	7.12

	Issue	Section reference
	penalties to those attracted by offences under environment protection legislation?	
	Comment: The penalties under the Health Act should be commensurate the extent of the impact caused by any offences.	
74	Should the new Act allow for greater penalties where the offender is a body corporate?	7.12
	Comment: Yes. The penalties for corporation should be greater than for individuals similar to Food Act and other legislation.	
75	Should the new Act include a statutory defense of due diligence?	7.13
	Comment: A defense of due diligence would be consistent with the defenses in the Food Act and would; 1. reflect the principles of risk management; 2. acknowledge the reality that some incidents are outside the control of individuals/corporations; 3. Diminish the possibility of unreasonable prosecution. The onus of proof should be on the defendant to prove due diligence.	
	What method of review should apply to administrative decisions made under the Act?	7.15
	Comment: Initially the Secretary should be given the first opportunity to review administrative decisions. Then VCAT would be the most appropriate and cost effective option for the review process.	
77	Do the current provisions appropriately address the public health risk associated with hairdressing, beauty therapy and skin penetration?	8.1

	Issue	Section reference
	<p>Comment: The provisions rely on the use of codes of practice which are a useful guide for businesses and useful educational tool for authorized officers. The limitation is that they don't have any statutory power.</p> <p>It would be useful in terms of enforcement that minimum requirements are included in regulation i.e. Health (infectious Diseases) Regulations</p>	
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
	<p>Comment: It would be useful to consolidate all the provisions relating to the regulations of brothels and remove them from the part 6 of the Health (Infectious Diseases) Regulations.</p> <p>Consideration should also be given to transferring the inspectorial powers in relation to infection control to local Govt and to registration of these operations similar to other businesses where the risk of transmission of disease is inherent in the operation or activity.</p> <p>Council would then provide the type of proactive, educational monitoring that is carried out at other high risk businesses.</p>	
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
	<p>Comment: The provisions relating to accommodation are included in regulation, not codes of practice and are therefore legally enforceable. They are adequate in relation to the potential public health risk.</p> <p>These provisions and the requirement for registration must be maintained to continue to ensure that they are sufficiently regulated.</p>	
80	Should an additional guiding principle for provisions in relation to the management and control of infectious diseases be that, wherever practicable,	8.3

	Issue	Section reference
	the least coercive power should be used first?	
Comment: Generally this is a sound principle. However the Secretary should be able to over ride this in an emergency		
81	Should the new Act clearly set out the action that may be taken when contact tracing is authorized and the protections provided to individuals that may be required to provide personal information under these provisions?	8.3
Comment: The Act should set out some broad principles with regards to contact tracing rather than specific actions.		
82	Should the Secretary to the Department of Human Services have the power to authorize an autopsy where they believe there is a risk to public health and the Coroner does not have jurisdiction over the body?	8.3
Comment: Yes. This is a sensible provision where there is a clear jurisdictional demarcation		
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: No comment		
84	Should the new Act introduce a system for the authorization of non-consensual testing where consent cannot be given to testing?	8.4
Comment: No 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

	Issue	Section reference
	Comment: Yes. The Act should also attempt to define 'serious risk' within the legislation.	
87	Should the new Act provide a power for involuntary testing with reasonable use of force? If so, should it be exercised by 'an authorized officer', a delegate of the Secretary and/or the police?	8.5
	Comment: Yes. The Act should specify (as much as possible) the circumstances where this would be required. The power should be exercised only by the police.	
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: Yes. In the interests of clarity and transparency.	
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
	Comment: No. This should be done through the courts.	
90	Should there be time limits imposed on orders and, if so, what time limits should apply?	8.5
	Comment: No comment	
91	Should any or all public health orders require court/tribunal confirmation?	8.5
	Comment: Yes. This would provide additional checks and balances in a complex area and add comfort to the wider community.	
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: In principle this would seem reasonable. The Act should specify the circumstances where this may occur and to ensure a warrant is obtained.	

	Issue	Section reference
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: Yes. Failure to comply with some orders may also breach the Crimes Act.		
94	What appeal and external review processes should be made available under the new Act?	8.5
Comment: No 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: No. The current provisions are sufficient		
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: Yes. This is sensible and consistent with best practice principles.		
97	Should the term 'notifiable disease' be replaced with the term 'notifiable condition'?	8.6
Comment: The term 'notifiable disease' should be replaced with the term 'notifiable disease or condition'.		
98	Would alternative non-regulatory mechanisms (for example, best practice guidelines) be effective in ensuring pre-and post-test information and counseling for infectious diseases (other than HIV) is provided by appropriately qualified health care professionals?	8.7
Comment: No comment.		
99	Should the new Act rely on the privacy framework for all health records, rather than include specific privacy provisions?	8.7

	Issue	Section reference
	Comment: In general the Privacy Framework should apply to all health records. There is no compelling evidence at this stage to establish specific provisions in the Act.	
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: The Act should allow for this on a case by case basis.	
101	Should the new Act provide for a court to be closed when evidence is presented concerning other diseases?	8.7
	Comment: Yes. Where the principles with regards to HIV are consistent.	
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: No comment	
103	Should the new Act state the role of municipal councils in relation to immunization as 'co-ordinating and providing immunization services to children living or being educated within the municipal district'?	8.8
	Comment: No. There is no real advantage in this as the Federal Government GP incentive scheme promotes immunization through GP's.	
104	Should provisions regarding recording the immunization 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 No. See comment above.	
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 immunization update on re-enrolment?	8.8

	Issue	Section reference
Comment: Principles should make every effort to seek the immunization status of each child upon re enrolment.		
106	Should the new Act introduce an obligation on parents to supply evidence of immunization on enrolment of their child into secondary school and an obligation on school principals to make reasonable efforts to seek immunization 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 immunization on enrolment and an obligation on tertiary facilities to make reasonable efforts to seek immunization records in respect of every student enrolled in the facility? If so, for which diseases should immunization records be required?	8.8
Comment: There should be a provision to provide life long immunization status information.		
108	Should the new Act provide for different forms of evidence of immunization? If so, what should they be?	8.8
Comment: As there will be a range of different providers of immunization services, there should be a requirement for different forms of evidence.		
109	Should the new Act introduce a penalty for failure on behalf of a parent or guardian to produce immunization records on secondary school entry?	8.8
Comment: No.		
110	Should the new Act require the principal teacher or person in charge of the school to take reasonable steps to ensure that immunization records are maintained, and to allow inter-school transfer of ISCs?	8.8
Comment: Yes on the precondition that schools are funded to take on additional administration		

	Issue	Section reference
111	Should the new Act facilitate consistency with the NHMRC schedule for immunization?	8.8
Comment: No 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: Yes in order to meet their duty of care		
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: No 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: No 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
Comment: No comment		
116	Should provisions dealing with offensive waterways not be included in the new Act?	9.1
Comment: These provisions are adequately and more appropriately dealt with in the Environment Protection Act 1970.		
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	9.1

	Issue	Section reference
	dealt with by the issue of an improvement notice?	
<p>Comment: Regulation 53 of the Health (Infectious Diseases) Regulations specifies that an authorized officer may give reasonable written direction to persons to take steps to rectify any conditions. This is sufficient power to deal with these matters.</p> <p>However the improvement notices in the new Act could be used to deal with the same situations depending on the definition for public health risks. It would be the same result.</p>		
118	Should Parts 5A and 5B of the <i>Building Act 1993</i> be transferred to the new public health Act?	
<p>Comment: It would be more appropriate to include the provisions relating to cooling towers and warm water systems in the new Public Health Act as these provisions relate to prevention of disease (Legionella).</p> <p>The powers relating to inspections are now contained within 3 different pieces of legislation and the proposal to introduce RMPs in the new Act provides an opportunity to consolidate the regulation of cooling towers and warm water systems into one new Act.</p>		
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?	
<p>Comment:</p>		
120	Should the new Act re-enact provisions relating to meat supervision?	9.3
<p>Comment: No. This area is adequately managed by the Meat Industry Act.</p>		
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

	Issue	Section reference
Comment: The amendment proposed would assist authorised officers to take action in relation to certain meats without having to prove that the food may cause harm to the person who consumes the meat.		
122	Who should be required to hold a licence to use pesticides under the new Act?	9.4
Comment:		
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
Comment:		