

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

Recommendations

	Issue	Section reference
1	That the new Act be named the <i>Public Health Act</i> .	1.1
Comment: Supported		
2	That non-legislative mechanisms, such as a Memorandum of Understanding, be entered into with agencies administering legislation that interface with public health legislation, as required in the particular circumstance.	1.2
Comment: No need for MOU to be prepared		
3	That the public health Act recognise the importance of promoting public health.	1.2
Comment: Supported via Guiding principles, definitions and scope.		
4	That the public health Act recognise the need to address inequalities in the health and wellbeing of disadvantaged communities.	1.2
Comment: Supported via Guiding principles, definitions and scope		
6	That the term "health and wellbeing" be defined in the public health Act to include health as a positive condition, not merely the absence of disease, and be inclusive of physical, social and mental wellbeing (both individual and collective) and apply to the provisions in the public health act relating to the following: (a) objects (see 1.6) (b) guiding principles (see 1.7) (c) functions of Secretary, Chief Health Officer and municipal councils (see 1.8 to 1.10) (d) public health inquiries (see 2.1)(e) (e) municipal public health plans (see 3.1)(f) (f) health information management (see 3.6).	1.4
Comment: Definition of health to include wellbeing in relation to health promotion is supported.		
7	That the term "health" apply to all other provisions	1.4

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	and be defined narrowly, to exclude concepts of social and mental wellbeing.	
	Comment: Supported	
8	That the public health Act provide that it applies throughout Victoria (including areas that do not form part of a municipal district).	1.5
	Comment: Supported	
10	That the public health Act bind the Crown.	1.5
	Comment: Supported	
11	<p>That the public health Act include the following statement of objects:</p> <p><i>Whereas</i></p> <p>The State of Victoria has a significant role in promoting and protecting the health of all Victorians; and</p> <p>It is accepted that health is a state of individual and collective wellbeing, not merely the absence of disease; and</p> <p>One of the ways it is possible to improve the population’s health status and reduce health inequalities is through public health interventions —</p> <p>The objects of the Act are:</p> <ul style="list-style-type: none"> (a) to protect public health and prevent disease, illness, injury, disability and premature death; (b) to promote conditions in which the people of Victoria can be healthy; and (c) to reduce social and health inequalities and enable all Victorians to achieve the best possible state of health and wellbeing. 	1.6
	Comment: Supported	

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
12	That the provision of evidence-based information to the public about the health of the population be incorporated into the functions of the Chief Health Officer under the new Act, rather than as an object provision.	1.6
Comment:		
13	<p>That the public health Act include the following guiding principles:</p> <p>(a) Principle of evidence-based decision making</p> <p>Decisions as to the most effective and efficacious public health interventions and efficient use of resources to protect and promote public health are informed by reliable and relevant evidence (where available in the circumstances).</p> <p>(b) Precautionary principle</p> <p>If there are threats of a serious public health risk, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk (based on section 1C of the <i>Environmental Protection Act 1970</i> (Vic)).</p> <p>(c) Principle of the primacy of prevention</p> <p>Preventing harm or damage is preferable to repairing it later. Promoting resilience and building capacity is preferable to allowing deficits or problems to otherwise undermine health or autonomy.</p> <p>(d) Principle of accountability</p> <p>Public health officials should ensure, as far as is practicable, that decisions made under the Act are transparent, systematic and appropriate. The community should therefore be given:</p> <p>(i) access to reliable information in appropriate forms to facilitate a good</p>	1.7

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>understanding of public health issues; and</p> <p>(ii) opportunities to participate in policy and program development (based on section 1L of the <i>Environmental Protection Act 1970</i> (Vic)).</p> <p>(e) Principle of proportionality</p> <p>Acts taken and decisions made by officials under the public health Act should be proportionate to the harm to be prevented, minimised or controlled. Where action is necessary to protect public health, the action chosen must be the least intrusive means available to achieve that goal and must not be imposed in an arbitrary way.</p> <p>(f) Principle of collaboration</p> <p>Public health is enhanced by collaborative approaches between national, state and local government, the community sector, industry and individuals.</p>	
Comment: Supported		
15	<p>That the public health Act include the following statement of function of the Secretary under the Act:</p> <p>(a) to develop and implement policies and programs to achieve the objects of the Act</p> <p>(b) to assist other agencies which have an impact on public health to enhance opportunities for public health</p> <p>(c) to support, equip and empower communities to address their health needs</p> <p>(d) to establish and maintain a comprehensive information system which includes information on:</p> <p>(i) the health status of Victorians and groups of Victorians including the extent and effects of illness, injury and premature death</p> <p>(ii) the determinants of health/(iii) health</p>	1.8

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	system performance in Victoria.	
	Comment: Supported	
19	<p>That the public health Act include the following statement of the function of the municipal councils: The function of every council under this Act is to seek to protect and improve public health, and promote community wellbeing by:</p> <ul style="list-style-type: none"> (a) creating environments which support the health of the local community and strengthen the capacity of communities and individuals to achieve better health (b) initiating, supporting and managing public health planning processes at the municipal level (c) developing and enforcing up-to-date public health standards and intervening if the health of people within the municipal district is, or may be, affected (d) facilitating and supporting the efforts of other local agencies whose work has an impact on public health to improve public health status of the local community (e) coordinating and providing immunisation services to children living or being educated within the municipal district. 	1.10
	<p>Comment: The co-ordination of immunisation services is an important role of local governments but there are other organisations such as community health services that many that maybe equipped to provide cost effective immunisation services.</p> <p>Section (d) should not include the word "other", as local governments are not an agency.</p>	
20	<p>That the public health Act not re-enact the requirement for municipal councils to report annually to the Secretary, but the requirement to report as required by the Secretary be retained.</p>	1.10
	Comment: Supported	
21	<p>That the public health Act provide that the exercise by a delegate of council's power to refuse an</p>	1.10

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	application for registration under the Act is only valid if the council later ratifies that refusal.	
	Comment: Supported	
22	That the Secretary retain the power to perform the functions of municipal councils in emergency situations where there is a serious risk to public health (based on section 36A of the Health Act).	1.10
	Comment:	
23	That the public health Act not include the legislative requirement that every municipal council appoint a medical officer of health.	1.12
	Comment: Supported	
24	That non-legislative mechanisms be employed to assist municipal councils obtain public health expertise.	1.12
	Comment: Supported	
25	That the public health Act re-enact the requirement for every municipal council to appoint one or more environmental health officers, and allow environmental health officers to be shared between councils.	1.12
	Comment: Supported	
26	That an environmental health officer who is appointed by a council automatically be an authorised officer for the purposes of the public health Act (see paragraph (b) of the definition of "authorised officer" in section 4(1) of the <i>Food Act 1984</i> (Vic)).	1.12
	Comment: Supported	
27	That the public health Act require that a council only appoint as an environmental health officer a person who has qualifications and/or experience nominated by the Secretary, or by a person	1.12

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	approved by the Secretary.	
	Comment: Supported	
28	That the provision of the Health Act that provides that, in addition to any other duties, the Secretary, "health officers", environmental health officers and "engineers" have the same powers and duties as environmental health officers and medical officer of health appointed by municipal councils not be re-enacted.	1.12
	Comment: Supported	
29	That the public health Act provide that: (a) the Secretary may appoint Departmental officers as authorised officers (b) a municipal council may appoint employees or officers of the council as authorised officers.	1.12
	Comment: Supported, competency for the role would be assessed at a local level during recruitment.	
30	That the Secretary or municipal council (as appropriate) may only appoint a person to be an authorised officer if the Secretary or municipal council (as appropriate) is satisfied that the person has the qualifications or experience required to perform his or her functions. Those competencies regarding qualifications or experience would not be specified in the public health Act.	1.12
	Comment: Supported, competency for the role would be assed at a local level during recruitment.	
31	That consideration be given to the development, in consultation with stakeholders, of non-legislative guidelines as to competencies and minimum standards of training required to fulfil particular statutory functions.	1.12

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>Comment: Difficult to implement non-statutory minimum competency standards. Which introduces risks to Council. There is a lack of conformance by high risk premises, if requirements are non-statutory. A good example is the variation in the training sector selected by Food Safety Supervisors in the Victorian Food Act.</p>	
	<p>Comment: Supported. This would allow time for the evaluation of the previous plan, the gathering of data for the next plan and Council's Key Directions outlined in the developmental phase of the Council Plan.</p>	
56	<p>The public health Act list matters to be addressed in municipal public health plans as follows:</p> <ul style="list-style-type: none"> (a) examine data about health status and health determinants in the municipal district (b) identify goals and strategies based on available evidence for creating healthy communities, to enable people living in the municipal district to achieve maximum health and wellbeing (c) describe how the local community is engaged in developing, implementing and evaluating the plan (d) address how municipal councils work in partnership with the Department of Human Services and others undertaking public health initiatives, projects and programs within the municipal district to accomplish goals and priorities identified in the municipal public health plan. 	3.1
	<p>Comment: Supported</p>	
57	<p>That the public health Act provide that each municipal council be required to review its municipal public health plan annually and, if appropriate, amend the plan.</p>	3.1
	<p>Comment: Supported</p>	
58	<p>That the public health Act provide that each municipal council must submit its municipal public health plan ("MPHP") to the Department of Human Services within 12 months after each general election. Where the plan is amended, it must be submitted annually. The MPHPs would be made</p>	3.1

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	available on a central database as a resource for council health planners. Further, MPHs would inform the development of state public health planning and policies.	
	Comment: Supported. Database should be resourced by Local Government Partnerships Team, Public Health group. The development of the MPHP would also be informed by the state health planning and policies through a consultative process.	
59	That the Department of Human Services continue to support municipal councils in the development, implementation and evaluation of municipal public health plans through non-legislative mechanisms, including developing and implementing tools and capacity building initiatives such as <i>Environments for Health</i> .	3.1
	Comment: Supported	
60	That municipal public health plans be required to be consistent with the council plan prepared under section 153A of the <i>Local Government Act 1989</i> (Vic) and municipal strategic statement prepared under section 12A of the <i>Planning and Environment Act 1987</i> (Vic) for the municipal district.	3.1
	Comment: It is recommended the MPHP be recognized as one of the key planning documents for Council and be linked to the Council Plan and the Municipal Strategic Statement.	
66	That the Department of Human Services consider non-legislative guidelines for consultation, if appropriate, to support provisions in the new Act.	3.5
	Comment: Support depended on provisions that it's applicable to.	
67	That the public health Act continue to provide for the collection of the following information: (a) notifiable diseases (Health Act, s 138) (b) perinatal data (Health Act, ss 162F, 162G) (c) HIV incidence (Health Act, s 130).	3.6
	Comment: Supported	

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
71	That the public health Act support and enhance the practice of risk management, rather than incorporate specific procedural requirements.	4.1
Comment: Supported		
72	That the Department of Human Services consider developing administrative guidelines where appropriate, to ensure that issues of risk are addressed properly and in a consistent manner (such as guidelines for the issue of improvement and prohibition notices: see 4.9).	4.1
Comment: Supported		
76	That the public health Act not impose a General Duty on all people.	4.2
Comment: Supported		
77	<p>That the following limits be imposed on the scope of the General Duty:</p> <ul style="list-style-type: none"> (a) applies only to material risks and not trivial risks (b) requires people to refrain from conduct that is injurious to public health, rather than create a positive duty to promote public health (c) only requires people to act reasonably and appropriately, and by expecting them to do the things that can practicably be expected of them. <p>Reasonableness of a person's conduct would be considered having regard to:</p> <ul style="list-style-type: none"> (i) the nature of the conduct and the circumstances in which it occurred (ii) the likelihood of a person suffering harm as a result of the conduct (iii) the nature and seriousness of the harm that may be suffered as a result of the conduct (iv) the number of people who may be harmed by the conduct (v) the reason why the person engaged in the conduct and the social utility of the 	4.2

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>activity</p> <ul style="list-style-type: none"> (vi) the knowledge and information that the person had or ought reasonably to have had or acquired about the risk, nature and scale of harm that may be suffered as a result of the conduct (vii) whether and, if so, what precautions the person took to prevent or reduce the harm that may be suffered as a result of the conduct, or to reduce the risk that harm may occur as a result of the conduct (viii) the ease or difficulty with which people at risk of suffering harm as a result of the conduct could protect themselves against the risk of harm and the extent to which they voluntarily accepted the risk (ix) any other relevant factors. <p>(d) Could specifically exclude harm to self and hypersensitivities.</p>	
	Comment: Supported	
82	That the public health Act not introduce a "risk to health" offence.	4.3
	Comment: Supported	
83	That the new Act continue to deal separately with environment related health risks that arise at the local level (nuisances) and broader public health risks that affect the community or subsections of the community.	4.4
	Comment: Supported	
84	<p>That the nuisance provisions apply to nuisances which are, or are liable to be, dangerous to health or offensive, including nuisances arising from or constituted by:</p> <ul style="list-style-type: none"> (a) any building or structure (b) any land, water or land covered by water (c) any insect or animal capable of carrying a disease transmissible to humans 	4.4

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

Issue	Section reference
<ul style="list-style-type: none"> (d) any refuse (e) any noise or emission (f) any state, condition or activity (g) any other matter or thing. 	
Comment: Supported	
85	That "offensive" be defined as "noxious or injurious to personal comfort" and the reference to "annoying" be removed.
Comment: Supported. The removal of 'annoying' will better reflect current practice and intention of the legislation to only investigate matters that effect human health rather than just amenity issues of an annoying nature.	
86	That a risk of a "nuisance" be sufficient to trigger powers.
Comment: Not supported. Dealing with risks of nuisance may divert resources to areas that may not be appropriate, such as matters that are better dealt with via mediation or planning schemes.	
87	That, in determining whether a state, condition or activity is a nuisance which is, or is liable to be, dangerous to health or offensive: <ul style="list-style-type: none"> (a) regard must not be had to the number of people affected or that may be affected by the state, condition or activity; and (b) regard may be had to the degree of offensiveness of the state, condition or activity (as in s 40(2)).
Comment: Supported	
88	That each municipal council continue to have a duty to "remedy as far as is reasonably possible all 'nuisances' in its municipal district" (as in s 41).
Comment: Supported	
89	That the following administrative powers continue to be applied to the duty to abate a nuisance: <ul style="list-style-type: none"> (a) notification of nuisance (ss 43(1) and (2)) (b) failure of council to investigate complaint (s

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	45) (c) nuisance caused by two or more people (s 46) (d) who may institute proceedings (s 47) (e) delegation (s 47A) (f) investigation outside districts (s 47B) (g) nuisances on unoccupied land (s 47C) (h) regulation-making power (s 47D).	
	Comment: Supported	
90	That it continue to be an offence to cause a "nuisance" (as in s 42).	4.4
	Comment: Supported	
91	That if, upon investigation, a nuisance is found to exist, the council must: (a) take action to abate the nuisance; or (b) if the council is of the opinion that the matter is better settled privately, advise the person notifying the council of the nuisance of any available methods for settling the matter privately (s 43(3)).	4.4
	Comment: Supported	
92	That nuisance abatement provisions (s 44) be removed, and municipal councils instead rely on the general enforcement provisions under the new Act; that is, improvement notices and prohibition notices (see 4.9).	4.4
	Comment: Supported	
93	That the Department of Human Services continue to issue best practice standards of practice, as appropriate. Compliance with standards of practice would be non-binding, unless they were set out in the regulations. However, compliance with guidelines could be a defence under the public health Act, if the guidelines relate to the General Duty.	4.5

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>Comment: Partly Supported. This model is difficult to implement due to lack of enforcement powers. This model will only work if the legislation requires risks to be controlled and the Best Practice model is advising on how to keep detailed records.</p>	
96	<p>That the provisions in the public health Act regarding risk management plans in the case of registerable/licensable activities, be based on the approach used in Part 5B of the <i>Building Act 1993</i> (Vic) in relation to cooling tower systems. For instance:</p> <ul style="list-style-type: none"> (a) there would be provision for approved auditors who are approved by the Secretary (b) approved auditors would need to comply with any conditions imposed on their approval (c) the approved auditors would assess whether the risk management plan addresses the required matters, but not its adequacy (d) there would be provisions regarding reporting "failed" audits to the registering authority (the Secretary or municipal council) (e) there would be provisions regarding conflicts for approved auditors, granting audit certificates and impersonation of approved auditors. 	4.6
	<p>Comment: Partly supported. Supported only if this requirement relates to major works or if it also applicable to smaller issues then there is a policy such as RMP templates which are available to support the plan development.</p>	
97	<p>That an improvement notice could require a person to prepare a risk management plan (see 4.9). (This would not include the requirement that external approved auditors audit the plan.)</p>	4.6
	<p>Comment: As above</p>	
98	<p>That the public health Act provide powers for the Secretary (or municipal council, where applicable) to:</p> <ul style="list-style-type: none"> (a) grant, renew, vary, suspend or cancel the registration/licence (b) determine whether the registration/licence applicant is a fit and proper person 	4.7

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<ul style="list-style-type: none"> (c) set registration/licensing periods for public health risk activities within specified parameters (for example, a maximum licensing period of three years) (d) set conditions to which the licence is subject (registration would not be subject to conditions) (e) make enquiries regarding the authenticity and suitability of documents presented with licence or registration applications (f) reissue a licence or certificate of registration upon application of a licence holder that the original licence/registration has been lost, stolen or destroyed (g) monitor the activities of licence/registration holders, to ensure that they comply with any requirements of the licence/registration. 	
	Comment: Supported	
99	<p>That the public health Act:</p> <ul style="list-style-type: none"> (a) set out criteria for registration/licence applications, renewals, variations, transfers, suspensions or cancellations of registration/licences, so that the registration/licensing process is transparent and decisions to register/licence are consistent (b) set out eligibility requirements for a licence/registration, such as prescribed qualifications or training competencies (c) provide for prescribing fees, including for the issue and reissue of a registration/licence, and for late applications. 	4.7
	Comment: Partly supported. Criteria for administration of registration is acceptable as per the current Health Prescribed Forms regulations. Councils should have the capacity to set its own fees.	
100	<p>That the following offence provisions be set out in the public health Act:</p> <ul style="list-style-type: none"> (a) conducting an activity for which a licence is required, without the operator being registered/licensed (b) breaching the conditions of the licence (c) making a false or misleading statement in 	4.7

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>relation to an application for the grant, renewal or variation of a registration/licence</p> <p>(d) failing to prepare a risk management plan (where there is an obligation to have a risk management plan)</p> <p>(e) an offence of failing to notify authorities in the event of certain types of incidents occurring.</p>	
	Comment: Supported	
101	<p>That a person whose registration/licence has been cancelled by the Secretary/municipal council has the right to re-apply for registration/licence, but could be required to inform the registration/licensing authority of previous cancellations or suspensions. Failure to do so could be grounds for refusing to issue a registration/licence, or for cancelling any registration/licence subsequently issued.</p>	4.7
	Comment: Supported	
102	<p>That (at this stage) there should not be a requirement that solaria be registered with municipal councils (or the Secretary).</p>	4.7
	Comment: Supported	
103	<p>That there should not be a requirement that public events be registered with municipal councils (or the Secretary).</p>	4.7
	Comment: Supported	
104	<p>That regulation-making powers allow for an obligation being imposed on people conducting activities subject to registration/licensing and on proprietors of non-registered premises (for example, proprietors of swimming pools or brothels) to notify the relevant authority (Secretary or municipal council) in the event of prescribed circumstances.</p>	4.7
	Comment: Supported	

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
105	<p>That the Secretary or municipal council (as appropriate) must issue the authorised officers with identity cards that:</p> <ul style="list-style-type: none"> (a) contain the authorised officers' name and photo (b) identify the authorised officers as authorised officers under the Act (c) are signed by the authorised officer (d) are signed by the Secretary (for Department of Human Services officers) or a member of council staff authorised to issue the identity cards (for council officers or employees). 	4.8
Comment: Supported		
106	<p>That an authorised officer is subject to the directions of the Secretary or municipal council (as appropriate) in the performance of his or her functions, or the exercise of his or her powers under the Act or the regulations. A direction of the Secretary or municipal council (as appropriate) may be of a general nature or may relate to a specified matter or specified class of matter.</p>	4.8
Comment: Supported		
107	<p>That an authorised officer must produce his or her identity card for inspection:</p> <ul style="list-style-type: none"> (a) before exercising any of the powers noted below (general enforcement powers, incident powers and emergency powers), unless the request is made in writing or it is otherwise not practicable, such as entry onto land that is temporarily unoccupied) (b) if asked to produce his or her card by the occupier of the premises during the exercise of the power. 	4.8
Comment: Supported		
108	<p>That an authorised officer may not continue to exercise any of his or her powers if he or she fails to produce on request his or her identity card for inspection by the occupier of the premises.</p>	4.8

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
Comment: Supported		
109	<p>That before entering a premises to exercise a general enforcement, incident or emergency power, the authorised officer must (subject to the exceptions noted in this paragraph) announce that he or she is authorised under the public health Act to enter the premises and give any person at the premises an opportunity to allow entry to the premises. The exceptions to this requirement are if:</p> <ul style="list-style-type: none"> (a) it is not practicable (the premises are vacant) (b) the authorised officer believes on reasonable grounds that immediate entry to the premises is required to ensure: <ul style="list-style-type: none"> (i) the safety of any person; or (ii) the effective exercise of the powers noted below. 	4.8
Comment: Supported		
110	<p>That the public health Act provide that an authorised officer is able to exercise powers to monitor compliance and investigate possible contraventions of the Act. This should include the power to (at any reasonable time) exercise the following “general enforcement powers”:</p> <ul style="list-style-type: none"> (a) enter a place (b) stop and search any person, animal, vehicle, vessel or other means of conveyance (c) inspect, examine and make enquiries at the place (d) examine or inspect any thing at the place (e) bring any equipment or materials to the place that may be required (f) seize any thing, including a document, at the place, where: <ul style="list-style-type: none"> (i) the seizure is required to determine whether there has been a contravention of the Act; or (ii) the seized thing may be used as evidence for a possible prosecution; or (iii) the seizure is required to minimise a risk to health (g) seal a place or thing (h) take a sample of any thing at the place 	4.8

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<ul style="list-style-type: none"> (i) take any photographs or measurements or make sketches, impressions or any audio or visual recordings (j) make copies of, or take extracts from, any document kept on the place (k) use or test any equipment at the place (l) request a person at the place to provide information or produce documents (m) request a person at the place to operate equipment to access information from that equipment (such as from a disk or tape) (n) request a person at the place to provide any document that is needed to investigate or monitor compliance (o) use any assistants the authorised officers considers necessary to exercise the powers conferred on an authorised officer (p) exercise any other power conferred on the authorised officer by the public health Act (q) do any other thing that is reasonably necessary for the purpose of the authorised officer performing his or her functions, or exercising his or her powers, under the public health Act. 	
	Comment: Supported	
111	That there is no need to have a warrant to perform any of the above powers.	4.8
	Comment: Supported	
112	<p>That the following provisions apply for seized things:</p> <ul style="list-style-type: none"> (a) the authorised officer must provide a receipt for any seized thing in the prescribed form (b) seized things may be held for up to 60 days, unless: <ul style="list-style-type: none"> (i) the Magistrates' Court extends the period of seizure, on the application of an authorized officer; or (ii) the thing had to be destroyed by the Secretary or council (for example, due to contamination) (c) the seized things should be returned (if 	4.8

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	practicable) if the reason for their seizure no longer exists. If the thing cannot be returned, it becomes the property of the Secretary or council.	
	Comment: Supported	
114	That the public health Act include offences regarding: (a) impersonating an authorised officer (b) failure to answer questions of an authorised officer without a reasonable excuse (c) knowingly providing an authorised officer, council, Secretary or Chief Health Officer with information that is false or misleading (d) interference with, or obstruction of, an authorised officer (e) failure of a person that is required to keep records to (upon request by an authorised officer) provide the records to the authorised officer.	4.8
	Comment: Supported	
115	That the public health Act provide that an improvement or prohibition notice could be issued by a municipal council or the Secretary, where the council or Secretary believes on reasonable grounds that a person is breaching or may breach an obligation under the public health Act or its regulations.	4.9
	Comment: Supported	
116	That the public health Act provide an illustrative list or examples of some of the types of improvement or prohibition notices that could be issued under the Act. An improvement or prohibition notice would be able to achieve everything that a “notice to abate” can achieve under section 44 of the Health Act.	4.9
	Comment: Supported	
117	That failure to comply with an improvement or	4.9

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	prohibition notice is an offence under the public health Act.	
	Comment: Supported	
126	<p>That if a person is prosecuted and found guilty of contravening the public health Act, the following provisions apply:</p> <ul style="list-style-type: none"> (a) a municipal council or the Secretary could seek reimbursement of costs it has incurred costs as a result of the contravention (such as clean-up costs) (b) if a municipal council or the Secretary is awarded legal costs, it could seek payment for the costs incurred by its officers to investigate the contravention. 	4.11
	Comment: Supported	
127	That if a person fails to comply with a direction of a municipal council, authorised officer, the Secretary or an improvement or prohibition notice and the municipal council, authorised officer or Secretary steps in to perform that task, then the municipal council or Secretary would be entitled to seek the cost of performing that task.	4.11
	Comment: Supported	
128	That expenses incurred by a municipal council in the abatement of a nuisance can be recovered from the occupier of the land, even if there has not been a prosecution.	4.11
	Comment: Supported	
130	That there be the capacity for contraventions of some provisions of the public health Act to be enforced through the Penalty Enforcement by Registration of Infringement Notice system.	4.12

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	Comment: Not supported. Most provisions within the legislation need to be assessed via a risk management, evidence based approach and are not clear enough to be appropriate for enforcement via on the spot fines. Such a proposal must be considered in relation to its impact on public health outcomes and whether such a penalty system can be implemented in a cost effective and consistent manner	
131	That during the development of the relevant regulations that determine which offences are subject to the Penalty Enforcement by Registration of Infringement Notice system, the Department of Human Services consult closely with local government and other relevant stakeholders.	4.12
	Comment: Supported. If this was to be pursued there would have to be prescriptive policy to assist with consistency and reporting requirements should be included so that there is State Government data on enforcement.	
132	That the public health Act set penalty levels that reflect the seriousness of the public health consequences of a breach and be sufficient to deter conduct that creates an unacceptable risk to public health.	4.12
	Comment: Supported	
133	That higher penalties be imposed on bodies corporate, than those imposed on individuals. The maximum fine would be 5 times the maximum fine for a natural person.	4.12
	Comment: Supported	
136	That the public health Act provide for the following appeal rights in relation to licences and registrations: (a) a right of internal review for applicants for decisions by the municipal council/Secretary to: (i) refuse to grant, extend or vary a licence/registration (ii) vary, suspend or cancel a licence/registration (iii) impose certain conditions on a	4.14

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p style="text-align: center;">licence/registration.</p> <p>(b) full appeal rights to the Victorian Civil and Administrative Tribunal in relation to any decision made upon internal review</p> <p>(c) a right of direct appeal to the Victorian Civil and Administrative Tribunal in relation to any decision to cancel or suspend a registration or licence (the holder of the cancelled/suspended licence or registration could elect to utilise the internal review or apply directly to the Victorian Civil and Administrative Tribunal for review).</p>	
	Comment: Supported	
144	That the requirement that businesses conducting hairdressing be registered with municipal councils not be re-enacted in the public health Act.	5.1
	Comment: Supported based on risk of infectious disease transmission is low	
145	That the requirement that a person conducting a business of beauty therapy be registered with municipal councils be re-enacted.	5.1
	Comment: Supported	
146	That businesses conducting tattooing, skin penetration and colonic irrigation be required to be registered with municipal councils.	5.1
	Comment: Supported	
147	That the specific regulatory scheme set out in the Regulations would be proportionate to the level of risk associated with the specific activity. For example, the regulations for premises conducting skin penetration could be more prescriptive than the regulations for premises conducting beauty therapy.	5.1
	Comment: Supported	
148	That definitions for "beauty therapy", "tattooing",	5.1

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>“skin penetration” and “colonic irrigation” be included in the public health Act. The definition of skin penetration would include various cosmetic and decorative procedures such as scarification, branding and beading.</p>	
	Comment: Supported	
150	That proprietors of swimming pools continue to be subject to regulation under the public health Act, but not be required to be registered with municipal councils.	5.1
	Comment: Supported	
154	The public health Act continue to require registration of premises providing accommodation to a high number of people (such as tourist accommodation and rooming houses).	5.2
	Comment: Supported	
157	That the specific regulatory scheme set out in the Regulations be proportionate to the level of risk associated with that activity.	5.2
	Comment: Supported	
159	<p>That the following people be authorised to exercise contact tracing powers for a notifiable condition under the public health Act:</p> <p>(a) authorised officers of the Department of Human Services, subject to directions of the Secretary</p> <p>(b) authorised officers of council, but only if directed to do so by the Secretary and subject to the directions of the Secretary.</p> <p>These powers authorise the collection, use and disclosure of personal information and health information.</p>	5.3
	Comment: Supported	
180	That the term “notifiable disease” be replaced by	5.6

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	the term “notifiable condition” in the public health Act.	
	Comment: Supported	
181	That notifiable conditions (notifiable diseases) continue to be prescribed in a schedule to the regulations.	5.6
	Comment: Supported	
189	That the public health Act include a regulation-making power to permit conditions to be imposed on pathology laboratories. For example, a requirement to take part in quality assurance programs, to refer all HIV reactive tests to a specified laboratory for confirmatory testing or to supply data for epidemiological purposes.	5.7
	Comment:	
190	That provisions in relation to immunisation records in children’s services (Regs 14(2) and 16(0)) be retained in the Children’s Services Regulations 1998 (Vic), rather than included in the public health Act.	5.8
	Comment:	
191	That the current requirement for a parent or guardian to provide an immunisation status certificate on enrolment of their child in primary school be retained.	5.8
	Comment: Supported	
192	That a parent or guardian be required to provide evidence of immunisation status on enrolment of their child in secondary school.	5.8

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

Issue	Section reference
<p>Comment: It is understood that there are advantages to knowing the immunisation status of students if an outbreak occurs in a secondary school and reminding families about the importance of immunisation at the completion of primary school. However, the increased on-going workload for Local Government associated with preparing Immunisation Status Certificates for those children who have been immunised overseas must be noted.</p>	
193	That no obligation be imposed on people enrolling in tertiary facilities to provide evidence of immunisation status. 5.8
<p>Comment: Supported</p>	
195	That the public health Act require principals to take reasonable steps to ensure that immunisation records are kept up-to-date for each child enrolled in the school. 5.8
<p>Comment: Supported</p>	
196	That section 144(2) of the Health Act not be re-enacted in the public health Act. (This provision provides that "a person in charge of a primary school must not refuse a child admission to the school only because an immunisation status certificate has not been produced in respect of the child". The provision is unnecessary.) 5.8
<p>Comment:</p>	
197	That there be no offence for a parent or guardian failing to produce immunisation records to the school. 5.8
<p>Comment: Supported</p>	
198	That an immunisation status certificate under the public health Act include one of: 5.8 (a) a certificate issued in the prescribed form by a person authorised to do so by a municipal council (b) a certificate issued in the prescribed form by a person who is authorised by the Australian

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>Childhood Immunisation Register to be an immunisation provider</p> <p>(c) a prescribed person who certifies that the person has been presented with the required documentary evidence in relation to each prescribed infectious disease</p> <p>(d) a prescribed document (it is proposed that the Child History Statement issued by the Australian Childhood Immunisation Register would be prescribed to be an immunisation status certificate).</p>	
	Comment: Supported	
199	<p>That a person authorised to do so by a municipal council must issue an immunisation status certificate to a parent, where:</p> <p>(a) The parent produces for each prescribed infectious disease one of the forms of evidence listed in recommendation 201 below; and</p> <p>(b) The child resides in the municipal district or attends, or proposes to attend, a school in the municipal district.</p>	5.8
	Comment: Supported	
200	<p>A prescribed person or a person authorised by the Australian Childhood Immunisation Register to be an immunisation provider, may issue an immunisation status certificate if the parent produces for each prescribed infectious disease one of the forms of evidence listed in recommendation 201 below. However, it would not be a statutory obligation for these people to issue an immunisation status certificate.</p>	5.8
	Comment: Supported	
201	<p>That an immunisation status certificate be issued if the parent or guardian of the child produces for each prescribed infectious disease:</p> <p>(a) evidence that the child has been immunised (this may include patient-held records, provider held records or an Australian Childhood Immunisation Register report)</p>	5.8

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<ul style="list-style-type: none"> (b) laboratory evidence that the child has developed a natural immunity and does not require immunisation (c) evidence that the child has not been immunised against the disease(s) due to the reasonable belief of a registered medical practitioner that the child may suffer an adverse reaction to the vaccination (d) a statutory declaration that the parent or guardian believes that the child has been vaccinated (e) a statutory declaration that the parent or guardian has a conscientious objection to vaccination against a specified disease (f) other prescribed evidence (it is envisaged that the regulations would provide that a parent report of varicella infection (chicken pox) would be prescribed). 	
	Comment: Supported	
202	That an immunisation status certificate must cover the prescribed diseases. The vaccines listed under the National Health and Medical Research Council <i>National Immunisation Program</i> could be prescribed.	5.8
	Comment: Supported	
203	That a parent or guardian be required to notify the school if their child is infected or comes into contact with a person infected with a vaccine preventable or excludable infectious disease.	5.9
	Comment: Supported with procedures provided for schools considering confidentiality of personal information.	
204	That exclusion periods from schools and children's services for infectious disease cases and contacts continue to be prescribed.	5.9
	Comment: Supported	
206	That school principals and people in charge of children's services be required to seek advice from	5.9

**CITY OF BOROONDARA SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>the Department of Human Services before excluding children where:</p> <ul style="list-style-type: none"> (a) the child enrolled in the school or children's service is suffering from a vaccine preventable illness (b) the child enrolled in the school or children's service has not been immunised and has been in contact with a person at the school or service who is infected with the disease. 	
	Comment: Supported	
207	<p>That the provisions in the new Act and Regulations be consistent with National Health and Medical Research Council <i>Guidelines on the Recommended Minimum Periods of Exclusion from School, Preschool and Child Care Centres of Infectious Disease Cases and Contacts</i>.</p>	5.9
	Comment: Supported	
210	<p>That a separate regulation-making power regarding rats and mice, as is currently contained in section 87 of the Health Act, not be included in the public health Act.</p>	6.1
	Comment: Supported	
226	<p>That consideration be given to whether the <i>Food Act 1984</i> (Vic) should be amended, in line with the proposed provisions in the public health Act, to provide that a municipal council may appoint an authorised officer under the <i>Food Act 1984</i> (Vic), if the council is satisfied that the authorized officer has the training or experience required to perform his or her functions. The competencies regarding training or experience would not be specified in the Act.</p>	6.3
	Comment: Supported	