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24 January 2006

Mr Stephen Lodge  
Manager  
Legislation Review  
Public Health  
Department of Human Services  
GPO Box 1670N  
MELBOURNE VIC 3001

Dear Mr Lodge

**Review of the Health Act 1958 – Draft Policy Paper – for Consultation**

We wish to submit the following comments:

**Recommendations**

	<b>Issue</b>	<b>Section reference</b>
228	That the public health Act retain the current licensing requirements, with the additional aspects noted below.	6.4
<b>Comment:</b> We support this recommendation subject to our comments below.		
229	That the public health Act continue to provide for the licensing of trainee pest control operators where applicants are: (a) undergoing prescribed training (for example completion of units of competency as specified in the <i>National Standard for Licensing of Pest Management Technicians (1999)</i> or completion of a prescribed course as listed in the current Health (Pest Control) Regulations 2002 (Vic)) (b) operating under the prescribed supervision of a person who is licensed as a pest control operator to use those pesticides.	6.4
<b>Comment:</b> We support this recommendation.		

	<b>Issue</b>	<b>Section reference</b>
230	<p>That pest control operator licences be issued for a period of up to 3 years and may be subject to conditions relating to:</p> <ul style="list-style-type: none"> <li>(a) pesticide use, including uses that are for purposes noted in section 108C(1A) of the Health Act (for example, weed control and agricultural). The Secretary to the Department of Human Services would need to consult with the Secretary to the Department of Primary Industries before imposing a condition that specifically related to uses that are for purposes noted in section 108C(1A) of the Health Act.</li> <li>(b) minimum competency standards</li> <li>(c) compliance with the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic) and (Vic) and the <i>Occupational Health and Safety Act 2004</i> (Vic).</li> </ul>	6.4
<b>Comment:</b> Yes		
231	That it be an offence for a pest control operator to contravene a condition of his or her licence.	6.4
<b>Comment:</b> We support this recommendation.		
232	<p>That pest control operator licences be issued for a period of up to 3 years and may be subject to conditions relating to:</p> <ul style="list-style-type: none"> <li>(a) pesticide use, including uses that are for purposes noted in section 108C(1A) of the Health Act (for example, weed control and agricultural). The Secretary to the Department of Human Services would need to consult with the Secretary to the Department of Primary Industries before imposing a condition that specifically related to uses that are for purposes noted in section 108C(1A) of the Health Act.</li> <li>(b) minimum competency standards compliance with the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic) and (Vic) and the <i>Occupational Health and Safety Act 2004</i> (Vic).</li> </ul>	6.4
<b>Comment:</b> We support this recommendation.		
232	That the public health Act contain a provision allowing the Secretary to issue endorsements on licences for pest control operators to use a	6.4

Issue	Section reference
<p>prescribed chemical product, within the meaning of section 30 of the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic).</p>	
<p><b>Comment:</b> We support this recommendation.</p>	
<p>233 That, in exercising his or her discretion to issue an endorsement on a licence, the Secretary must be satisfied that the pest control operator is competent to use the prescribed chemical product for which the endorsement is to be issued. The Secretary to the Department of Human Services would need to consult with the Secretary to the Department of Primary Industries before issuing an endorsement on a licence to use a prescribed chemical product within the meaning of section 30 of the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic), if that chemical could (Vic), if that chemical could not be used for a purpose covered by section 108C(1) (such as a herbicide).</p>	6.4
<p><b>Comment:</b> We support this recommendation.</p>	
<p>234 That the Secretary be given the power to cancel, suspend, refuse to grant or vary a licence under the new Act on any of the following grounds:</p> <ul style="list-style-type: none"> <li>(a) the licence was issued in error or because of a document or representation that was false or misleading or omitted a material particular</li> <li>(b) the licence was obtained or made in an improper way</li> <li>(c) the holder has not complied with a condition of the licence</li> <li>(d) the holder of the licence has contravened the Act or regulations or other legislation regulating the use of pesticides (such as the <i>Occupational Health and Safety Act 2004</i> (Vic), the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic) or corresponding interstate legislation) (Vic) or corresponding interstate legislation)</li> <li>(e) the Secretary is no longer satisfied that the person is a fit and proper person</li> </ul> <p>the Secretary has formed the view on reasonable grounds that to do otherwise (to issue the licence or refrain from cancelling, suspending or varying the licence) may endanger public health.</p>	6.4
<p><b>Comment:</b> We support this recommendation.</p>	

	Issue	Section reference
235	That pest control operators be required to keep prescribed records for a prescribed period of, say, up to 7 years.	6.4
<p><b>Comment:</b> We consider that two years is an appropriate length of time for records to be retained for incident investigation. In addition the volume of physical records created by pest control businesses is such that the retention of records after two years becomes a costly records management issue for businesses and also provides no public benefit.</p>		
236	That the public health Act includes a regulation-making power requiring pest control operators to give notice of their proposed use of a pesticide in specified situations.	6.4
<p><b>Comment:</b> We do not believe that there is a need for the inclusion of a regulation making power in the Act.</p> <p>There are no demonstrated benefits from its introduction but it would be a significant cost to the industry, and ultimately the community.</p> <p>There already exists a requirement for the application of a pesticide to be carried out in accordance with the label that sets out use that is judged to be safe to those to whom it may be exposed. If there is a breach of this requirement action should be taken under the existing regulation. The addition of a further regulation is no substitute for the lack of enforcement of the existing regulation.</p> <p>Prior notification may not address the problem it is intended to. Superficially it has the appeal of allowing people to make a decision on what they may do if pesticides are to be applied. In reality the benefit cannot be demonstrated yet the cost of notification can and is significant.</p> <p>Problem arising from the requirement to give prior notification are:</p> <ul style="list-style-type: none"> <li>• who should give notification? The pest manager or the owner of the property;</li> <li>• should it apply to all pesticides? Some applications such as baiting have minimal risk;</li> <li>• who is to handle the increased complaints or enquiries?;</li> <li>• what should be done in an emergency with pests such as wasps, bees or rodent outbreaks?;</li> <li>• there is further cost burden if the job has to be postponed and scheduled for a later date;</li> <li>• it adds significantly to the cost of enforcement;</li> <li>• there is an unequal impact on those in the industry if enforcement is not consistent.</li> </ul>		
237	That the public health Act not include any provisions regulating the non-commercial use of	6.4

Issue	Section reference
pesticides (except to the extent that these are addressed by the nuisance provisions or the Chief Health Officer's ability to issue an improvement or prohibition notice).	
<b>Comment:</b> We disagree with this recommendation as public health risk still exists.	
238 That further consideration be given to the development of a memorandum of understanding between the Department of Human Services and the Department of Primary Industries (and other relevant agencies and departments), clarifying the roles and responsibilities of different agencies and departments involved in the management of spray drifts.	6.4
<b>Comment:</b> We support this recommendation.	
239 That the public health Act provides that an employer of a pest control operator is guilty of an offence if the pest control operator contravenes the provisions of the Act relating to pest control. This would be subject to a due diligence defence analogous to section 17E of the <i>Food Act 1984</i> (Vic).	6.4
<b>Comment:</b> We support this recommendation	
240 That it is an offence for a person to hold him or herself out as being able to use pesticides, where the person would need to be licensed to use these pesticides and the person does not have the required licence.	6.4
<b>Comment:</b> We support this recommendation.	
241 That the public health Act not introduce an offence provision relating to damaging a person's property.	6.4
<b>Comment:</b> We support this recommendation.	

Yours sincerely

David Gay  
Chairman