

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
Comment: Public Health Act would appear to be a more descriptive title for the new Act and would better reflect the push for the act to move away from its sanitary origins and towards proactive preventative health.		
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. It is important to ensure that any responsibility for the promotion of public health is written such that it is desirable but not a new statutory role for local government. Regular and meaningful promotion of public health is not achievable by local government in isolation and with current resources. The recognition of public health promotion in legislation should encourage local government to work with others where possible to achieve health promotion.		
6	Should the new Act contain a provision specifying guiding principles, and, if so, what principles should be included?	3.4
Comment: Guiding principles are useful and if they are similar to those in other Acts this can help increase understanding of and familiarity with them, hence greater use. Precautionary principle would be useful, especially in order for the administration of the act to be proactive.		
9	Should the new Act retain the functions for municipal councils as set out in the current Act?	4.2
Comment: Yes. These provisions are fairly clear on general duties of councils, any alterations to reflect service delivery should focus on what is already occurring and not come up with new functions		
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: Yes, however this may be incorporated into the municipal public health plan rather than set up as separate statutory roles.		
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: There doesn't appear to be a specific need, again this can be covered in the MPHP.		
12	Should the new Act place greater emphasis on	4.4

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	implementing the MPHP and achieving its outcomes, rather than just developing a document, and if so, how could this be achieved?	
	Comment: No. The plan is a document in its infancy, which holds great potential for inter-agency communication and achieving broad successful health outcomes. Each council is at a different stage in development, understanding and use of their MPHP, so how to grapple with its implementation inclusive of the social model of health need not necessarily be a legislated task.	
13	Should the new Act require that municipal councils set out how they intend to fulfil their statutory functions in their MPHPs?	4.4
	Comment: No. To try and detail this at this time would be a nonsense	
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
	Comment: Yes. Intervals should perhaps mirror review of other Council documents such as the planning scheme rather than on an annual basis. As long as the steering committee remain active the Moorabool MPHP will be involved in ongoing review, inclusive of D.H.S.	
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
	Comment: There appears to be no real value in regular reporting at this point, generating unnecessary paperwork. Once the document has taken shape it is useful for the council and its partners and doesn't need particular overseeing by state govt, as representatives are likely to be on steering committees anyway where these exists.	
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. This is a good link. Moorabool Shire has made this connection. A good look at the plan every 4 yrs seems reasonable.	
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

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<p>Comment: Yes. Moorabool does not have a current MOH. An MOH holds office with Council on the terms and conditions set out in the officer's instrument of appointment and is entitled to receive any remuneration and allowances also set out in the instrument of appointment.</p> <p>There is no legal obligation for an MOH to have a practice in or be a resident in the municipality. The MOH can be shared with other municipalities.</p> <p>The duties of the MOH are as stated in the Act to " provide advice and assistance on health matters to and at the request of the Secretary (i.e. the Department of Human Services) and the Council ".</p> <p>The statutory requirement for Councils to appoint a Medical Officer of Health is a long-standing requirement of the Health Act. However it could be argued that in practical terms it is not essential given modern communications and the structure of the DHS with its centrally managed Communicable Diseases section as well as its Regional Offices.</p> <p>The current lack of an MOH does not appear to have been the subject of any concern from the Department.</p>	
<p>18 Should an EHO who is appointed by a council automatically be an authorised officer for the purposes of the Act?</p>	4.6
<p>Comment: Yes. EHOs have the training and qualifications for the relevant roles and this would mirror the approach used in the Food Act 1984.</p>	
<p>20 Should the new Act require that authorised officers have qualifications and/or experience prescribed by the Secretary?</p>	4.7
<p>Comment: Yes in order to ensure that authorised officers are in some way competent for their position. There is currently no standardised qualification/experience prescribed. This would also help authorised officers be seen in a more professional capacity. The other issue is that if authorised officers have no requirement for qualification/experience, it reduces the professional integrity of EHO's – why train to become an EHO when an authorised officer can be hired to perform the role?</p>	
<p>21 Alternatively, should the Act provide that councils may only authorise persons appropriately competent?</p>	4.7
<p>Comment: 'Appropriately competent' would need to be defined, and it would appear that if it is prescribed by the secretary at least this could be standard across the state.</p>	
<p>27 Should Victoria continue to rely on a legislative requirement for HIA in EIA legislation?</p>	6.2
<p>Comment: No. Having a separate procedure could be seen as being advantageous as HIA could be applied more widely in non-project matters that don't require EIA.</p>	
<p>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?</p>	6.2

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	<p>Comment: Yes. It would be useful to see a separate requirement that is perhaps triggered by a planning referral to the EHO. If there are already provisions which allow consideration of public health separate to EIA in the Planning and Environment Act, then this is not well understood at council level. Is it a matter of these relationships being better spelt out, or should we have a section in the act given that more EHOs are likely to be familiar with the Health Act than the Planning and Environment Act?</p> <p>If a separate requirement for HIA is introduced, there is a danger that HIA could be overused which would reduce the efficiency and effectiveness of HIA. HIAs would need to be specific in what they are meant to achieve and in what context they are used.</p>	
30	Should the new Act include a general statutory duty of care?	7.2
	<p>Comment: Any general statutory duty of care will be dangerous if it exposes council to prosecution for not taking action. At present council is required to follow up all complaints regarding nuisance or suffer a penalty, however where is the line drawn in taking action over something which may or may not happen?</p> <p>The question of the consequences of this duty on the administration of EHO's other duties (ie Food Act, Tobacco Act) in terms of accountability needs to be addressed. Will a general statutory duty of care expose council to prosecution for not taking action or not performing all duties properly? At the moment, EHO's have high workloads, which results in some elements of the job not being focused on as much as others. In some circumstances, not all registered premises are inspected within a 12-month period. Will this general duty of care and idea of 'risk to health' be carried over to include prosecution in these matters without a threat to health occurring? Under the Tobacco Act, EHO's are responsible for ensuring that this legislation is being complied with. However it is not possible for EHO's to enforce this Act at all times (ie attending bars/pubs at night to issue infringement notices). Will failure to perform this duty result in a duty of care being breached if it is claimed that smoking (which is known to cause a threat to health) occurred in a restaurant and EHO's didn't prevent it?</p>	
31	If so, what should be the scope of the duty?	7.2

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<p>Comment: If there is a general duty, it must be useful and give officers tools that they don't already have, whilst at the same time not expose council to risk of litigation.</p> <p>The scope should be carefully considered, as making it too narrow will not achieve the aim of making the new act responsive to change.</p> <p>If the nuisance provisions are replaced instead with administrative orders to deal with risks to health, more scope than the existing statutory nuisances could be covered. Current statutory nuisance provisions are limited by sanitary origins and cannot be applied pro-actively, while a general duty of care would be able to do this. This would be more useful to EHO's investigating nuisances than the current tools.</p> <p>With a wide scope, there would need to be guiding principles as well as technical guidelines (similar to Environment Protection Act) in order to consistently administer the general duty.</p>	
<p>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?</p>	7.3
<p>Comment: The main problem with the nuisance provisions is determining the actual risk to health, and how far to take matters that are merely annoying. A lot more debate is required about how councils can best facilitate neighbourhood disputes (possibly through local laws) and ensure health act nuisance is used for more serious matters and threats to public health. The concepts of nuisance and general duty of care appear to be quite separate and possibly both are needed.</p>	
<p>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?</p>	7.3
<p>Comment: If so then another mechanism is needed to give councils power to follow up annoying issues. It could be seen that removing the 'annoying' part of the definition would necessitate a need for Councils to address these issues in Local Laws, which would be a much simpler mechanism for addressing them. Alternatively, councils may step back from this role and force neighbours to seek their own remedies through civil action or mediation. At present council officers tend to address these issues through negotiation and discussion rather than using any legislative mechanism.</p> <p>However, if there is a general duty of care then issues not addressed through this duty that are still be seen as nuisances, would only be those that are 'annoying'. This would seem to suggest that separate nuisance provisions are not required if 'annoying' issues are to be removed from Health Act legislation.</p>	
<p>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</p>	7.3

	Issue	Section reference
	on general enforcement provisions under the new Act?	
	Comment: Unsure how this would work in practice.	
40	Should best practice standards continue to have a role in the regulation of public health risks?	7.4
	Comment: Yes, they are a good tool for education and enforcement and perhaps should also be legislated. It could be seen if a general duty of care is adopted that the best practice standards could be used in the same way as Food Safety Programs under the Food Act as evidence of risk management.	
43	What criteria should be used in deciding which activities should be subject to the requirement of registration or licensing?	7.6
	Comment: Evidence or real risk to public health.	
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: Evidence based criteria for the administration of registration would be useful. For example, hairdressers are seen as a low risk activity yet they are required to be inspected on the same frequency as tattoo parlours (higher risk). It would be good if registration frequency could be reduced/increased based on level of risk to health in order to provide a fairer system for registration. Many believe that the risk to health is so low with hairdressers that registration should be removed completely. This is not necessary if registration frequency could be adjusted (ie registration lasts for more than one year).	
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: Yes, there are a group of personal care treatments that do not pose a threat of infectious (blood-borne) disease, but pose other risks to health. For example, solarium and colonic irrigation. Currently the Health Act only deals with the registration and enforcement of those industries that are involved in skin penetration practices in order to control the spread of blood-borne diseases. Other activities would appear to be just as much a threat to health, if not more (ie improper use of solarium would seem to be more of a risk to health than hairdressing). These industries should be regulated	
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: Yes this seems logical to shift to onus to operators to notify, as is the case with other activities such as gastro outbreaks or sewer spills.	
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

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	Comment: Yes this would also be useful, and notification to DHS for statistical purposes would provide long term data benefit.	
48	Should all enforcement powers be brought together in one part of the Act?	7.7
	Comment: Seems to be logical.	
72	Should the new Act introduce PERIN for suitable offences?	7.11
	Comment: Yes. A PERIN could be very useful in the administration of the Health Act as there is currently no other suitable way of dealing with offences under the Act (ie. failure to register premises under the Health Act). However, offences that would be dealt with by a PERIN would need to be clearly spelt out. It would seem that a PERIN system would give greater respect and compliance with our regulatory enforcement provisions. For example, there has been a long history of problems with registration of hairdressers. A PERIN system would result in making it easier to enforce registration on those businesses that fail to register.	
73	Should public health offences attract similar penalties to those attracted by offences under environment protection legislation?	7.12
	Comment: Yes, it would need to be similar to other legislation in order for offences being taken seriously.	
103	Should the new Act state the role of municipal councils in relation to immunisation as 'coordinating and providing immunisation services to children living or being educated within the municipal district'?	8.8
	Comment: Yes. The role in providing immunisation takes a great deal of resources and is a very important service for the community. Recognising this would be valuable	
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: Yes	
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: No. This would appear to be a double up of roles and information.	
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

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	Comment: Yes, Parents should provide the evidence, and where feasible principals can initiate programs to check records, not sure this needs to be a legislated task.	
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: Would be hard to determine how far something like this should go, particularly when the types of diseases more common to tertiary students are those not usually vaccine preventable.	
109	Should the new Act introduce a penalty for failure on behalf of a parent or guardian to produce immunisation records on secondary school entry?	8.8
	Comment: No. Immunisation is still a personal choice. This may be seen to be discriminatory.	
111	Should the new Act facilitate consistency with the NHMRC schedule for immunisation?	8.8
	Comment: Yes this seems logical as this schedule guides the national provision of immunisation	
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: Possibly, however guidelines already exist and are easily followed	
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: Yes this seems logical	
116	Should provisions dealing with offensive waterways not be included in the new Act?	9.1
	Comment: Yes, leave this area to the Environment Protection Act.	
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

	Issue	Section reference
	<p>Comment: Yes. A provision like this would make it easier to be proactive in public health risks from the above. It would seem that it would make it easier to demonstrate that a risk to health exists and would give authorised officers more powers in relation to complaints about rats, mice, vermin, pests or other animals suspected of having diseases capable of transmission.</p>	
118	Should Parts 5A and 5B of the <i>Building Act 1993</i> be transferred to the new public health Act?	
	<p>Comment: This seems logical and would appear to result in greater understanding of the scope of inspection powers of authorised officers.</p>	
120	Should the new Act re-enact provisions relating to meat supervision?	9.3
	<p>Comment: Believe, as these provisions have been largely superseded by specific food legislation, that this is unnecessary.</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
	<p>Comment: Yes, as it would have the same effect as the current provisions in the Health Act but would make it simpler to enforce and it makes more sense to keep the offence within food legislation.</p>	
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
	<p>Comment: any methods to assist EHOs in the management of spray drift complaints in a concise manner would be appreciated. EHOs can't do anything once the activity has occurred except issue nuisance abatement notice to prevent reoccurrence. Not specifically an area local government can manage.</p>	