

14 March 2006



Dr Robert Hall  
Director Public Health & Chief Health Officer  
Department of Human Services  
GPO Box 1670N  
MELBOURNE VIC 3001

Dear Dr Hall

### **REVIEW OF THE HEALTH ACT 1958**

The following comments are submitted on behalf of the City of Melbourne on the policy recommendations contained in the Health Act Review Draft Policy Paper.

#### **Medical Officer of Health**

*Recommendation 24*

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

An alternative to the non-legislative appointment of a Regional Medical Officer of Health as previously recommended by the City of Melbourne in its November 2004 submission may include the appointment of a sub-regional Medical Officer of Health who would be responsible for covering two to three municipal areas.

#### **Municipal Public Health Plans**

*Recommendation 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 and municipal strategic statement prepared under section 12A of the Planning and Environment Act 1987 for the municipal district.*

The City of Melbourne considers that the above legislative provisions are adequate to ensure MPHPs or their equivalent are prepared by councils thereby negating the need for the Public Health Act to legislatively require MPHPs. As long as public health issues are adequately canvassed in Council Plans and Municipal Strategic Statements, it is considered unnecessary to create a separate MPHP document. This was the basic intent of the guidelines issued by the Minister for Health in the document entitled *Environments for Health*.

## General Statutory Duty

In relation to recommendations surrounding the proposed general statutory duty, the City of Melbourne seeks clarification on the commentary provided at paragraph 4.2.2.2, in particular the reference to compliance with cooling tower systems. At present the City of Melbourne does not monitor compliance with the regulation of cooling towers and it is unclear whether it is proposed that this situation is to be altered.

The use of the word "Could" at recommendation 77 (d) is also questioned. It is appropriate that self-harm and hypersensitivities be specifically excluded from the scope of the General Duty.

## Nuisance

### *Recommendation 85*

*That "offensive" (as referred to in the definition of "nuisance" be defined as "noxious or injurious to personal comfort" and the reference to "annoying" be removed.*

The whole notion of "nuisance" being included in the Public Health Act is questioned, especially as it is a vague concept and other legislation including the Planning and Environment Act and Council's Local Laws more than adequately cover such issues as protection of amenity and "personal comfort".

Whilst the City of Melbourne supports the removal of "annoying" from the definition of "offensive" as it applies to "nuisance", the value of such an amendment is questioned when it is proposed that "injurious to personal comfort" remain in the definition. Clarification is sought on what is perceived to be the difference between "annoying" and "injurious to personal comfort", and in what differing circumstances these definitions would apply.

### *Recommendation 86*

*That a risk of a nuisance be sufficient to trigger powers.*

Council has concern in relation to the risk of a nuisance being sufficient to trigger powers. It is unclear from the Draft Policy Paper how this concept is proposed to be imported into the Act. The triggering of powers by the risk of a nuisance implies that a council may have a duty to act and therefore an increased liability in the case of not effectively administering these provisions. An example might be in the case of a council approving a development which may increase noise or light emissions and therefore present a "risk of a nuisance". Further consideration needs to be given to this recommendation and the consequences for municipal councils of such an amendment and as expressed above, duplication or even conflict with provisions of other legislation, should be carefully examined.

### *Recommendation 98 (d)*

*That the Public Health Act provide powers for the Secretary (or municipal council, where applicable) to determine whether the registration/licence applicant is a fit and proper person.*

The City of Melbourne supports this recommendation however should it be included, it is critical that criteria to determine whether a person is fit and proper is stipulated in the Act.

### Cost Recovery

Clarification is sought on whether the cost recovery provisions proposed at recommendations 126-129 will be subject to the Appeal provisions outlined in recommendations 136-138.

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} 136 - 138

### Immunisation

The City of Melbourne considers that improved co-ordination may be achieved by the new Act providing for primary schools returning the child's Immunisation School Certificate (ISC) at the completion of primary school and to require the parent or guardian to submit the ISC to a secondary school as a condition of enrolment.

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It is recommended that chickenpox be added as a scheduled vaccine during secondary school years.

It is further recommended that more appropriate funding from Federal and State Governments be provided to enable full cost recovery for local government in providing enhanced immunisation services.

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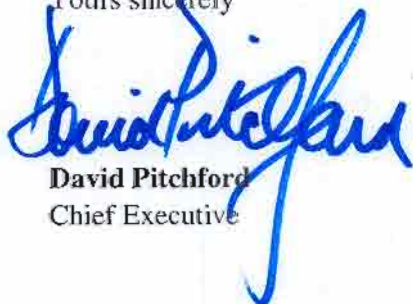
### Prescribed Accommodation

Further to the comments sought in relation to the recommendations made in the Draft Policy Paper, it is requested that the definitions within the *Health (Prescribed Accommodation) Regulations 2001* also be reviewed. It is considered that the exemptions at Regulation 5 surrounding self-contained flats, particular in relation to buildings containing a number of serviced apartments need clarification.

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Once again, thank you for providing the opportunity to provide comments in relation to this important review. Please contact Russell Webster, Manager Health Services on 9658 8801 should you require further information.

Yours sincerely



**David Pitchford**  
Chief Executive