

**Health Issues Centre  
Response to Draft Public Health Act  
January 2006**

**General**

Health Issues Centre is broadly supportive of the changes proposed but considers there are still several key flaws that seriously undermines its credibility. Our main comments are as follows. Below we make more detailed responses.

- We agree with inclusion of principles about addressing inequalities in health, but note that this appears somewhat tokenistic as it is not really carried through anywhere.
- We disagree strongly with the lack of requirement to have a Public Health Plan, even though the Act requires municipal councils to develop a local version.
- The lack of requirement to have a broad Public Health Advisory Council (although there are a range of specific issue committees)
- We strongly agree with intention to make one of Secretary's roles to empower consumers and communities.
- We welcome possible inclusion of consumers on advisory committees but strongly propose it should be necessary, not just possible
- We are very concerned that there is insufficient requirement to consult with disadvantaged communities affected by various public health issues, especially given their generally poorer health status.
- We consider there is a lack of balance between increased powers and individual rights
- We consider there should be more attention to privacy issues (eg some needs for checks and balances on Secretary's power to disclose information about individuals).

Our brief responses to those recommendations most relevant to Health Issues Centre's mission are as follows.

**Issue**

1	That the new Act be named the <i>Public Health Act</i> .	1.1	Agree
3	That the public health Act recognise the importance of promoting public health.	1.2	Agree
4	That the public health Act recognise the need to address inequalities in the health and wellbeing of disadvantaged communities.	1.2	Strongly agree – this is vital issue. However, as noted above, there are few specific recommendations in the remaining changes that will give effect to this, leaving recommendations such as this somewhat tokenistic. For example, it is not noted in the Secretary's role (as opposed to the ACT Act where the Secretary has to report on inequalities to the public), nor in the Municipal Public Health Plan or Health Impact Assessment clauses, nor in the CHO

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			role.
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	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: (a) objects (see 1.6) (b) guiding principles (see 1.7) (c) functions of Secretary, Chief Health Officer and municipal councils (see 1.8 to 1.10) (d) public health inquiries (see 2.1)(e) (e) municipal public health plans (see 3.1)(f) (f) health information management (see 3.6).	1.4	Agree, especially broader view of health, and mention of reducing health inequalities in the Objects..
7	That the term “health” apply to all other provisions and be defined narrowly, to exclude concepts of social and mental wellbeing.	1.4	Not sure - this seems a narrow definition.
8	That the public health Act provides that it applies throughout Victoria (including areas that do not form part of a municipal district).	1.5	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 <i>Local Government Act 1989</i> (Vic), before making a recommendation to the Governor in Council in relation to this issue.)	1.5	Agree
10	That the public health Act bind the Crown.	1.5	
11	That the public health Act include the following statement of objects: <i>Whereas</i> 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 —	1.6	Agree, although this would be stronger if it included the notion of health as a human right.

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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.

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	Agree
13	That the public health Act include the following guiding principles: (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 <i>Environmental Protection Act 1970</i> (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 <i>Environmental Protection Act 1970</i> (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	1.7	Agree, although it is disappointing on two counts: <ul style="list-style-type: none"><li>• No inclusion of the principle that public health actions should generally seek to reduce health inequalities; and</li><li>• The principle of 'polluter pays' has not been adopted. The principle therefore inherent in the Act remains that of 'private profit – public cost'.</li></ul>

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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.

15	<p>That the public health Act include the following statement of function of the Secretary under the Act:</p> <ul style="list-style-type: none"><li>(a) to develop and implement policies and programs to achieve the objects of the Act</li><li>(b) to assist other agencies which have an impact on public health to enhance opportunities for public health</li><li>(c) to support, equip and empower communities to address their health needs</li><li>(d) to establish and maintain a comprehensive information system which includes information on:<ul style="list-style-type: none"><li>(i) the health status of Victorians and groups of Victorians including the extent and effects of illness, injury and premature death</li><li>(ii) the determinants of health(iii) health system performance in Victoria.</li></ul></li></ul>	1.8	Strongly agree, especially 15© , and (d) could be strengthened in inequalities in health status was specifically mentioned. Inclusion of information about the determinants of health is also strongly supported.
16	<p>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.</p>	1.8	Agree but again should include provision to report on health inequalities.
18	<p>That the public health Act include the following statement of functions of the Chief Health Officer:</p> <ul style="list-style-type: none"><li>(a) to develop and implement strategies to promote and protect public health</li><li>(b) to advise the Minister about public health issues</li><li>(c) to carry out any other functions granted to the Chief Health Officer under the public health Act or any other Act</li><li>(d) to ensure that a comprehensive report on the health and wellbeing of Victorians is made available to the public on a biennial basis.</li></ul>	1.9	Agree but again should include provision to report on health inequalities
19	<p>That the public health Act include the following statement of the function of the municipal councils: The function of every council under this Act is to seek to protect and improve public health, and promote community wellbeing by:</p> <ul style="list-style-type: none"><li>(a) creating environments which support the health of the local community and strengthen the capacity of communities and individuals to achieve better health</li><li>(b) initiating, supporting and managing public health planning processes at the municipal level</li></ul>	1.10	Agree

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	(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.		
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	Agree
23	That the public health Act not include the legislative requirement that every municipal council appoint a medical officer of health.	1.12	Agree
24	That non-legislative mechanisms be employed to assist municipal councils obtain public health expertise.	1.12	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	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	Agree although believe there should be a mechanism for communities or specific populations affected by potential significant health risks to request or trigger
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	Agree, but there should be a requirement to consult affected communities or populations.
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	Agree
39	That the public health Act provide that, when conducting an inquiry, the Secretary, Chief Health Officer, person or panel: (a) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.	2.1	Agree

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- (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.
- 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
- 48 That the public health Act contain a provision 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. 2.2 Strongly agree in general, although would prefer that involvement of appropriate consumers or community representatives from affected populations be a necessary requirement, not simply a potential one. Further, two such representatives should be appointed to prevent tokenism and allow the communities affected a real voice (on a committee of articulate experts).
- 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 Agree
- 56 The public health Act list matters to be addressed in municipal public health plans as follows: 3.1 Agree but 56(a) should include mention of data on health inequalities
- (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.
- 57 That the public health Act provide that each municipal council be required to review its 3.1 Agree

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municipal public health plan annually and, if appropriate, amend the plan.

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	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 <i>Environments for Health</i> .	3.1	Agree
60	That municipal public health plans be required to be consistent with the council plan prepared under section 153A of the <i>Local Government Act 1989</i> (Vic) and municipal strategic statement prepared (Vic) and municipal strategic statement prepared under section 12A of the <i>Planning and Environment Act 1987</i> (Vic) for the municipal district.	3.1	Strongly 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	Disagree strongly! This is embedding the rule that there is one rule for the Victorian Government and one for others, eg local councils, who in this same legislation are required to develop and implement a Municipal Public Health Plan. Requiring a State plan would enable a more transparent approach to public health activities, and would create common directions, eg for councils to complement at a local level. It would also be informed by the MPHPs themselves, many of which are developed with considerable community input. (Currently the Department requires the plans to be submitted, but makes no obvious use of the highly useful information contained in them, nor does it appear to seek to coordinate its own activities with them.

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| 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 | Strongly disagree! Although there is an obvious role for the consultative councils on specific issues, there will be no body which is required to look at the bigger public health picture. For example, no council specifically looks at addressing inequalities in health. This requires action way beyond the particular strategies that might be utilized to tackle very specific issues. |
| 65 | That, at this stage, there is no new statutory obligation to require a health impact assessment to be conducted. However:<br>(a) the Secretary to the Department of Human Services and Chief Health Officer would have the statutory power to conduct and initiate inquiries<br>(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)<br>(c) the Department of Human Services and councils could prepare non-statutory health impact assessments.   | 3.4 | Disagree. There should be a mechanism for communities affected by new developments to trigger such an assessment where there is a prima facie case that a negative health impact is possible.   |
| 66 | That the Department of Human Services consider non-legislative guidelines for consultation, if appropriate, to support provisions in the new Act.  | 3.5 | Disagree – this is far too weak and leaves no guarantee that reasonable consultation will be required to support the Act.   |
| 68 | That the public health Act authorises 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)).<br>Registers that may be established by regulation include:<br>(a) an environmental events register (modelled on the <i>Public Health Act 2005</i> (Qld))<br>(b) a register of public health information held by the Department of Human Services and provided to third parties, for example, for research purposes (modeled on the <i>Public Health Act 2005</i> (Qld)). | 3.6 | Agree   |

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4.2 Still have concerns . We have not written specific comments on these sections but are generally concerned that there is a lack of balance still between increased powers and individual rights

We also consider there should be more attention to privacy issues (eg some needs for checks and balances on Secretary's power to disclose information about individuals).