

1. Introduction

Maroondah City Council submitted in early 1999 a number of issues relevant to the review of the Health Act in 1998. A number of the issues raised in that report have not been acted upon and will establish the framework for this submission. They include:

- A more relevant definition of Public Health
- Clearer Definitions of Roles and Partnerships
- Clarification of the Role of the Secretary in relation to Local Government
- The development of Public Health Impact Assessments
- Clear annunciation of the Role of Local Government based on key elements of Local Governments position in the community
- The relevance for a Medical Officer of Health in today's society
- The inequality of funding from the Commonwealth and State Governments
- A lowering of service standards as a result of the introduction of CCT
- The ability of Council's to recoup costs
- Issues specific to the Registration process
- Issues around the Nuisance section of the Act
- The transfer of some sections to other Acts
- Issues around Immunisation in particular funding and Council's obligations
- Issues pertaining to the Statutory Powers of Enforcement of the Act
- The introduction of "On The Spot Fines"

Amendments, which have occurred since the 1998 Review, which are pertinent to local government, included:

- The increased role of Local Government on National Committee's
- Increased linkages between Local Government the State and Commonwealth in a number of areas
- The removal of the General Sanitary Provisions of the Health Act
- The removal of the Meat Supervision section of the Act

2. RESPONSE TO KEY ISSUES

3.1¹ Name of the New Act

As stated in the 1999 submission from Council, we reiterate that the name of the Act should be reflected consistently across Australia. Hence, in line with the majority of states, it is recommended that the Act in Victoria be titled the "Public Health Act".

¹ The numbering used in this submission reflects the issues and numbering of the discussion paper

3.4 Guiding Principles

Council supports the identified Principals as being more aligned to contemporary living. Council notes thought that the impact of these Principals on Council resources, finance, enforcement powers and cost reimbursement would need to be assessed in more detail. For example the "*principle of polluter-pays*" would need to be defined to allow Council's to recover costs for offences other than environmental or nuisance issues.

4.2 Functions of Councils

The Act should clearly set out the role and functions of Council's by ensuring those functions currently outlined in Section 29A are enhanced by a more descriptive role. The Act also needs to give Local Government the ability to respond to emerging public health issues, particularly those not covered by other mechanisms.

4.3 Partnerships in Public Health

Recently there has been a major shift in local government service provision to its community through the acknowledgment and acceptance of the strength of partnerships and collaboration with relevant groups and organisations within its community. This same concept should be embraced and spelt out in the Act between the State and Local Governments to enhance better public health services and results.

4.4 Municipal Public Health Plans (MPHP)

Maroondah City Council is one of seven eastern region Councils participating on a cross regional MPHP Working Group that assists in information and knowledge sharing and implementation of each of the Council's MPHP. Each of the seven eastern metropolitan local governments places great emphasis on implementing their MPHPs and achieving their outcomes. The Plans have separate Action Plans that include output and other performance measures. The development and implementation of the MPHP is a key action in each of the Council Plans and audited accordingly.

Council supports that each local government body should not have to set out how they intend to fulfil their statutory functions. The focus of MPHP is based on a social model of health rather than statutory, tangible functions and applications. This shift has led to MPHPs gaining the status of strategic rather than operational documents in the Eastern Metropolitan Region Network's (EMR) member councils. The statutory functions are more appropriately reported in the relevant department's operational plans.

Council supports that the new Act could link the requirement to prepare a MPHP to the Council Plan. This requirement would assist with the elevation of MPHPs to the same level of prominence as the Municipal Strategic Statement. It would be Councils preference that there be a four-year interval in development of MPHPs to coincide with the preparation of the Council Plan. If it was determined that formal linkages with the Council Plan were necessary then the obvious mechanism would be the Local Government Act.

4.5 Medical Officer of Health (MOH)

Council supports that the role of the MOH is no longer perceived as necessary. This is based on the ability of Council to better access medical expertise when required. This would best be achieved by the DHS having a Regional Medical Officer appointed to assist Council as required and to perform other duties within the Region that would enhance public health.

The critical issue being, in the absence of a MOH, Council's must have 24-hour access to appropriately trained and skilled personnel.

4.6 Appointment of an Environmental Health Officer (EHO)

The position of the EHO is recognised by Council as being a vital function in public health surveillance and safety in the community due to their training and demonstrated professional expertise.

Council's supports the view that an EHO who is appointed by a Council should automatically be appointed an authorised officer for the purpose of the Act.

Council supports the view that the Act should reflect specific qualifications and or experience for the appointment of an EHO. These qualifications should be determined by the peak body for EHO the AIEH and endorsed by the Secretary of the DHS.

There needs to be a distinction between the role and function of an EHO as an authorised officer and "other authorised officers" appointed under the Act.

4.7 Authorised Officers

Council supports that the determination of competency of authorised officers should not be the responsibility of council. Qualifications should be determined by the Secretary to enable Council to appoint suitably, rather than have to assess competency of individuals.

5.1 Health Information

Council is of the opinion the current powers of the Act should be extended to the Secretary to collect information where there is a risk or potential risk to public health and this power should not be restricted by the principal pertaining to an individuals rights.

6.2 Health Impact Assessments (HIA)

It is Council's opinion, that Victoria should continue to rely on health impact assessments in EIA legislation, however the requirement for a HIA should be contained within the Act.

7.1 Risk Management

Council believes that the new Act should support and enhance the practice of risk management. However applying such an approach to all issues in the Act may be difficult

especially in relation to individuals and small business where such an approach may be well beyond their capabilities. Following are concerns that would need to be addressed:

- A thorough investigation into their application to Health Act premises and appropriate training and education of Council's officer if the application of risk management plans are to be considered, to avoid the issues which marred the introduction and phasing in of Food Safety Programs under the Food Act.
- Risk Management Plans for Health Act premises if introduced, should only apply to high risk premises i.e. tattooist, skin penetration and non registrable premises such as colonic irrigation. The non-registrable premises such as the above are declared premises for the purpose of registration and compliance.
- That where adopted in relation to Health Act premises, "RMP" templates are adopted for specific premises.
- That the onus for compliance with such plans is on the proprietor of the premises.
- Advice as to whether the introduction of risk management processes would support and enhance the practice of risk management, like "Health Impact Assessment".
- If Council's/ Echo's are to undertake such assessments the issues around training, resources and costs would need to be explored. Any increase in resources or cost to Council would not be accepted.
- That the Act set out a broad criteria to be addressed in a Risk Management Plan including:
 - a) Identifying the risks
 - b) Determine the likelihood of the risks
 - c) Set out steps to manage the risks
 - d) Ensure compliance with relevant legislation.

7.2 General Duty of Care (GDC)

Included in the 2004 Review, is the proposal for the Act to include a general statutory duty of care either in addition to the Nuisance section of the Act or as an option to the Nuisance section.

Council would not support the use of the introduction of a "GDC" as they have the potential for the wasting of Council's resources, increasing its workload and resulting in costly and extensive legal application.

These concerns are based on the lack of case law over many years, and the lack of practical examples as to what determines a "GDC" and what increase if any would they have on workload and cost to Council to enforce.

Other concerns Council has in regards to the implementation of a "GDC" are:

- Would a duty of care be used to prosecute those who did not comply or proactively enhance compliance?
- What training and skills would an officer of Council need to base a case on non-compliance of a duty of care?

- If adopted, it may take years of case law to determine what are reasonable costs when a person fails to comply with a duty of care?
- What practical examples would be available to quantify how a duty of care may work in practice?
- If a risk base approach were to be used in determining compliance with a duty of care, how would this be applied?
- If adopted would the duty be positive or negative in it's application?
- That the consequences of a breach of duty, should only be limited to administrative powers it implemented.

7.3 Nuisances

Council supports the retention of this section and argues that the nuisance provisions should focus purely on risks to public health. In doing so, Council puts forward the following responses:

- The current definition of 'nuisance' is too broad.
- The word "Nuisance" be replaced with the words " Risks to Health"
- The words "annoying" and "offensive" are deleted. These words contribute to many complaints Council receive which do not pose a threat specific to public health risk, but which, are purely related to issues that are irritating, aesthetic or stressful to the complainant.
- The word "obligation" within this section, be deleted as it is a tool used by some solicitors and members of the community to waste Council's time to investigate non specific health issues under the current interpretation of a nuisance ie noise from a neighbours garden pond
- That there be a separation between nuisances which are directly related to risks to public health and nuisances which are of an environmental nature which are a risk to health, and where applicable the impact on other related legislation ie Environment Protection Act
- Any change to this section should include how, a Council's can deal more readily and with issues arising from a person's behaviour which impacts primarily on their own or other people's health such as poor living conditions.
- Those issues which are not specifically a health issue, should be removed from this section, and transferred to other appropriate legislation ie any building, building structure and drainage issues to the Building Control Act, the reference to any animal, bird, pest or animal.

7.6 Registration and Licensing

As registration of relevant Health Act premises provides Council with both a financial return and knowledge of such premises within its municipality, Council puts forward the following issues:

- That any activity where there is a risk to public health should be subject to the requirements of registration ie colonic irrigation, brothels (only in relation to inspecting

such premises in accordance with the general hygiene and public health safety issues not medical issues).

- That there needs to be classification of businesses defined by risk ie High, Medium or Low
- That certain businesses currently requiring registration under the Act be deleted from registration and inspection (not complaints pertaining to public health risks), such a hairdressers, some beauty parlours with responsibility transferred to their relevant association if relevant.
- That registration cost and frequency of inspection be according to the risk categorisation of the premises.
- That all premises including those operated by Council which pose a risk to health ie colonic irrigation, solariums, pools, spas be required to be registered under the Act.
- That there is an obligation on persons conducting a premises subject to registration to contact the authorities in the event of certain type of incidents occurring in that premises. And such incidents of notification to be outlined in the Act.
- Council also supports an extension of the general provisions of registration to include the granting, renewal, varying, suspension, cancellation of a registration and the power to determine setting of registration / licensing periods.
- That there be specific minimal requirements improved on these premises that should be prescribed and not simply included in code/guidelines.

7.7 Enforcement Powers

- Council supports all enforcement powers outlined in the Act be brought together to minimise misunderstanding, misinterpretation and aid in ease of locating.
- In regards to broadening the powers of enforcement under the Health (Infectious Disease) 2001, Council enforcement of these Regulations is primarily the role of the DHS and Council role is adequately reflected. However, the Council also agrees, that the Secretary should have whatever power of enforcement as is deemed necessary, to enforce the provisions of the Health (Infectious Disease) Regulations.
- The Act should also include the requirement of Council to enforce compliance with the Emergency Management Act in regards to public health planning and response.
- The current enforcement powers are deemed adequate but Council would not accept any eroding of the current powers. In relation to the power of entry, this power should be enhanced by the inclusion of the power to take samples, carry out inspection, seizure and retention and take photographs.
- The introduction of "On the Spot Fines" would enhance the enforcement powers of Council and an officer's ability to resolve issues expediently, but their introduction would need to be clearly defined.
- Council would also support the inclusion of power to act in an emergency or in response to a complaint to carry out any action in the absence of the owner to prevent or minimise the risk or complaint ie turn off alarm, tap, pump etc. Where any cost is incurred by Council in undertaking the above ie hire of contractor or equipment, such cost should be recoverable to Council.
- The Council also believes penalties should be increased in relation to assault of an officer, obstruction and tampering with evidence.

- Council believes in line with new technology, the use of computerised data ie registers and data duly signed by a designated officer of Council, be an acceptable form of evidence in Court cases.
- In regards to the power of the Secretary in relation to seize goods without a warrant to be widened and to search and inspect any records, data or other items. Council believe the Secretary should have whatever powers as is necessary to enact such action, where there is a perceived risk to health.

7.8 Power of the Secretary to act when Local Government is in Default

The exercise of the power of the secretary to perform the functions of a municipal council in an emergency should be limited to emergency situations where there is a serious risk to public health. A "serious risk to public health" should be defined and included within the legislative framework.

7.9 Cost Recovery

Council supports the view of cost recovery where deemed appropriate by Council where a person has:

- been convicted of an offence
- has contravened the Act but there has been no conviction, or
- has caused a risk to health

7.10 New Offence of "Risk to Health"

- Council supports the view that a new offence 'risk to health' be introduced but this needs to be specific in it's definition and be able to be measured/quantified.
- That the department develops a risk matrix for Health Act premises, with levels of risks.
- Council is of the view that where a person or company is charged in relation to the above a defence should be based around a "Defence of Reasonable Precaution", that the defendant knowingly allowed the risk to occur or continue, that the defendant intentionally caused the risk.

7.11 "On the Spot Fines"

While supporting the introduction of "On the Spot Fines" and the introduction of PERIN for suitable offences, Council support for 'OSF' is based on:

- clearly define breaches / offences, and
- they must be specific ie relate to public health risks

7.15 Appeal Rights

Council believes because of issues around time in regards to the current VCAT system, that a more appropriate system would be:

- The establishment of a separate tribunal to deal with public health issues, or appeal to the Local Government Ombudsman.
- That the Act prescribe a minimum timeframe for appeal.

8.0 Control of Infectious Disease

In response to if the current provisions appropriately address the public health risks associated with hairdressing and beauty therapy, Council is of the opinion that these premises should be transferred to the Hairdressing Board/ Academy and relevant Beauticians Association.

8.8 Immunisation

Council strongly supports the role of local government of co-ordinating and providing immunisation service delivery be reflected in the Act. Formal partnership agreements with DHS would strengthen this role, provide for greater accountability.

The current inequity in funding arrangements between local government and private partitioners has severely compromised this service provided by Council and needs to be addressed as a matter of urgency.