

## Recommendations

Issue	Section reference
1 That the new Act be named the <i>Public Health Act</i> .	1.1

**Comment:** We agree.

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
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**Comment:** This would have to be administered with great care.

Parliament has a mandate from the people to legislate on their behalf and for the common good. A conscientious government will seek feedback from the people and especially from groups and bodies within the people, who may have a special interest in, or be affected by, a proposed legislation. This document is an excellent example of this democratic process in action. Our multiple party, two house system, endeavours to further assure that the legislative process and legislative decisions are made in a democratic way. Government Ministers and their staff set out to become well informed on the subjects and issues of their portfolio(s). Whilst not perfect, this is, we believe, a sincerely devised and generally effective democratic process.

The proposed recommendation 2, has the potential to undermine the precious checks, which the above-mentioned system ensures. The expertise of agents of local government, on issues of public health may be limited, uninformed or even biased. Whilst this may not be common, it can occur and if it did, a "Memorandum of Understanding" could confer powers or discretions upon local government agents or agencies, which might not be in accord with the intent of the Public Health Act and which might potentially threaten the democratic rights of particular persons.

If this recommendation is adopted, we strongly suggest that a robust mechanism of appeal be concurrently installed, to ensure that any grievances can be swiftly and impartially heard and that the democratic process is honoured. Refer to 13(e)

3 That the public health Act recognise the importance of promoting public health.	1.2
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**Comment:** We agree with this principle and ask that efforts to promote public health, include natural and alternative therapies, as well as allopathic and pharmaceutical approaches. Historically, natural and alternative modalities that can help to establish and maintain health, have been ignored and at times, even suppressed.

We would like to see the Act and your department acknowledging and encouraging complementary modalities, practiced by providers who, whilst not registered under any specific act, can demonstrate that they are appropriately qualified and experienced, that they behave in an ethical and professional manner and that their profession is effectively self-regulated, usually through their associations.

- 4 That the public health Act recognise the need to address inequalities in the health and wellbeing of disadvantaged communities. 1.2

**Comment:** We agree that it is most important that the public health Act should address inequalities in the health and wellbeing of disadvantaged communities, including indigenous and ethnic groups, disabled, single parents, low income families and individuals.

However, it is equally important that the Act or its facilitators at government or local government level, do not inflict unreasonable building regulations and facility requirements on small health providers. Requirements for specialised facilities or access provisions, could put the small practitioner out of business.

Home based practitioners, small practices with a turnover of less than say \$250,000 or involving a minimal number of practitioners, should be exempt. There are similar exemptions existing for items such as unfair dismissal, payroll tax, retrenchment payouts etc.

- 5 That the initial print of the public health Act include the explanatory memorandum at the front of the Act (subject to the approval of Parliamentary Counsel). 1.3

**Comment:** We agree.

- 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: 1.4

- (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).

**Comment:** We agree.

- 7 That the term "health" apply to all other provisions and be defined narrowly, to exclude concepts of social and mental wellbeing. 1.4

**Comment:** We disagree as we strongly believe that health and wellbeing are inseparable. Physical, emotional and mental health have been shown to be interactive, each affecting the state and prognosis of the other. Social situations also greatly affect one's state of being. To view "health" in isolation and as simply the absence of disease, as inferred above, is unrealistic and may lead to inappropriate decisions.

If you have an arrow in your head, but do not have a disease such as measles, for example, then you are healthy, according to the above "narrow" definition of health, even though you may die of the arrow in your head. The West Australian premier recently resigned "because of ill health", when his condition was publicly admitted as depression.

We feel that already in many medical situations, health is viewed simply in terms of the presence or absence of disease. In Item 6 above, you clearly recognise that health should include the total or overall state of being of the individual. We feel that the Act should fully reflect this and that all practitioners, of all modalities and indeed all health and allied workers, should be encouraged by the Act, to accept and to embrace this holistic concept of health. We feel that this would be a significant step towards ensuring "That the public health Act recognise the importance of promoting public health" ( Item 3 ).

- 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:** We agree.

- 9 That the Governor in Council may declare that a municipal council has specified powers and functions under the public health Act in relation to an area that is outside a municipal district, as if the area was within that municipal council's municipal district. (The Minister for Health would be required to consult with the Minister administering the *Local Government Act 1989* (Vic), before making a recommendation to the Governor in Council in relation to this issue.) 1.5

**Comment:** We agree.

- 10 That the public health Act bind the Crown. 1.5

**Comment:** We agree.

- 11 That the public health Act include the following statement of objects: 1.6

*Whereas*

The State of Victoria has a significant role in promoting and protecting the health of all Victorians; and

It is accepted that health is a state of individual and collective wellbeing, not merely the absence of disease; and

One of the ways it is possible to improve the population's health status and reduce health inequalities is through public health interventions —

The objects of the Act are:

- (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.

**Comment:** Whilst we agree that Government intervention, designed to promote and improve public health and especially to avoid or minimise any public health crisis, is totally appropriate and indeed, the responsibility of the government. There should be no compulsion to force people to do something that is perceived, even by a majority of the community, to either prevent disease or promote health. The right of each individual to decide conscientiously on issues concerning their own health and the health of their dependent family, is a basic human right which must be embedded in any and all Australian legislation. Also refer to previous Item 7, which narrows the definition of health and is in contradiction with this item.

- 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:** Evidence should include the results of clinical practice and not be restricted to the very narrow "double blind" method as is often demanded. It should include qualitative evidence as well as quantitative evidence. Often, valuable observations and experience, proffered by qualified and professional practitioners, is dismissed as "anecdotal evidence" and not given the attention that it deserves.

Evidence should also be acceptable for modalities such as hypnotherapy and counseling, where a double blind test is impossible to achieve. The Chief Health Officer should be obliged to publish this evidence based information about the health of the population and to include the method of gathering the evidence, together with the sample size assessed. It should be noted that statistically, a sample of 250 people is considered to be the minimum, valid sampling.

## (a) Principle of evidence-based decision making

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).

## (b) Precautionary principle

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 *Environmental Protection Act 1970* (Vic)).

## (c) Principle of the primacy of prevention

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.

## (d) Principle of accountability

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:

- (i) access to reliable information in appropriate forms to facilitate a good understanding of public health issues; and
- (ii) opportunities to participate in policy and program development (based on section 1L of the *Environmental Protection Act 1970* (Vic)).

## (e) Principle of proportionality

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.

(f) Principle of collaboration

Public health is enhanced by collaborative approaches between national, state and local government, the community sector, industry and individuals.

**Comment:** We agree. We have highlighted 13 (e) in red as we regard this item as very important. We are concerned that "Memorandums of Understanding" between the department and local government, may occasionally lead to disproportionate action, or actions which are not consistent from one municipal jurisdiction to another. Please refer back to our response to Item 2, at the beginning of this document.

- 14 That the public health Act continue to have provisions for the Minister for Health and the Department of Human Services: 1.8
- (a) creation of Secretary (based on section 6 of the Health Act)
  - (b) Secretary subject to direction of Minister in relation to the Secretary's exercise of powers and functions under the public health Act, or any other Act (based on section 8 of Health Act)
  - (c) delegation by the Secretary under the public health Act or any other Act (based on section 8A of the Health Act)
  - (d) delegation by the Minister under the public health Act or any other Act (based on section 8B of the Health Act).

**Comment:** We agree.

- 15 That the public health Act include the following statement of function of the Secretary under the Act: 1.8
- (a) to develop and implement policies and programs to achieve the objects of the Act
  - (b) to assist other agencies which have an impact on public health to enhance opportunities for public health
  - (c) to support, equip and empower communities to address their health needs
  - (d) to establish and maintain a comprehensive information system which includes information on:
    - (i) the health status of Victorians and groups of Victorians including the extent and effects of illness, injury and premature death
    - (ii) the determinants of health
    - (iii) health system performance in Victoria.

**Comment:** We agree. We would like especially to have access to information resulting from research into the "determinants of health".

- 16 That, if a statutory position of Chief Health Officer is established, the public health Act require the Chief Health Officer to ensure that a comprehensive report on the health and wellbeing of Victorians is made available to the public on a biennial basis. 1.8

**Comment:** We agree. Please ensure free access to this information via the internet and public libraries.

- 17 That the public health Act establish the position of the Chief Health Officer, who is a registered medical practitioner appointed by the Minister and can delegate his or her powers to an employee or officer of the Department of Human Services, who is a registered medical practitioner. 1.9

**Comment:** We agree with this recommendation. However we would like to add that, whilst we respect the knowledge and expertise of registered medical practitioners in their own field, we believe that their understanding and knowledge of the huge variety of allied and alternative health modalities, is necessarily limited.

We suggest that the Act allow for the formation and maintenance of an advisory panel, made up of representatives of as wide a variety of both registered and non-registered health professionals, delegated by their own peers, to ensure full clarity and representation of the full spectrum of facilities available for the establishment and maintenance of public health and wellbeing.

- 18 That the public health Act include the following statement of functions of the Chief Health Officer: 1.9
- (a) to develop and implement strategies to promote and protect public health
  - (b) to advise the Minister about public health issues
  - (c) to carry out any other functions granted to the Chief Health Officer under the public health Act or any other Act
  - (d) to ensure that a comprehensive report on the health and wellbeing of Victorians is made available to the public on a biennial basis.

**Comment:** Can the information gathered under 18 [c] above, be progressively published, in the shortest possible time, on the internet, to minimize response times from the health professional community?

- 19 That the public health Act include the following statement of the function of the municipal councils: 1.10
- The function of every council under this Act is to seek to protect and improve public health, and promote community wellbeing by:
- (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.

**Comment:** We agree with the above recommendations 19 (a) to (e). However we would like to see the following provisions included in this section:

(i) That councils be required to confer with representative bodies from health professions and any industries which can impact upon public health, to bring about and ensure state-wide consistency of interpretation of the Act.

This could be achieved in practice, by conference between the Municipal Councils Association and the industry representative bodies, such as the CCH in the case of Clinical Hypnotherapy, to produce guidelines which are in accordance with the Act and which account for the peculiarities, perceived risks and requirements of each profession and industry.

(ii) An appeal process to be established which does not financially compromise the individual and is available, impartial and just. This system should be based upon mediation rather than an adversarial approach and the Act should include sanctions designed to prevent the risk of "victimization" of individuals or businesses who appeal against a council, under this provision. Care should be taken to ensure that rights under the fair trading and equal opportunity laws, are observed.

20      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.      1.10

**Comment:** We suggest that the Secretary require a report from a municipal council in response to any substantial complaint or incident report, from the community.

21      That the public health Act provide that the exercise by a delegate of council's power to refuse an application for registration under the Act is only valid if the council later ratifies that refusal.      1.10

**Comment:** We agree.

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:** We agree.

- 23 That the public health Act not include the legislative requirement that every municipal council appoint a medical officer of health. 1.12

**Comment:** We agree.

- 24 That non-legislative mechanisms be employed to assist municipal councils obtain public health expertise. 1.12

**Comment:** This needs clarification. Could this include our suggestion (i) under our comment for Item 19?

- 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:** We agree. Sharing of these officers will help to maintain consistency of interpretation of the Act across municipalities. We also agree that environmental health has to be observed at a local level.

- 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 *Food Act 1984* (Vic)). 1.12

**Comment:** We agree.

- 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 approved by the Secretary. 1.12

**Comment:** We agree.

- 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:** We agree.

- 29 That the public health Act provide that: 1.12  
(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.

**Comment:** We agree, as long as the requirements for relevant qualification and/or experience, as required in Item 27 above, are upheld.

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:** This is reasonable.

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

**Comment:** We agree. Please refer to our response, comment (i), to Item 19.

32 That the public health Act include a provision allowing the Secretary to appoint analysts for specified purposes under the Act. 1.13

**Comment:** We agree.

33 That where an analyst carries out an analysis, the analyst may prepare and sign a certificate in writing of the analysis. 1.13

**Comment:** We agree.

34 That any such certificate of analysis may be produced as evidence to a court of the thing in relation to which the certificate is issued, and is presumed to be accurate and precise, unless evidence to the contrary is presented. 1.13

**Comment:** We agree.

35 That the public health Act provide for a broad power to conduct inquiries into matters of public health concern (modelled on the modern public health inquiries powers in other jurisdictions' public health Acts), including the power to appoint independent experts to conduct the inquiry. 2.1

**Comment:** We agree.

36 That the public health Act continue to provide that such an inquiry can be initiated at the direction of the Governor in Council, the Minister or the Secretary, or on the initiative of the Secretary. 2.1

**Comment:** We agree.

37 That, if a statutory position of Chief Health Officer is established, the public health Act provide that the Chief Health Officer may conduct and initiate an inquiry. 2.1

**Comment:** We agree.

38 That there be a requirement that a report on any inquiry be made available to the public (subject to exceptions relating to privacy and confidentiality). 2.1

**Comment:** We agree.

39 That the public health Act provide that, when conducting an inquiry, the Secretary, Chief Health Officer, person or panel: 2.1

- (a) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.
- (b) is not bound by the rules of evidence;
- (c) may inform itself in any way it considers appropriate, including by holding hearings;
- (d) subject to any directions, may decide the procedures to be followed for the inquiry; and
- (e) may allow or refuse to allow a person, including a lawyer, to represent someone else at the inquiry.

**Comment:** We are concerned with the danger of the rights of the individual being compromised under Item 13 (e) above. We strongly suggest that the words "refuse to allow" be removed from this sub-clause.

40 That the public health Act require that, when conducting an inquiry, the Secretary, Chief Health Officer, person or panel must observe the principles of natural justice. 2.1

**Comment:** We agree.

41 That the provisions regarding the constitution, procedures and functions of all consultative councils be consolidated in one part of the public health Act. 2.2

**Comment:** We agree.

42 That the public health Act retain separate provisions for the establishment, functions and procedure of the Consultative Council on Paediatric Mortality and Morbidity. 2.2

**Comment:** We agree.

43 That, in relation to the Consultative Council on Paediatric Mortality and Morbidity ("CCOPMM"): 2.2

- (a) The Act would define a “maternal death” as the death a woman who was pregnant at the time of death; or was pregnant within the 12 months prior to her death.
- (b) The provisions relating to the membership of CCOPMM be simplified. A possible approach may be to provide that CCOPMM is to consist of not more than 12 members including a chairperson and such other members, the majority of whom shall be people with special knowledge in the matters referred to the council”.
- (c) The requirements to report a birth to CCOPMM in section 162G be retained, but extended to also include mandatory reporting of birth defects by hospitals, diagnostic laboratories and prenatal screening facilities.
- (d) Section 22A of the Coroners Act 1985 (Vic) is amended to provide that the Coroner must notify CCOPMM of maternal and child deaths (this does not include stillbirths). (Currently, the Act provides that the Coroner may notify CCOPMM of the death of a child that is reported to the Coroner.)
- (e) Section 49B of the Births Deaths and Marriages Registration Act 1996 (Vic) is amended to provide that, in addition to being required to report stillbirths and child deaths to CCOPMM, the Registrar of Births, Deaths & Marriages must also notify CCOPMM of maternal deaths that are reported to the Registrar of Births, Deaths & Marriages.

**Comment:** We agree, but with the question, why does Item 43 (d) exclude “still-births”? Surely this information could lead to more useful statistics on child mortality.

44 That the public health Act retain the capacity for the Minister to establish a consultative council, or appoint a body as a consultative council. 2.2

**Comment:** We agree.

45 That the public health Act provide that a consultative council established or appointed by the Minister may be prescribed to: 2.2

- (a) have confidentiality provisions based on the provisions currently applying to the Consultative Council on Paediatric Mortality and Morbidity
- (b) disclose information in accordance with recommendation 52 below.

**Comment:** We agree.

- 46 That the public health Act provide that consultative 2.2  
councils established by the Minister, which are  
prescribed as a consultative council for the purpose  
of the confidentiality and disclosure provisions,  
have the following core minimum functions  
specified in the public health Act:
- (a) to monitor, analyse and report on key areas of  
concern as specified for each consultative  
council
  - (b) to liaise with other consultative councils on  
issues of common concern, including the  
development of appropriate systems for  
practitioners reporting relevant cases
  - (c) to improve practice by publication and  
dissemination of relevant information and  
practical strategies identified during  
deliberations of the council
  - (d) to consider, investigate and report on matters  
referred to the council by the Minister or  
Secretary
  - (e) to publish an annual report of the Council's  
research and activities.

**Comment:** We agree. We believe that these reports on research and activities should be made available to the public, via internet and public libraries.

- 47 That a consultative council established by the 2.2  
Minister has a chairperson and the majority of its  
members with special knowledge in the matters  
referred to the council in the order establishing the  
council.

**Comment:** We agree.

- 48 That the public health Act contain a provision 2.2  
allowing the Minister to empower the Consultative  
Council on Paediatric Mortality and Morbidity (or  
another consultative council established by the  
Minister) to co-opt any person with special  
knowledge or skill. This would include a consumer  
representative (or any other relevant person) to  
assist the council. Such a person should be  
regarded as a member of the consultative council  
to which they are appointed, until their period of  
co-option ends.

**Comment:** We agree.

- 49 That the public health Act include a provision 2.2  
enabling the Consultative Council on Paediatric  
Mortality and Morbidity and consultative councils  
established by the Minister to establish  
subcommittees.

**Comment:** We agree.

- 50 That the public health Act include a provision enabling consultative councils to disclose information to another consultative council, if the council considers that the information is relevant to the functions of the other council. It is proposed that this power only be exercised following a formal determination by the council that such information should be disclosed to the other council. 2.2

**Comment:** We agree.

- 51 That consultative councils could, in appropriate cases, jointly examine matters. For instance, if there was a maternal death while the mother was anaesthetised, Consultative Council on Paediatric Mortality and Morbidity and the Consultative Council on Anaesthetic Mortality and Morbidity could jointly examine the death. 2.2

**Comment:** We agree.

- 52 That the public health Act enable the Consultative Council on Paediatric Mortality and Morbidity and prescribed consultative councils to disclose information to the following specified entity or entities, if the councils determine it is in the public interest to do so: 2.2
- (a) the Secretary to the Department of Human Services
  - (b) the Medical Practitioners Board of Victoria
  - (c) the Nurses Board of Victoria
  - (d) the State Coroner
  - (e) a Ministerial Committee (ie the Victorian Child Death Review Committee)
  - (f) a protective intervener under section 64(1) of the *Children and Young Persons Act 1989* (Vic), if the council believes on reasonable grounds that a child is in need of protection
  - (g) a day procedure centre, multipurpose service, private hospital, public hospital and denominational hospital within the meaning of section 3(1) of the *Health Services Act 1988* (Vic)
  - (h) any person or body in another state or territory that the council determines has functions corresponding to a body referred to above
  - (i) any other prescribed person or class of person.

**Comment:** We agree. We also again ask why would this information not include information on still births?

53 That the public health Act contain a regulation-making power regarding the mandatory notification of specified events by health service providers to prescribed consultative councils established by the Minister. 2.2

**Comment:** We agree, provided patient privacy rights are respected.

54 That the public health Act provide that a prescribed consultative council established by the Minister may request a health service provider to provide information to the council and the health service provider is authorised to provide that information to the council. This could be a general request or made in a particular case. 2.2

**Comment:** We agree, provided patient privacy rights are respected.

55 That in order to protect and promote public health within their municipal district, municipal councils be required to prepare a municipal public health plan (in consultation with the Department of Human Services) within 12 months after each general election. 3.1

**Comment:** We agree.

56 The public health Act list matters to be addressed in municipal public health plans as follows: 3.1

- (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.

**Comment:** We agree.

57 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. 3.1

**Comment:** We agree.

58 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 available on a central database as a resource for council health planners. Further, MPHPs would inform the development of state public health planning and policies. 3.1

**Comment:** We agree.

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 *Environments for Health*. 3.1

**Comment:** We agree.

60 That municipal public health plans be required to be consistent with the council plan prepared under section 153A of the *Local Government Act 1989* (Vic) and municipal strategic statement prepared under section 12A of the *Planning and Environment Act 1987* (Vic) for the municipal district. 3.1

**Comment:** We agree.

61 That the Department of Human Services develop a non-legislative public health plan that assesses and sets priorities for the public health system. However, at this stage, the Act should not require the Secretary to develop such a plan. 3.2

**Comment:** We agree.

62 That the Department of Human Services continue to establish non-legislative bodies to advise on specific public health matters, as required. The public health Act should not establish a public health advisory council. 3.3

**Comment:** We agree.

63 That Victoria continue to rely on a legislative requirement for health impact assessment in the *Environment Effects Act 1978* (Vic) and the *Environment Protection Act 1970* (Vic). 3.4

**Comment:** We agree.

64 That there is further consideration regarding whether public health issues are adequately addressed in the *Planning and Environment Act 1987* (Vic). 3.4

**Comment:** We agree.

- 65 That, at this stage, there is no new statutory obligation to require a health impact assessment to be conducted. However: 3.4
- (a) the Secretary to the Department of Human Services and Chief Health Officer would have the statutory power to conduct and initiate inquiries
  - (b) the Secretary's statutory functions include assisting other agencies which have an impact on public health, to enhance opportunities for public health (see 1.8)
  - (c) the Department of Human Services and councils could prepare non-statutory health impact assessments.

**Comment:** We agree.

- 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:** We agree.

- 67 That the public health Act continue to provide for the collection of the following information: 3.6
- (a) notifiable diseases (Health Act, s 138)
  - (b) perinatal data (Health Act, ss 162F, 162G)
  - (c) HIV incidence (Health Act, s 130).

**Comment:** We agree.

- 68 That the public health Act authorise the establishment of registers by regulation. The Act would set out general provisions as to the purposes and procedures for registers established and their proposed use and confidentiality requirements (modelled on the proposed Public Health Bill (NZ)). Registers that may be established by regulation include: 3.6
- (a) an environmental events register (modelled on the *Public Health Act 2005* (Qld))
  - (b) a register of public health information held by the Department of Human Services and provided to third parties, for example, for research purposes (modelled on the *Public Health Act 2005* (Qld)).

**Comment:** We agree.

- 69 That the public health Act provide that, if the Secretary determines it is in the public interest, he or she may release information held by the Secretary or an authorised officer to a statutory authority if, in the opinion of the Secretary, the disclosure would assist the body to carry out one or more of its functions. 3.6

**Comment:** We agree.

70 That the public health Act provide that, if the municipal council determines it is in the public interest, it may release information held by the council to a statutory authority if, in the opinion of the council, the disclosure would assist the body to carry out one or more of its functions. 3.6

**Comment:** We agree.

71 That the public health Act support and enhance the practice of risk management, rather than incorporate specific procedural requirements. 4.1

**Comment:** We agree.

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:** We agree.

73 That it is a condition of licenses and registration made under the Act that, except in relation to cooling tower systems, the holder of the licence or registration must comply with the following duty: 4.2

*The person must not undertake the licensable/registered activity in a manner that may result in a serious harm to health of another person unless the person takes all reasonable and practicable measures to prevent or minimize the possibility of that harm occurring ("General Duty")*

That, in relation to cooling tower systems, the Act includes a regulation-making power allowing the General Duty to be imposed by regulation. For instance, it could be imposed on the person who manages or controls the system.

**Comment:** We agree.

74 Monitoring compliance with the General Duty in these circumstances would be the responsibility of the registering or licensing authority (Secretary or municipal council). 4.2

**Comment:** We agree.

75 That a registration or licence holder's compliance with the duty could be determined as follows: 4.2

- (a) if there is a method outlined in the Regulations, these must be complied with
- (b) if the Chief Health Officer develops guidelines that state how to minimise public health risk, then the person must either:
  - (i) adopt and follow the method stated in the guideline; or

- (ii) adopt and follow another way that minimises the public health risk; and
- (c) where there is neither a prescribed method nor any Chief Health Officer guideline, then the person may choose the method by which they discharge their obligation.

Notice of the Chief Health Officer's guidelines would need to be published in the Government Gazette and the guidelines would need to be published on the Department of Human Service's website.

**Comment:** We agree.

- 76 That the public health Act not impose a General Duty on all people. 4.2

**Comment:** We agree.

- 77 That the following limits be imposed on the scope of the General Duty: 4.2

- (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.

Reasonableness of a person's conduct would be considered having regard to:

- (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 activity
- (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.

(d) Could specifically exclude harm to self and hypersensitivities.

**Comment:** We agree.

78 That compliance with other laws would not exclude the operation of the General Duty. However, there needs to be a clear understanding of which Act (and agency) takes precedence in particular areas. 4.2

**Comment:** We agree.

79 That the Chief Health Officer may issue an improvement or prohibition notice if a person: 4.2

- (a) undertakes an activity that poses a serious risk to public health; and
- (b) fails to take all reasonable and practicable measures to prevent or minimise the possibility of that harm occurring.

The limits noted in recommendation 77 would apply in relation to situations where the Chief Health Officer may issue an improvement or prohibition notice.

**Comment:** We agree.

80 That the Chief Health Officer be able to exercise general enforcement powers in investigating whether to issue an improvement or prohibition notice. 4.2

**Comment:** We agree.

81 That it would be at the discretion of the Chief Health Officer ("CHO") whether to impose the improvement or prohibition notice. The provision would not create liability for breach of statutory duty in relation to whether the CHO does or does not issue a notice or in relation to the terms of that notice. Without limiting the above, the CHO may decline to issue a notice if: 4.2

- (a) alternative remedies are available or separate legal proceedings have been or could be brought
- (b) it is more appropriate for another person or body to address the matter (for instance, the CHO could refer the matter to the Health Services Commissioner or a health practitioner board); or

- (c) the nature of the issue means that, if the risk is to be addressed, it should be addressed by regulatory reform involving legislative provisions.

**Comment:** We agree.

- 82 That the public health Act not introduce a “risk to health” offence. 4.3

**Comment:** We agree.

- 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:** We agree.

- 84 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: 4.4
- (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
  - (d) any refuse
  - (e) any noise or emission
  - (f) any state, condition or activity
  - (g) any other matter or thing.

**Comment:** We agree.

- 85 That “offensive” be defined as “noxious or injurious to personal comfort” and the reference to “annoying” be removed. 4.4

**Comment:** We agree.

- 86 That a risk of a “nuisance” be sufficient to trigger powers. 4.4

**Comment:** “Risk” is a very subjective word. We feel that this Item 86, needs refinement to make it more explicit.

- 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: 4.4
- (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:** We agree.

- 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). 4.4

**Comment:** We agree.

- 89 That the following administrative powers continue to be applied to the duty to abate a nuisance: 4.4
- (a) notification of nuisance (ss 43(1) and (2))
  - (b) failure of council to investigate complaint (s 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:** We agree.

- 90 That it continue to be an offence to cause a “nuisance” (as in s 42). 4.4

**Comment:** We agree.

- 91 That if, upon investigation, a nuisance is found to exist, the council must: 4.4
- (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)).

**Comment:** We agree.

- 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:** We agree.

- 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

**Comment:** We agree.

- 94 That there continue to be an obligation for the owner of land on which there is a cooling tower system to ensure that a risk management plan is prepared in relation to the system (see recommendation 215). 4.6

**Comment:** We agree.

- 95 That there is consideration regarding whether any other people undertaking a registerable or licensable activity should be required to prepare a risk management plan. The Act would specify whether such people are required to prepare a risk management plan. 4.6

**Comment:** We agree.

- 96 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 *Building Act 1993* (Vic) in relation to cooling tower systems. For instance: 4.6
- (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.

**Comment:** We agree.

- 97 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.) 4.6

**Comment:** We agree.

- 98 That the public health Act provide powers for the Secretary (or municipal council, where applicable) to: 4.7
- (a) grant, renew, vary, suspend or cancel the registration/licence
  - (b) determine whether the registration/licence applicant is a fit and proper person

- (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:** We agree.

- 99 That the public health Act: 4.7
- (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.

**Comment:** We agree.

- 100 That the following offence provisions be set out in the public health Act: 4.7
- (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 relation to an application for the grant, renewal or variation of a registration/licence
  - (d) failing to prepare a risk management plan (where there is an obligation to have a risk management plan)
  - (e) an offence of failing to notify authorities in the event of certain types of incidents occurring.

**Comment:** We agree.

101 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. 4.7

**Comment:** We agree.

102 That (at this stage) there should not be a requirement that solaria be registered with municipal councils (or the Secretary). 4.7

**Comment:** We agree.

103 That there should not be a requirement that public events be registered with municipal councils (or the Secretary). 4.7

**Comment:** We agree.

104 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. 4.7

**Comment:** We agree.

105 That the Secretary or municipal council (as appropriate) must issue the authorised officers with identity cards that: 4.8

- (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).

**Comment:** We agree.

106 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 4.8

Secretary or municipal council (as appropriate) may be of a general nature or may relate to a specified matter or specified class of matter.

**Comment:** We agree.

- 107 That an authorised officer must produce his or her identity card for inspection: 4.8
- (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.

**Comment:** We agree.

- 108 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. 4.8

**Comment:** We agree.

- 109 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: 4.8
- (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:
    - (i) the safety of any person; or
    - (ii) the effective exercise of the powers noted below.

**Comment:** We agree.

- 110 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": 4.8
- (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:
  - (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
- (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: Whilst it is necessary for authorised officers to be able to carry out their work, and whilst in some circumstances there may be considerable urgency involved, these powers as listed above, are highly contentious. There are inherent dangers to the privacy of clients/patients and to the means of livelihood of the business owner and any employees, if certain documents or equipment are seized.

There is a need for a robust system requiring authorised officers to justify their actions and to discourage over-zealousness on the part of authorised officers or victimisation of groups or individuals, for whatever reason, by authorised officers or their employers.

- 111 That there is no need to have a warrant to perform any of the above powers. 4.8

Comment: Where a genuine emergency exists, we agree. Otherwise, the requirement for a warrant may be part of the "checks and balances" built into a "robust system" as we mentioned in our response to Item 110.

Clear guidelines defining what constitutes a "genuine emergency", need to be drafted, together with a clause in the Act, allowing action without a warrant in the case of a "genuine emergency". There needs to be a system of impartial review of action taken under this "genuine emergency" clause, to ensure that it is used appropriately.

In all other circumstances where actions described in Item 110 may be necessary, the Act should require the acquisition of a proper warrant, before officers proceed.

It is interesting to note for instance, that even in an emergency, the SES cannot enter a property without permission, given in person by the property owner.

- 112 That the following provisions apply for seized things: 4.8
- (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:
    - (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 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:** We agree.

- 113 That self-incrimination is not an excuse from complying with a request of the authorised officer. However, any self-incriminatory statement made under a direction is not admissible in any criminal proceedings against that person, unless: 4.8
- (a) the answer is admitted in respect of a proceeding regarding the provision of false information to an authorised officer; or
  - (b) the information is contained in any document or item that a person is required to keep by any Australian law.

**Comment:** We agree.

- 114 That the public health Act include offences regarding: 4.8
- (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.

**Comment:** We agree. However, in Item 114 (b), a “reasonable excuse” needs to include the seeking of legal advice.

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:** We agree.

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:** We agree.

117 That failure to comply with an improvement or prohibition notice is an offence under the public health Act. 4.9

**Comment:** We agree.

118 That the public health Act provide for additional powers where: 4.10

- (a) The Chief Health Officer is of the view that there is a serious risk to public health (the reference to “a serious risk to public health” incorporates risks that may eventuate). In these circumstances, authorised officers should have the ability to respond quickly to the relevant incident to protect the health and safety of people.
- (b) The Chief Health Officer is of the view that an epidemic or the risk of an epidemic of a disease poses a serious risk to public health. In these circumstances, authorised officers (who are registered medical practitioners) should have the ability to respond quickly to the relevant incident to protect the health and safety of people, by providing treatment or prophylaxis.

**Comment:** We agree.

- 119 That in the event that the Chief Health Officer (“CHO”) determines that there is a serious risk to public health, the CHO can, in order to lessen or prevent the serious risk to public health, authorise an authorised officer to exercise the following “incident powers”:
- 4.10
- (a) close any premises, place, vehicle or vessel, including a school, children’s services centre or shopping centre
  - (b) direct a person or group of people to enter, not to enter, to stay at or to leave any particular place
  - (c) enter any, place and search for and seize any thing (without a warrant) for the purpose of investigating the serious risk to public health
  - (d) require the provision of information to investigate the serious risk to public health or to address that risk
  - (e) inspect any place where a disease may be spread
  - (f) require cleaning or disinfection of any place where the risk may arise
  - (g) require disposal or destruction of any thing in order to address the risk
  - (h) direct the proprietor of a business or the person in charge of a place to take any action necessary to address the risk
  - (i) direct any person to take any other action that the CHO considers reasonably necessary to prevent or address the risk
  - (j) exercise any of the general enforcement powers noted in any of the earlier recommendations.

**Comment:** We agree.

- 120 That in the event that the Chief Health Officer makes a finding that an epidemic or the risk of an epidemic poses a serious risk to public health, the Chief Health Officer may, in order to lessen or prevent the serious risk to public health, authorise an authorised officer (who is a registered medical practitioner) to exercise the following “epidemic powers”:
- 4.10
- (a) treat any person
  - (b) administer prophylaxis (including vaccination) to the person, subject to any of the following exceptions:
    - (i) the proposed prophylaxis is vaccination and the person has been vaccinated against the disease
    - (ii) a registered medical practitioner reasonably believes that an individual may suffer an adverse reaction to the

- prophylaxis, which may contraindicate prophylaxis
- (iii) the individual has produced medical confirmation of experiencing the natural disease against which the prophylaxis protects, which renders the administration of the prophylaxis ineffectual
- (iv) the individual has produced laboratory confirmation of the presence of existing adequate immunity
- (v) the individual (or legal representative) objects in a statutory declaration on the basis that the individual has a conscientious objection to the prophylaxis (modelled on section 5-109[h] of the US Turning Point Model State Public Health Act and section 144 of the Health Act)

**Comment:** We agree.

- 121 That, if a person refuses to comply with a direction given under these provisions, a member of the police force may use reasonable force to ensure compliance with that direction. 4.10

**Comment:** We agree.

- 122 That, in exercising these powers, a search warrant should not be required. (There would be requirements that the authorised officers identify themselves and display their identification.) 4.10

**Comment:** We agree.

- 123 That the Governor in Council may proclaim an emergency in relation to a specified area, as a result of a serious risk to public health. Such a proclamation: 4.10
- (a) may be made for up to 4 weeks
  - (b) may be extended for 4 week periods up to a maximum of 6 months
  - (c) would be a disallowable instrument (could be disallowed by either House of Parliament).

**Comment:** We agree.

- 124 If there is such a proclamation of an emergency by the Governor in Council, the Chief Health Officer may, in order to lessen or prevent the serious risk to public health, authorise an authorised officer to exercise the following “emergency powers”: 4.10
- (a) detain any person or class of person in a proclaimed area (an authorised officer must facilitate any reasonable request for communication made by a person subject to detention)
  - (b) restrict the movement of any person within

- the proclaimed area
- (c) prevent any person from entering the proclaimed area
- (d) give any other direction that is reasonable and necessary to protect the health and safety of people
- (e) exercise any of the "incident powers" or "epidemic powers" noted at recommendations 119 and 120 above
- (f) exercise any of the "general enforcement powers" noted at recommendation 110 above.

**Comment:** We agree.

- 125 That further consideration be given to whether the Chief Health Officer should have reserve powers, to direct public hospitals and public health services to provide services or use of facilities to respond to a public health emergency. Mechanisms for engagement of private health services and health care workers may also be examined. 4.10

**Comment:** We agree.

- 126 That if a person is prosecuted and found guilty of contravening the public health Act, the following provisions apply: 4.11
- (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.

**Comment:** We disagree with 126 (b) as it could lead to the person being billed for working hours of council officers, which the council would already be obliged to pay, whether the officers are engaged on investigating the matter concerned or not. This could amount to a further and arbitrary penalty, over and above the statutory penalty imposed upon the person, on being found guilty of the offence.

- 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:** We agree.

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:** We disagree. This endows upon the council, the ability to penalise an individual or company, without any requirement for the council to prove its case.

129 That there should also be further consideration regarding whether other cost recovery provisions would be appropriate, having regard to the provisions in the *Environment Protection Act 1970* (Vic) and the *Health Act 1958* (Vic). 4.11

**Comment:** We agree.

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

**Comment:** We agree.

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:** We agree.

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:** We agree.

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:** We agree.

134 That, based on the offence provisions that are currently proposed for the public health Act, the public health Act not introduce a defence of due diligence (modelled on section 17E of the *Food Act 1984* (Vic)). 4.13

**Comment:** This seems unjust. If due diligence has been exercised and this can be demonstrated, what more can be expected?

135 That blood and tissue donation forms (which create statutory defences) are approved by the Secretary. Notice of the form would need to be published in the government gazette and the form would need to be published on the Department of Human Services' website. 4.13

**Comment:** We agree.

- 136 That the public health Act provide for the following appeal rights in relation to licences and registrations: 4.14
- (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 licence/registration.
  - (b) full appeal rights to the Victorian Civil and Administrative Tribunal in relation to any decision made upon internal review
  - (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).

**Comment:** We agree.

- 137 That there is a review mechanism for improvement and prohibition notices that specifies the steps to be undertaken. The review mechanism needs to be prompt and review should be by the Victorian Civil and Administrative Tribunal. 4.14

**Comment:** We agree.

- 138 An application for an appeal in relation to licences/registrations and review in relation to improvement/prohibition notices must be made within 28 days after the later of: 4.14
- (a) the day on which the applicant was notified of the decision
  - (b) the day on which the eligible person is notified by the Secretary/municipal council of the eligible person's right to a review.

**Comment:** We agree.

- 139 That a person may appeal to the Supreme Court against the exercise of an order (but not a testing or examination order) made under the equivalent section to section 121. 4.14

**Comment:** We agree.

- 140 That the review mechanism regarding incident and epidemic powers be similar to the current approach for reviewing public health orders (internal review to the Secretary and external review to the Supreme Court) (modelled on section 122 of the Health Act). 4.14

**Comment:** We agree.

141 That there are no appeal provisions in relation to the exercise of emergency powers (although the proclamation of the emergency by the Governor in Council would be a disallowable instrument and the provision would not oust judicial review). 4.14

**Comment:** We agree.

142 Subject to a decision to the contrary (by the Supreme Court, the Victorian Civil and Administrative Tribunal or the person who is conducting the internal review), an appeal does not affect the decision that is subject to review. 4.14

**Comment:** Does this mean that a decision is enforceable, even whilst subject to appeal? If so, is the decision revoked upon the appeal being successful? Item 142 is confusing and needs clarification.

143 That further consideration be given to whether the Chief Health Officer and Secretary should be able to apply to the Supreme Court to compel a person to comply with a direction that was made as part of an incident power, epidemic power, emergency power or public health order. 4.14

**Comment:** We agree.

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:** We agree.

145 That the requirement that a person conducting a business of beauty therapy be registered with municipal councils be re-enacted. 5.1

**Comment:** We disagree and feel that Item 144 should apply to Beauty Therapists also. Both of these businesses have OHS standards to which they must comply.

146 That businesses conducting tattooing, skin penetration and colonic irrigation be required to be registered with municipal councils. 5.1

**Comment:** We agree.

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:** We agree.

148 That definitions for “beauty therapy”, “tattooing”, “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. 5.1

**Comment:** We agree.

149 That the practices of professionals who are trained in infection control and regulated by professional bodies which regard poor infection control practices as unprofessional conduct (registered medical practitioners, dentists, nurses, podiatrists and acupuncturists) be exempted from the requirement to register with municipal council. The practices of accredited pathology services and hospitals should also be exempted from the requirement to register with municipal council. However, exempt businesses would still be required to comply with the requirements regarding cleanliness of equipment (including sterilisation) and personal hygiene of each person in the business that conducts the skin penetration activity. 5.1

**Comment:** We agree.

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:** We agree. However, we presume that this applies to swimming pools that are open to the public in a commercial or club situation and that this does not refer to owners of domestic swimming pools or spas. We feel that this should be clarified in the Act.

151 That the brothel provisions under the Health (Infectious Diseases) Regulations 2001 (Vic) not be transferred to the Prostitution Control Regulations 1995 (Vic), but that administrative arrangements between the Department of Justice and the Department of Human Services ensure that the members of the industry are informed of their requirements under the Health (Infectious Diseases) Regulations 2001 (Vic). 5.1

**Comment:** We agree.

152 That public health risks associated with sex on premises venues be addressed under the public health Act, by the ability for the Chief Health Officer to issue an improvement or prohibition notice if the proprietor fails to take all reasonable and practicable measures to prevent or minimize the possibility of a serious harm happening to another person (such as the spread of sexually transmissible infections). 5.1

**Comment:** We agree.

153 That the public health Act have regulation-making powers broad enough to allow regulation of sex on premises venues, should voluntary arrangements not succeed. 5.1

**Comment:** We agree.

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:** We agree.

155 That the regulation-making power under the public health Act be broad enough to regulate accommodation provided by people who are not necessarily "in the business" of providing prescribed accommodation. This would be broad enough to regulate accommodation provided to seasonal workers (if appropriate). 5.2

**Comment:** We agree.

156 That the public health Act continue to prescribe by regulation the classes of accommodation to be registered. It is expected that the classes of accommodation currently required to be registered will continue to be prescribed by regulation, except for some residential accommodation that is adequately regulated under other legislative regimes, for example accommodation regulated under the *Children and Young Persons Act 1989* or the or the *Intellectually Disabled Persons' Services Act 1986*. The classes of accommodation currently exempt from the requirement to be registered will probably continue to be exempt, although it would be appropriate to carefully consider facilities provided to non-permanent residents in caravan parks. 5.2

**Comment:** We agree.

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:** We agree.

158 That the following principles apply in relation to the investigation and control of infectious diseases: 5.3  
(a) the general principles that apply to the whole Act (see 1.7)  
(b) the guiding principles which are currently in section 119 of the Health Act (except to the extent that the principles are incorporated into the general guiding principles).

**Comment:** We agree.

- 159 That the following people be authorised to exercise contact tracing powers for a notifiable condition under the public health Act: 5.3
- (a) authorised officers of the Department of Human Services, subject to directions of the Secretary
  - (b) authorised officers of council, but only if directed to do so by the Secretary and subject to the directions of the Secretary.

These powers authorise the collection, use and disclosure of personal information and health information.

**Comment:** We agree.

- 160 That contact tracing powers extend to permit information to be obtained from: 5.3
- (a) the person with the condition and their contacts
  - (b) any other person who has or may have relevant information, including:
    - (i) business records
    - (ii) other records held about the person.

**Comment:** We agree.

- 161 That the public health Act clearly set out what action may be taken when contact tracing is authorised and the protections provided to individuals that may be required to provide personal information under these provisions (modelled on the *Public Health Act 2005 (Qld)*). 5.3

**Comment:** We agree.

- 162 That the Chief Health Officer has the power to require a registered medical practitioner who has the appropriate qualifications or experience to conduct an autopsy on a body, or collect diagnostic specimens from a body, in cases where the Chief Health Officer reasonably believes there is a risk to public health and the coroner does not have jurisdiction over the body. 5.3

**Comment:** We agree, provided Item 163 is upheld .

- 163 Before conducting an internal examination of the body, the Chief Health Officer would need to seek to advise the senior next of kin of the proposed internal examination. The senior next of kin would be able to object to the examination, in the same manner that the senior next of kin may object to a coroner that proposes to conduct an autopsy under the *Coroners Act 1985 (Vic)*. 5.3

**Comment:** We agree.

- 164 That the provisions in the public health Act relating to compulsory testing orders and authorisations: 5.4
- (a) continue to apply to human immunodeficiency virus and forms of hepatitis that may be transmitted by blood or body fluids, such as hepatitis B, C and D
  - (b) continue to apply to infectious diseases that are prescribed for the purposes of the compulsory testing provisions
  - (c) apply to occupational incidents, irrespective of whether the person is a care-giver or custodian
  - (d) apply to incidents involving a volunteer or "Good Samaritan".

**Comment:** We agree.

- 165 That there is further consideration regarding whether there should be specific restrictions in the public health Act regarding the permitted use of a sample taken under the compulsory testing provisions. 5.4

**Comment:** We agree.

- 166 That public health order powers under the new Act continue to apply to an infectious disease or condition where there is a serious risk to public health. 5.5

**Comment:** We agree.

- 167 That the power in section 121(1) of the Health Act for the Secretary to order that a person be examined and tested for a disease be re-enacted, but the power should be granted to the Chief Health Officer. The basis of the order should continue to be a reasonable belief that the person has an infectious disease, or has been exposed to an infectious disease in circumstances where a person is reasonably likely to contract the disease. 5.5

**Comment:** We agree.

- 168 That the Chief Health Officer be given the power to make an order to detain or isolate the person for the purpose of examination or testing (where a person refuses to undergo an examination or testing). The basis of the order should continue to be a reasonable belief that the person has an infectious disease, or has been exposed to an infectious disease in circumstances where a person is reasonably likely to contract the disease. 5.5

**Comment:** We agree.

- 169 That there should be an obligation to conduct the examination or test as soon as practicable, if an order was made on the basis of the Chief Health 5.5

Officer's ("CHO's") belief that the person has an infectious disease, or has been exposed to an infectious disease in circumstances where a person is reasonably likely to contract the disease. If the CHO no longer holds the belief that is required to make an order, then the CHO must revoke that order.

**Comment:** We agree.

170 That the public health Act not include additional guiding principles from the US Model Act in respect of the power to conduct testing and examination under a public health order. Issues in relation to validity; justification; pre-test information; and post-test information (modelled on US Model Act) would be considered in developing administrative guidelines to support the provisions. 5.5

**Comment:** We agree.

171 Subject to a law to the contrary, the sample taken under these provisions could only be used and kept for the purpose of conducting the test or a further permitted test (such as a confirmatory test). Once there is no longer a need to keep the sample for the permitted purpose, the sample would be destroyed. 5.5

**Comment:** We agree.

172 That the public health Act include a power for the Chief Health Officer to make an order that may require a person to do any or all of the following for the period stated in the order:  
(a) undergo testing or examination  
(b) undergo counselling by a stated person or people  
(c) refrain from stated conduct  
(d) refrain from visiting stated places  
(e) stay at a specified place  
(f) submit to the supervision of another person  
(g) undergo treatment  
(h) be isolated and detained

**Comment:** We agree.

173 That the public health Act provide that orders may be subject to the reasonable conditions the Chief Health Officer considers appropriate. 5.5

**Comment:** We agree.

174 That the general structure of the provisions indicate that the powers provided form a general hierarchy from the least to most restrictive, although there 5.5

would be flexibility to allow powers to be used as needed to protect public health. As a result of this hierarchy, a restrictive order may not be imposed unless the Chief Health Officer believes:

- (a) The person has an infectious disease or has been exposed to an infectious disease in circumstances where a person is reasonably likely to contract the disease; and
- (b) If infected with that infectious disease, the person is likely to transmit that disease; and
- (c) There is a serious risk to public health; and
- (d) The person has been counseled, or reasonable attempts have been made to counsel the person, before the making of the restrictive order is not practicable.

In practice, the way powers are used will be affected by:

- (a) the disease concerned
- (b) the availability of treatment for that disease
- (c) the infectivity and ease of transmission of that disease
- (d) whether urgent action will significantly affect the public health outcome
- (e) whether the person will comply voluntarily with a requirement of the Chief Health Officer and, if so, to what extent
- (f) the capacity of the person to understand the public health risk they present.

**Comment:** We agree.

175 That reasonable use of force may be exercised by an authorised officer or the police to enforce a public health order made under this section. If an authorised officer exercises the power, the person may obtain the assistance of any member of the police force. 5.5

**Comment:** We agree.

176 That the public health Act require that all public health orders be reviewed by the Chief Health Officer, at intervals not exceeding 28 days. 5.5

**Comment:** We agree.

177 That the public health Act provide that an authorised officer who is a registered medical practitioner may seek a warrant to apprehend a person who fails to comply with a public health order and take the person to a place named in the warrant. 5.5

**Comment:** We agree, provided there is a mechanism in place to allow the person who is the subject of such a warrant, to appeal the decision or the proposed action.

178 That the public health Act provide that a person on a public health order who is apprehended must be advised of his or her rights and obligations. 5.5

**Comment:** We agree.

179 That the public health Act not re-enact the offence of knowingly and recklessly infecting another person with an infectious disease, and instead rely on the *Crimes Act 1958* (Vic) for prosecutions of this nature. 5.5

**Comment:** We agree.

180 That the term “notifiable disease” be replaced by the term “notifiable condition” in the public health Act. 5.6

**Comment:** We agree.

181 That notifiable conditions (notifiable diseases) continue to be prescribed in a schedule to the regulations. 5.6

**Comment:** We agree.

182 That the public health Act enable the Governor in Council to proclaim that a condition is a notifiable condition. The proclamation would be used for new and emerging diseases. This proclamation would last for up to 12 months and be a disallowable instrument. 5.6

**Comment:** We agree.

183 That pathology laboratories and registered medical practitioners continue to be required to notify the Secretary of a notifiable condition, in the prescribed form and within the prescribed time. 5.6

**Comment:** We agree.

184 That the public health Act require that hospitals have processes in place to ensure that notification requirements under the Act are met. 5.6

**Comment:** We agree.

185 That the public health Act not re-enact the HIV-specific pre and post-test counselling provisions. 5.7

**Comment:** We agree.

186 That the public health Act include a regulation-making power that requires post-test counseling to be provided for prescribed diseases and by a prescribed class of people (if any). It is expected that the Regulations would require post-test counselling for positive test results for human immunodeficiency virus (and possibly hepatitis C) by 5.7

registered medical practitioners, and nonmedical practitioners who have completed an approved course.

**Comment:** We agree.

- 187 That the public health Act not include specific privacy provisions for human immunodeficiency virus (the privacy framework for all health records provided in the *Health Records Act 2001* (Vic) would apply). 5.7

**Comment:** Please refer to our response to Item 188, below.

- 188 That the public health Act not retain the provision specifying that the court may be closed when evidence is presented concerning any matter related to human immunodeficiency virus and instead, courts rely on their general powers to hear evidence in a closed court. 5.7

**Comment:** This is contentious as it relies upon the discretion of the court to protect an individual's privacy. If the court errs in this matter, the potential damage to an individual's right to live without being subjected to prejudice, may be jeopardised.

- 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:** We agree.

- 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:** We agree. However the note the recent, consistent use of the word "immunisation" instead of the more correct word "vaccination". The word "immunisation" infers that the particular vaccine makes the recipient "immune" to the specified disease. Internationally published findings show that this is not necessarily so. Please refer to our response to Items 203 and 206, below.

Use of the word "immunisation", especially by a government department dealing with public health, could lead uninformed individuals to a false sense of security and therefore inadequate precaution in the face of an infectious disease. It could also lead to delay or even failure to report an infectious disease, if a person believes that "immunity" exists and therefore, despite the presenting symptoms, the person believes that the disease cannot be contracted.

The inference of "immunity" could even lead to litigation by a person who contracted a disease against which they had been "immunised".

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:** We agree, provided 201 (e) is upheld.

192 That a parent or guardian be required to provide evidence of immunisation status on enrolment of their child in secondary school. 5.8

**Comment:** We agree, provided 201 (e) is upheld.

193 That no obligation be imposed on people enrolling in tertiary facilities to provide evidence of immunisation status. 5.8

**Comment:** We agree.

194 That the public health Act require school principals to make reasonable efforts to seek an immunisation status certificate for every child enrolled in the school (this would apply to primary and secondary schools). 5.8

**Comment:** We agree.

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

**Comment:** We agree.

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

**Comment:** We agree, provided 201 (e) is upheld.

197 That there be no offence for a parent or guardian failing to produce immunisation records to the school. 5.8

**Comment:** We agree.

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 Childhood Immunisation Register to be an immunisation provider
- (c) a prescribed person who certifies that the person has been presented with the required documentary evidence in relation to each prescribed infectious disease
- (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).

**Comment:** We agree.

199 That a person authorised to do so by a municipal council must issue an immunisation status certificate to a parent, where: 5.8

- (a) The parent produces for each prescribed infectious disease one of the forms of evidence listed in recommendation 201 below; and
- (b) The child resides in the municipal district or attends, or proposes to attend, a school in the municipal district.

**Comment:** We agree.

200 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. 5.8

**Comment:** We agree.

201 That an immunisation status certificate be issued if 5.8

- the parent or guardian of the child produces for each prescribed infectious disease:
- (a) evidence that the child has been immunised (this may include patient-held records, provider held records or an Australian Childhood Immunisation Register report)
  - (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:** We agree.

- 202 That an immunisation status certificate must cover the prescribed diseases. The vaccines listed under the National Health and Medical Research Council *National Immunisation Program* could be prescribed. 5.8

**Comment:** We agree.

- 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:** We agree in principle, however we question the phrase "a vaccine preventable illness". Internationally published statistics show that the effectiveness of vaccines in preventing illness, is erratic, to say the least. For example, in the USA, official statistics from the CDC, state that 58% of all measles cases in the USA occur in vaccinated people. Further to this, the CDC states that 87% of all polio cases in the USA are *caused* by the vaccine.

We suggest that the wording in 203 be altered to read "is infected with a disease for which a vaccine is available".

- 204 That exclusion periods from schools and children's services for infectious disease cases and contacts continue to be prescribed. 5.9

**Comment:** We agree.

205 That the Chief Health Officer be given discretion to waive or alter the prescribed periods in individual cases. 5.9

**Comment:** We agree.

206 That school principals and people in charge of children's services be required to seek advice from the Department of Human Services before excluding children where: 5.9

- (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:** We agree in principle, however we question the phrase "a vaccine preventable illness". Internationally published statistics show that the effectiveness of vaccines in preventing illness, is erratic, to say the least. For example, in the USA, official statistics from the CDC, state that 58% of all measles cases in the USA occur in vaccinated people. Further to this, the CDC states that 87% of all polio cases in the USA are *caused* by the vaccine.

We suggest that the wording in 206 (a) be altered to read "is suffering from a disease for which a vaccine is available".

207 That the provisions in the new Act and Regulations be consistent with National Health and Medical Research Council *Guidelines on the Recommended Minimum Periods of Exclusion from School, Preschool and Child Care Centres of Infectious Disease Cases and Contacts*. 5.9

**Comment:** We agree.

208 That the provisions of the Health Act concerning offensive waterways (ss 68–72) not be included in the public health Act. 6.1

**Comment:** We agree.

209 That the public health Act include a consequential provision repealing section 275 of the *Melbourne and Metropolitan Board of Works Act 1958* (Vic) (which refers to Division 4 of Part 4 of the Health Act). 6.1

**Comment:** We agree.

210 That a separate regulation-making power regarding rats and mice, as is currently contained in section 6.1

87 of the Health Act, not be included in the public health Act.

**Comment:** We agree.

- 211 That the regulation-making powers in the public health Act be broad enough to make regulations to control specific public health risks, including public health risks posed by insects and animals capable of carrying a disease transmissible to humans. 6.1

**Comment:** We agree.

- 212 That, subject to the amendments noted below, Parts 5A and 5B of the *Building Act 1993* (Vic) be transferred to the public health Act. 6.2

**Comment:** We agree.

- 213 That responsibility for registration transfer from the Building Commission to the Secretary to the Department of Human Services. 6.2

**Comment:** We agree.

- 214 That the public health Act provide that the owner of the land on which there is a cooling tower system must ensure that the system is registered. 6.2

**Comment:** We agree.

- 215 That the public health Act continue to provide that the owner of the land on which there is a cooling tower system is responsible for the obligations noted in sections 75EA, 75EB, 75EC, 75ED and 75FA of the *Building Act 1993* (Vic). 6.2

**Comment:** We agree.

- 216 That the public health Act provide that the Secretary is able to vary the risk management requirements for a particular cooling tower system or class of systems, including:  
(a) specified maintenance and testing requirements  
(b) specified aspects of risk management plans  
(c) specified audit requirements  
where the Secretary is satisfied that such an exemption would not pose a higher health risk. 6.2

**Comment:** We agree.

- 217 That the public health Act include a power to make regulations that exempt a person from complying with the requirements of the Act. These exemptions 6.2

could be made subject to conditions.

**Comment:** We agree.

- 218 That the public health Act enable the Governor in Council to make regulations that would re-enact the provisions in Part 3 of the Health (Legionella) Regulations 2001 (Vic) (maintenance and testing of warm water systems). 6.2

**Comment:** We agree.

- 219 That the public health Act not include a provision enabling the owners of mobile cooling tower systems to register that cooling tower system and notify the Secretary where it is located. The owner of the land on which the cooling tower system is located would need to register the system. 6.2

**Comment:** We agree. However, we feel it should be a requirement that the owners of mobile cooling tower systems notify the owner of the land on which the cooling tower system is located, that the land owner is required to register the system.

- 220 That the public health Act not re-enact Part 15 of the Health Act. 6.3

**Comment:** We agree.

- 221 That there is a consequential amendment made to section 35(2) of the *Meat Industry Act 1993* (Vic), so that the reference to "consulting the Minister administering the *Health Act 1958*" is changed to "consulting the Minister administering the *Food Act 1984*". (Section 35(2) relates to consultation before there is an exemption by the Governor in Council from the prohibition of selling meat for human consumption, which is from a mammal that is not a "consumable animal".) 6.3

**Comment:** We agree.

- 222 That the provisions in Part 15 of the Health Act not be incorporated into either the *Meat Industry Act 1993* (Vic) or the *Food Act 1984* (Vic). 6.3

**Comment:** We agree.

- 223 That the *Food Act 1984* (Vic) be amended so that it is an offence against the *Food Act 1984* (Vic) for a person to contravene the requirements of section 34(1) of the *Meat Industry Act 1993* (Vic) at, on or in respect of: 6.3
- (a) food premises that are registered under Part 6
  - (b) food premises that are required to be

registered under Part 6.

The penalty would be the same as it is for a breach of section 34(1) of the *Meat Industry Act 1993* (Vic) (100 penalty units; subsequent offence 500 penalty units or 12 months imprisonment).

**Comment:** We agree.

224 That the authorised officers under the *Food Act 1984* (Vic) could prosecute a person under the provision outlined in recommendation 223 above and the provisions in Part 5 of the *Food Act 1984* (Vic) (Analysts) and Part 8 (Legal Proceedings) would apply to these prosecutions. 6.3

**Comment:** We agree.

225 That, following further analysis of the provisions in Part 20 of the *Health Act 1958* (Vic) and Parts 8 (Vic) and Parts 8 and 9 of the *Food Act 1984* (Vic), consequential amendments be made to the *Food Act 1984* (Vic) so that the relevant provisions of Part 20 of the Health Act (as amended) are inserted into the *Food Act 1984* (Vic) as new and separate provisions. 6.3

**Comment:** We agree.

226 That consideration be given to whether the *Food Act 1984* (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 *Food Act 1984* (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. 6.3

**Comment:** We agree.

227 That consideration be given to whether the *Food Act 1984* (Vic) should be amended, in line with recommendations 8 and 9 above to provide:  
(a) That the *Food Act 1984* (Vic) applies throughout Victoria (including areas that do not form part of a municipal district)  
(b) That the Governor in Council may declare that a municipal council has specified powers and functions under the *Food Act 1984* (Vic) in relation to an area that is outside a municipal district, as if the area was within that municipal council's municipal district. (The Minister for Health would be required to consult with the Minister administering the 6.3

*Local Government Act 1989 (Vic)*, before making a recommendation to the Governor in Council in relation to this issue.)

**Comment:** We agree.

228 That the public health Act retain the current licensing requirements, with the additional aspects noted below. 6.4

**Comment:** We agree.

229 That the public health Act continue to provide for the licensing of trainee pest control operators where applicants are: 6.4

- (a) undergoing prescribed training (for example completion of units of competency as specified in the *National Standard for Licensing of Pest Management Technicians (1999)* 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.

**Comment:** We agree.

230 That pest control operator licences be issued for a period of up to 3 years and may be subject to conditions relating to: 6.4

- (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.
- (b) minimum competency standards
- (c) compliance with the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992 (Vic)* and (Vic) and the *Occupational Health and Safety Act 2004 (Vic)*.

**Comment:** We agree.

231 That it be an offence for a pest control operator to contravene a condition of his or her licence. 6.4

**Comment:** We agree.

232 That pest control operator licences be issued for a 6.4

period of up to 3 years and may be subject to conditions relating to:

- (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.
- (b) minimum competency standards compliance with the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* (Vic) and (Vic) and the *Occupational Health and Safety Act 2004* (Vic).

**Comment:** We agree.

- 232 That the public health Act contain a provision allowing the Secretary to issue endorsements on licences for pest control operators to use a prescribed chemical product, within the meaning of section 30 of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* (Vic). 6.4

**Comment:** We agree.

- 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 *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* (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). 6.4

**Comment:** We agree.

- 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: 6.4
- (a) the licence was issued in error or because of a document or representation that was false or misleading or omitted a material particular
  - (b) the licence was obtained or made in an improper way

- (c) the holder has not complied with a condition of the licence
- (d) the holder of the licence has contravened the Act or regulations or other legislation regulating the use of pesticides (such as the *Occupational Health and Safety Act 2004* (Vic), the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* (Vic) or corresponding interstate legislation) (Vic) or corresponding interstate legislation)
- (e) the Secretary is no longer satisfied that the person is a fit and proper person  
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.

**Comment:** We agree.

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| 235 | That pest control operators be required to keep prescribed records for a prescribed period of, say, up to 7 years. | 6.4 |
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**Comment:** We agree.

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| 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 |
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**Comment:** We agree.

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| 237 | That the public health Act not include any provisions regulating the non-commercial use of 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). | 6.4 |
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**Comment:** We agree.

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| 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 |
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**Comment:** We agree.

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| 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 | 6.4 |
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would be subject to a due diligence defence analogous to section 17E of the *Food Act 1984* (Vic).

**Comment:** We agree.

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

**Comment:** We agree.

241 That the public health Act not introduce an offence provision relating to damaging a person's property. 6.4

**Comment:** We agree.

242 That Part 13 of the Act (s 228), which empowers the Governor in Council to make regulations relating to precautions against fire, not be re-enacted in the public health Act. 6.5

**Comment:** We agree.