



**Review of the *Health Act 1958*
Draft policy paper – for consultation (November 2005)**

**SUBMISSION BY THE HEALTH SERVICES COMMISSIONER,
VICTORIA – BETH WILSON**

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The Health Services Commissioner (HSC) congratulates the Department of Human Services on the thorough work that it has done in developing the policy paper. Public health legislation has been somewhat out of date and balancing competing tensions between public health concerns and possible public health threats with effective safeguards with issues such as privacy, when the state exercises coercive powers, is always a difficult task. Overall the HSC considers that the draft policy paper has managed to do this extremely well.

This submission will address the draft policy paper according to each relevant recommendation.

Recommendations

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

Comment: HSC supports the renaming of the legislation to the '*Public Health Act*'. HSC supports the notion that it was not necessary to consolidate all public health matters that are dealt with effectively by other legislation, such as drug, food or tobacco, into the new public health Act. Where other Acts are already dealing effectively with issues such as food safety, there is no point in duplicating this in the public health Act. Accordingly the public health Act should have objects addressing public health risks not otherwise managed adequately. HSC supports adopting a similar approach to section 4(a) of the *Public Health Act 1997* (ACT).

	Issue	Section reference
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
<p>Comment: The arguments against a specific section dealing with inconsistencies between legislation are well thought out and HSC supports the notion of a Memorandum of Understanding that could be entered into with agencies administering legislation that interfaces with public health legislation.</p>		
3	That the public health Act recognize the importance of promoting public health.	1.2
<p>Comment: It almost goes without saying that a public health Act has a strong role to play in the promotion of public health. HSC supports all of the proposals set out on pages 2 and 3 of the legislation, in particular the definition, objects and guiding principles. The legislation under which the HSC operates (the <i>Health Services (Conciliation and Review) Act 1987</i>) contains guiding principles and these have been extremely useful in promoting quality health services. Whilst they are set out as a series of aspirations, which are not always met, they are nonetheless extremely useful for health promotional purposes. They could also be very helpful in the new public health Act.</p>		
4	That the public health Act recognise the need to address inequalities in the health and wellbeing of disadvantaged communities.	1.2
<p>Comment: This is an extremely important notion as disadvantage appears to be growing within our community rather than diminishing. In the area particularly relevant to HSC, public dental health services are an example of where disadvantaged people are not receiving adequate care. The draft policy paper does well to recognize the disparity between the health of indigenous and other Australians which is the major social and economic challenge for this country. Similarly, the needs of people with disabilities and those from cultural and linguistically diverse backgrounds need to be recognized. Traditionally, our health services have not dealt well with diversity and are struggling to meet these challenges. Support and guidance in the new public health Act will be useful.</p>		
5	That the initial print of the public health Act includes the explanatory memorandum at the front	1.3

	Issue	Section reference
	of the Act (subject to the approval of Parliamentary Counsel).	
	Comment: HSC supports this idea as it has proved to be very helpful in the <i>Health Records Act 2001</i> which HSC administers. HSC considers it should not be difficult to get approval of Parliamentary Counsel since there is already a precedent in the <i>Health Records Act 2001</i> .	
6	<p>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:</p> <ul style="list-style-type: none"> (a) objects (see 1.6) (b) guiding principles (see 1.7) (c) functions of Secretary, Chief Health Officer and municipal councils (see 1.8 to 1.10) (d) public health inquiries (see 2.1)(e) (e) municipal public health plans (see 3.1)(f) (f) health information management (see 3.6). 	1.4
	Comment: HSC agrees it is important the definition of health should be inclusive and recognizes health as a positive condition rather than defining it by the absence of disease or infirmity. HSC supports recommendation 6.	
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: HSC supports this.	
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
	Comment: HSC supports this.	
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	1.5

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

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

	Issue	Section reference
	<p>1L of the <i>Environmental Protection Act 1970</i> (Vic)).</p> <p>(e) Principle of proportionality</p> <p>Acts taken and decisions made by officials under the public health Act should be proportionate to the harm to be prevented, minimised or controlled. Where action is necessary to protect public health, the action chosen must be the least intrusive means available to achieve that goal and must not be imposed in an arbitrary way.</p> <p>(f) Principle of collaboration</p> <p>Public health is enhanced by collaborative approaches between national, state and local government, the community sector, industry and individuals.</p>	
	<p>Comment: As mentioned above, the inclusion of guiding principles in the <i>Health Services (Conciliation and Review) Act 1987</i> has been very useful in promoting quality health care and in educating health service providers in what an ideal health system should be like. HSC considers they would be extremely useful in the new public health Act and supports recommendation 13.</p>	
14	<p>That the public health Act continue to have provisions for the Minister for Health and the Department of Human Services:</p> <p>(a) creation of Secretary (based on section 6 of the Health Act)</p> <p>(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)</p> <p>(c) delegation by the Secretary under the public health Act or any other Act (based on section 8A of the Health Act)</p> <p>(d) delegation by the Minister under the public health Act or any other Act (based on section 8B of the Health Act).</p>	1.8

	Issue	Section reference
	<p>Comment: HSC supports the proposed provisions and functions of the Secretary with the safeguard that comprehensive information systems take into account all relevant privacy considerations. It is important when this kind of information is collected to ensure that mechanisms are in place to make sure the risk of misuse is minimized and privacy considerations are taken into account. HSC assumes that the analysis and dissemination of the information on public health issues will of course be de-identified and in accordance with privacy considerations. Privacy considerations will be addressed in the section that contains the relevant recommendation.</p>	
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"> (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: <ul style="list-style-type: none"> (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. 	1.8
	<p>Comment: Recommendation 15 is supported by HSC.</p>	
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
	<p>Comment: Recommendation 16 is supported by HSC.</p>	
17	<p>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</p>	1.9

	Issue	Section reference
	officer of the Department of Human Services, who is a registered medical practitioner.	
	Comment: HSC supports the notion of the establishment of a Chief Health Officer and also that this position should be held by a registered medical practitioner. Having a statutory basis will give authority as well as resources and the necessary medical expertise.	
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"> (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. 	1.9
	Comment: A Chief Health Officer with relevant medical qualifications will bring respect to the office and will also ensure that other medical personnel can be enlisted to assist in achieving the objects of the Public Health Act. The draft policy paper uses the parallel of the Chief Psychiatrist. This particular office has had an interesting history with proposals in the 1990s to abolish it. These proposals were strenuously opposed by the then President of the Mental Health Review Board (Beth Wilson). HSC firmly believes the appointment of the Chief Health Officer by the Minister, who is responsible to the Minister, will provide leadership, guidance and support for all officers carrying out work under the public health Act. The Act does need to set out clearly what the functions of the Chief Health Officer are and HSC supports recommendation 18.	
19	<p>That the public health Act include the following statement of the function of the municipal councils: The function of every council under this Act is to seek to protect and improve public health, and promote community wellbeing by:</p> <ul style="list-style-type: none"> (a) creating environments which support the health of the local community and strengthen the capacity of communities and individuals to achieve better health (b) initiating, supporting and managing public health planning processes at the municipal 	1.10

	Issue	Section reference
	<p>level</p> <ul style="list-style-type: none"> (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. 	
	<p>Comment: In relation to recommendations 19, 20, 21 and 22 – HSC agrees that there is a very important role for municipal councils and if this is legislated, it will give them the necessary guidance and make sure that they carry out the important tasks that public health issues require in the public interest. Recommendation 19 makes it clear that councils have important functions in protecting and improving public health as well as in conducting promotional work.</p>	
20	<p>That the public health Act not re-enact the requirement for municipal councils to report annually to the Secretary, but the requirement to report as required by the Secretary be retained.</p>	1.10
	<p>Comment: This recommendation contains reporting provisions which are annual and/or as required by the Secretary. This is not too onerous for councils and the requirement to report as required is necessary in extreme or difficult circumstances.</p>	
21	<p>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.</p>	1.10
	<p>Comment: This is supported.</p>	
22	<p>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).</p>	1.10

	Issue	Section reference
	Comment: Recommendation 22 is pertinent to emergency situations where there is a serious risk to public health and where stronger powers are needed. HSC supports this.	
23	That the public health Act not include the legislative requirement that every municipal council appoint a medical officer of health.	1.12
	Comment: HSC supports this.	
24	That non-legislative mechanisms be employed to assist municipal councils obtain public health expertise.	1.12
	Comment: Councils should be free to obtain public health expertise and it is not necessary for this to be in the legislation.	
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: Environmental health officers will be extremely important in ensuring public health objectives are met. HSC supports recommendations 25 and 26.	
26	That an environmental health officer who is appointed by a council automatically be an authorised officer for the purposes of the public health Act (see paragraph (b) of the definition of "authorised officer" in section 4(1) of the <i>Food Act 1984</i> (Vic)).	1.12
	Comment: Environmental health officers need to be authorized officers to carry out their duties so this is supported.	
27	That the public health Act require that a council only appoint as an environmental health officer a person who has qualifications and/or experience nominated by the Secretary, or by a person approved by the Secretary.	1.12

	Issue	Section reference
	Comment: HSC supports environmental officers having the necessary qualifications and experience as nominated by the Secretary or his/her delegates.	
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: HSC supports recommendation 28.	
29	That the public health Act provide that: (a) the Secretary may appoint Departmental officers as authorised officers (b) a municipal council may appoint employees or officers of the council as authorised officers.	1.12
	Comment: HSC supports this.	
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: Again, HSC supports authorized officers having the necessary expertise and qualifications.	
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: HSC supports the requirement for minimum standards and competencies and agrees this can be non-legislative.	
32	That the public health Act include a provision allowing the Secretary to appoint analysts for	1.13

	Issue	Section reference
	specified purposes under the Act.	
	Comment: In relation to recommendations 32, 33 and 34 – these powers are necessary to carry out the duties under the Act and are supported by HSC.	
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: See comment at 32.	
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: See comment at 32.	
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: HSC supports recommendation 35. The Health Services Commissioner has similar powers to conduct inquiries and these have been extremely useful in improving the quality of health services. The inquiry into the Royal Melbourne Hospital in 2001 is a good example of this. Similar approaches could be taken under the public health Act with a non-blaming and shaming approach being adopted to work with services to improve public health services.	
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

	Issue	Section reference
	<p>Comment: Again HSC has conducted inquiries initiated by the Minister and recommendation 36 is supported. The way in which inquiries are carried out is very important and HSC again points to the inquiry into the Royal Melbourne Hospital, which could be adopted as a model. HSC has provided a road map or guide on its website which could be useful if inquiries are carried out. The website is www.health.vic.gov.au/hsc.</p>	
37	<p>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.</p>	2.1
	<p>Comment: Recommendations 37, 38, 39 and 40 are similar to those contained in the <i>Health Services (Conciliation and Review Act) 1987</i> and these have been very useful in practice. The proposals are supported by HSC.</p>	
38	<p>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).</p>	2.1
	<p>Comment: See comment at 37.</p>	
39	<p>That the public health Act provide that, when conducting an inquiry, the Secretary, Chief Health Officer, person or panel:</p> <ul style="list-style-type: none"> (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. 	2.1
	<p>Comment: See comment at 37.</p>	
40	<p>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.</p>	2.1

	Issue	Section reference
	Comment: See comment at 37.	
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: HSC supports the consolidation of consultative council provisions in the Act and understands the concerns about the effect of consolidation on councils such as the Consultative Councils on Pediatric Mortality and Morbidity. The HSC supports recommendations 41, 42 and 43 and also supports the inclusion on these councils of consumer representatives. Whilst some councils have argued that consumer representatives are not appropriate because they lack clinical expertise, HSC disagrees with this view. At the invitation of a consultative council, the Commissioner attended meetings and whilst they were very technical they were nonetheless very interesting. Consumer representation would be useful in advising councils of what to do with the useful information they collect. This is relevant to the public health Act as well as the existing councils. Further work needs to be done on whether the Coroner should be inquiring into still births, as there is currently an anomaly between the way in which parents have access to either HSC or the Coroner, depending on whether a baby who died has taken a breath or not. The HSC supports all the recommendations listed from 41 to 54 concerning consultative councils.	
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: See comment at 41.	
43	<p>That, in relation to the Consultative Council on Paediatric Mortality and Morbidity (“CCOPMM”):</p> <p>(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.</p> <p>(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</p>	2.2

	Issue	Section reference
	<p>council”.</p> <p>(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.</p> <p>(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.)</p> <p>(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.</p>	
	Comment: See comment at 41.	
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: See comment at 41.	
45	<p>That the public health Act provide that a consultative council established or appointed by the Minister may be prescribed to:</p> <p>(a) have confidentiality provisions based on the provisions currently applying to the Consultative Council on Paediatric Mortality and Morbidity</p> <p>(b) disclose information in accordance with recommendation 52 below.</p>	2.2
	Comment: See comment at 41.	
46	That the public health Act provide that consultative councils established by the Minister, which are prescribed as a consultative council for the purpose	2.2

	Issue	Section reference
	<p>of the confidentiality and disclosure provisions, have the following core minimum functions specified in the public health Act:</p> <ul style="list-style-type: none"> (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: See comment at 41.	
47	That a consultative council established by the 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.	2.2
	Comment: See comment at 41.	
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
	Comment: See comment at 41.	
49	That the public health Act include a provision	2.2

	Issue	Section reference
	enabling the Consultative Council on Paediatric Mortality and Morbidity and consultative councils established by the Minister to establish subcommittees.	
	Comment: See comment at 41.	
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: See comment at 41.	
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: See comment at 41.	
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: (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 <i>Children and Young Persons Act 1989</i> (Vic), if the council believes on reasonable grounds that a child is in need of protection	2.2

	Issue	Section reference
	<p>(g) (g) a day procedure centre, multipurpose service, private hospital, public hospital and denominational hospital within the meaning of section 3(1) of the <i>Health Services Act 1988</i> (Vic)</p> <p>(h) any person or body in another state or territory that the council determines has functions corresponding to a body referred to above</p> <p>(i) any other prescribed person or class of person.</p>	
Comment: See comment at 41.		
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: See comment at 41.		
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: See comment at 41.		
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: Municipal public health plans – these are key components of the new legislation and HSC supports the three-year plan with its annual review. Not making a definitive list in the legislation will add flexibility to the process so it will not be too rigid and can adapt to changing circumstances.		

	Issue	Section reference
56	<p>The public health Act list matters to be addressed in municipal public health plans as follows:</p> <ul style="list-style-type: none"> (a) examine data about health status and health determinants in the municipal district (b) identify goals and strategies based on available evidence for creating healthy communities, to enable people living in the municipal district to achieve maximum health and wellbeing (c) describe how the local community is engaged in developing, implementing and evaluating the plan (d) address how municipal councils work in partnership with the Department of Human Services and others undertaking public health initiatives, projects and programs within the municipal district to accomplish goals and priorities identified in the municipal public health plan. 	3.1
<p>Comment: This recommendation gives guidance to local councils and others concerning what a public health plan should look like. The recommendations from 55 to 60 are supported by HSC and HSC trusts that the necessary training, support, guidance and resources will be made available at the local level to ensure that councils are able to carry out their important duties under the new Act.</p>		
57	<p>That the public health Act provide that each municipal council be required to review its municipal public health plan annually and, if appropriate, amend the plan.</p>	3.1
<p>Comment: See comment at 56.</p>		
58	<p>That the public health Act provide that each municipal council must submit its municipal public health plan ("MPHP") to the Department of Human Services within 12 months after each general election. Where the plan is amended, it must be submitted annually. The MPHPs would be made 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.</p>	3.1

	Issue	Section reference
	Comment: See comment at 56.	
59	That the Department of Human Services continue to support municipal councils in the development, implementation and evaluation of municipal public health plans through non-legislative mechanisms, including developing and implementing tools and capacity building initiatives such as <i>Environments for Health</i> .	3.1
	Comment: See comment at 56.	
60	That municipal public health plans be required to be consistent with the council plan prepared under section 153A of the <i>Local Government Act 1989</i> (Vic) and municipal strategic statement prepared under section 12A of the <i>Planning and Environment Act 1987</i> (Vic) for the municipal district.	3.1
	Comment: See comment at 56.	
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: The non-legislative public health plan is supported by HSC.	
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: This is a new notion that was not contained in the discussion paper. It arises out of submissions that take into account disadvantaged groups. It is supported by HSC although recommendation 62 does not include the establishment of a public health advisory council. HSC is of the view that this should not be dismissed out of hand but should still be on the policy agenda for future discussions.	
63	That Victoria continue to rely on a legislative	3.4

	Issue	Section reference
	requirement for health impact assessment in the <i>Environment Effects Act 1978</i> (Vic) and the <i>Environment Protection Act 1970</i> (Vic).	
	Comment: Recommendation 63 concerning health impact assessments is supported.	
64	That there is further consideration regarding whether public health issues are adequately addressed in the <i>Planning and Environment Act 1987</i> (Vic).	3.4
	Comment: The HSC agrees it is important to have a national approach to important environmental and health impact considerations and also supports recommendations 63 to 65, which gives the Secretary and the Chief Health Officer statutory power to conduct and initiate relevant inquiries.	
65	That, at this stage, there is no new statutory obligation to require a health impact assessment to be conducted. However: <ul style="list-style-type: none"> (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. 	3.4
	Comment: See comment at 64.	
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: The Department of Human Services has demonstrated in recent years that it is a leader in conducting community consultation. HSC agrees it is not necessary to have legislative guidelines in the public health Act in this regard.	
67	That the public health Act continue to provide for	3.6

	Issue	Section reference
	<p>the collection of the following information:</p> <ul style="list-style-type: none"> (a) notifiable diseases (Health Act, s 138) (b) perinatal data (Health Act, ss 162F, 162G) (c) HIV incidence (Health Act, s 130). 	
	<p>Comment: Recommendations 67 to 70 all deal with the collection of health information and its management. The objective is to identify the causes, effects and nature of illnesses; determinants of good health and ill health; and utilisation of health services in Victoria. Once again HSC supports these recommendations however stresses the need to balance the collection, use and disclosure of information with important privacy principles.</p>	
68	<p>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:</p> <ul style="list-style-type: none"> (a) an environmental events register (modelled on the <i>Public Health Act 2005</i> (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 <i>Public Health Act 2005</i> (Qld)). 	3.6
	<p>Comment: See comment at 67. It is unclear what registers will be established, what information they will contain and what controls and protections there will be. Since regulatory impact assessments are carried out for all new regulations, these will provide the necessary safeguards.</p>	
69	<p>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.</p>	3.6
	<p>Comment: See comment at 67.</p>	

	Issue	Section reference
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: See comment at 67. How will councils make such determinations? Should administrative guidelines be developed to assist?		
71	That the public health Act support and enhance the practice of risk management, rather than incorporate specific procedural requirements.	4.1
Comment: A risk management approach is appropriate in the public health Act. However there also needs to be recognition that there is no such thing as a risk free society and, when human beings work with human beings, from time to time mistakes will be made. It is important that we have processes in place to learn from those mistakes to improve the quality of services and reduce risk as much as possible.		
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: HSC supports the development of administrative guidelines to assist in a consistent risk management approach.		
73	That it is a condition of licences 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: <i>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”)</i>	4.2

	Issue	Section reference
	<p>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.</p>	
	<p>Comment: Recommendation 73 deals with general statutory duties and the recommendation is that licenses and registrations under the Act be relevant to dealing with the possibility of serious harm to the health of another person. Separate provision is made in relation to cooling tower systems. HSC supports recommendations 73 and 74 and, in relation to cooling tower considerations, considers that there should be mandatory inspection at specified times.</p>	
74	<p>Monitoring compliance with the General Duty in these circumstances would be the responsibility of the registering or licensing authority (Secretary or municipal council).</p>	4.2
	<p>Comment: See comment at 73.</p>	
75	<p>That a registration or licence holder's compliance with the duty could be determined as follows:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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. <p>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.</p>	4.2

	Issue	Section reference
	Comment: Recommendations 75 to 81 deal with issues such as enforcement and HSC agrees these are necessary to carry out the duties under the Act.	
76	That the public health Act not impose a General Duty on all people.	4.2
	Comment: See comment at 75.	
77	<p>That the following limits be imposed on the scope of the General Duty:</p> <ul style="list-style-type: none"> (a) applies only to material risks and not trivial risks (b) requires people to refrain from conduct that is injurious to public health, rather than create a positive duty to promote public health (c) only requires people to act reasonably and appropriately, and by expecting them to do the things that can practicably be expected of them. <p>Reasonableness of a person's conduct would be considered having regard to:</p> <ul style="list-style-type: none"> (i) the nature of the conduct and the circumstances in which it occurred (ii) the likelihood of a person suffering harm as a result of the conduct (iii) the nature and seriousness of the harm that may be suffered as a result of the conduct (iv) the number of people who may be harmed by the conduct (v) the reason why the person engaged in the conduct and the social utility of the 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 	4.2

	Issue	Section reference
	<p>conduct</p> <p>(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</p> <p>(ix) any other relevant factors.</p> <p>(d) Could specifically exclude harm to self and hypersensitivities.</p>	
	Comment: See comment at 75.	
78	<p>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.</p>	4.2
	Comment: See comment at 75.	
79	<p>That the Chief Health Officer may issue an improvement or prohibition notice if a person:</p> <p>(a) undertakes an activity that poses a serious risk to public health; and</p> <p>(b) fails to take all reasonable and practicable measures to prevent or minimise the possibility of that harm occurring.</p> <p>The limits noted in recommendation 77 would apply in relation to situations where the Chief Health Officer may issue an improvement or prohibition notice.</p>	4.2
	Comment: See comment at 75.	
80	<p>That the Chief Health Officer be able to exercise general enforcement powers in investigating whether to issue an improvement or prohibition notice.</p>	4.2
	Comment: See comment at 75.	
81	<p>That it would be at the discretion of the Chief Health Officer (“CHO”) whether to impose the improvement or prohibition notice. The provision</p>	4.2

	Issue	Section reference
	<p>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:</p> <ul style="list-style-type: none"> (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. 	
	<p>Comment: See comment at 75.</p>	
82	<p>That the public health Act not introduce a “risk to health” offence.</p>	4.3
	<p>Comment: HSC agrees as it raises key issues of lifestyle and civil liberties. Whilst we must protect other people from harm, an individual does have autonomy over their own actions. It would be difficult to define “risk to health” and it would simply lead to the possibility of the power of being inappropriately used.</p>	
83	<p>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.</p>	4.4
	<p>Comment: HSC supports this.</p>	
84	<p>That the nuisance provisions apply to nuisances which are, or are liable to be, dangerous to health or offensive, including nuisances arising from or constituted by:</p> <ul style="list-style-type: none"> (a) any building or structure (b) any land, water or land covered by water (c) any insect or animal capable of carrying a disease transmissible to humans 	4.4

	Issue	Section reference
	(d) any refuse (e) any noise or emission (f) any state, condition or activity (g) any other matter or thing.	
	Comment: HSC supports this.	
85	That "offensive" be defined as "noxious or injurious to personal comfort" and the reference to "annoying" be removed.	4.4
	Comment: HSC supports this.	
86	That a risk of a "nuisance" be sufficient to trigger powers.	4.4
	Comment: HSC supports this.	
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: (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)).	4.4
	Comment: HSC supports this.	
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: HSC supports this.	
89	That the following administrative powers continue to be applied to the duty to abate a nuisance: (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)	4.4

	Issue	Section reference
	(g) nuisances on unoccupied land (s 47C) (h) regulation-making power (s 47D).	
	Comment: HSC supports this.	
90	That it continue to be an offence to cause a "nuisance" (as in s 42).	4.4
	Comment: HSC supports this.	
91	That if, upon investigation, a nuisance is found to exist, the council must: (a) take action to abate the nuisance; or (b) if the council is of the opinion that the matter is better settled privately, advise the person notifying the council of the nuisance of any available methods for settling the matter privately (s 43(3)).	4.4
	Comment: HSC supports this.	
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: HSC supports this.	
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: Best practice standards should continue to be issued by the Department. HSC agrees these will be a benchmark and useful in assessing compliance as well as being educative. The recommendation is that standards of practice are non-binding unless set out in regulations. HSC does not disagree with this.	
94	That there continue to be an obligation for the	4.6

	Issue	Section reference
	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).	
	Comment: HSC has supported the notion of a risk management approach and therefore supports recommendations 94 to 97 which allow this to occur.	
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: See comment at 94.	
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 <i>Building Act 1993</i> (Vic) in relation to cooling tower systems. For instance: <ul style="list-style-type: none"> (a) there would be provision for approved auditors who are approved by the Secretary (b) approved auditors would need to comply with any conditions imposed on their approval (c) the approved auditors would assess whether the risk management plan addresses the required matters, but not its adequacy (d) there would be provisions regarding reporting "failed" audits to the registering authority (the Secretary or municipal council) (e) there would be provisions regarding conflicts for approved auditors, granting audit certificates and impersonation of approved auditors. 	4.6
	Comment: See comment at 94.	
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

	Issue	Section reference
	Comment: See comment at 94.	
98	<p>That the public health Act provide powers for the Secretary (or municipal council, where applicable) to:</p> <ul style="list-style-type: none"> (a) grant, renew, vary, suspend or cancel the registration/licence (b) determine whether the registration/licence applicant is a fit and proper person (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. 	4.7
	Comment: HSC is not qualified to comment on the specific issues relating to radiation and solaria. HSC has not had complaints about these facilities however there may be long-term effects that are relevant. Recommendations 98 to 104 are supported by HSC.	
99	<p>That the public health Act:</p> <ul style="list-style-type: none"> (a) set out criteria for registration/licence applications, renewals, variations, transfers, suspensions or cancellations of registration/licences, so that the registration/licensing process is transparent and decisions to register/licence are consistent (b) set out eligibility requirements for a licence/registration, such as prescribed qualifications or training competencies (c) provide for prescribing fees, including for the issue and reissue of a registration/licence, and for late applications. 	4.7

	Issue	Section reference
	Comment: See comment at 98.	
100	<p>That the following offence provisions be set out in the public health Act:</p> <ul style="list-style-type: none"> (a) conducting an activity for which a licence is required, without the operator being registered/licensed (b) breaching the conditions of the licence (c) making a false or misleading statement in 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. 	4.7
	Comment: See comment at 98.	
101	<p>That a person whose registration/licence has been cancelled by the Secretary/municipal council has the right to re-apply for registration/licence, but could be required to inform the registration/licensing authority of previous cancellations or suspensions. Failure to do so could be grounds for refusing to issue a registration/licence, or for cancelling any registration/licence subsequently issued.</p>	4.7
	Comment: See comment at 98.	
102	<p>That (at this stage) there should not be a requirement that solaria be registered with municipal councils (or the Secretary).</p>	4.7
	Comment: See comment at 98.	
103	<p>That there should not be a requirement that public events be registered with municipal councils (or the Secretary).</p>	4.7
	Comment: See comment at 98.	
104	<p>That regulation-making powers allow for an obligation being imposed on people conducting</p>	4.7

	Issue	Section reference
	<p>activities subject to registration/licensing and on proprietors of non-registered premises (for example, proprietors of swimming pools or brothels) to notify the relevant authority (Secretary or municipal council) in the event of prescribed circumstances.</p>	
<p>Comment:</p>	<p>See comment at 98.</p>	
<p>105</p>	<p>That the Secretary or municipal council (as appropriate) must issue the authorised officers with identity cards that:</p> <ul style="list-style-type: none"> (a) contain the authorised officers' name and photo (b) identify the authorised officers as authorised officers under the Act (c) are signed by the authorised officer (d) are signed by the Secretary (for Department of Human Services officers) or a member of council staff authorised to issue the identity cards (for council officers or employees). 	<p>4.8</p>
<p>Comment:</p>	<p>Clearly the authorized officers need to have strong powers to take samples, inspect, seize, copy and take extracts of documents and gather all of the necessary evidence to do their jobs. The recommendations set out in section 4.8 appear to the HSC to be necessary to enable them to do this and strike a reasonable balance in terms of people's civil liberties.</p>	
<p>106</p>	<p>That an authorised officer is subject to the directions of the Secretary or municipal council (as appropriate) in the performance of his or her functions, or the exercise of his or her powers under the Act or the regulations. A direction of the Secretary or municipal council (as appropriate) may be of a general nature or may relate to a specified matter or specified class of matter.</p>	<p>4.8</p>
<p>Comment:</p>	<p>It is important that appropriate checks and balances are included to ensure powers are used appropriately, which this provision will provide.</p>	
<p>107</p>	<p>That an authorised officer must produce his or her identity card for inspection:</p> <ul style="list-style-type: none"> (a) before exercising any of the powers noted 	<p>4.8</p>

	Issue	Section reference
	<p>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)</p> <p>(b) if asked to produce his or her card by the occupier of the premises during the exercise of the power.</p>	
	<p>Comment: It is very important that occupiers of the premises can check for bona fide authorization to protect them against fraud.</p>	
108	<p>That an authorised officer may not continue to exercise any of his or her powers if he or she fails to produce on request his or her identity card for inspection by the occupier of the premises.</p>	4.8
	<p>Comment: This provides extra safeguards for the occupier and is necessary for public confidence.</p>	
109	<p>That before entering a premises to exercise a general enforcement, incident or emergency power, the authorised officer must (subject to the exceptions noted in this paragraph) announce that he or she is authorised under the public health Act to enter the premises and give any person at the premises an opportunity to allow entry to the premises. The exceptions to this requirement are if:</p> <p>(a) it is not practicable (the premises are vacant)</p> <p>(b) the authorised officer believes on reasonable grounds that immediate entry to the premises is required to ensure:</p> <p>(i) the safety of any person; or</p> <p>(ii) the effective exercise of the powers noted below.</p>	4.8
	<p>Comment: See comment at 108.</p>	
110	<p>That the public health Act provide that an authorised officer is able to exercise powers to monitor compliance and investigate possible contraventions of the Act. This should include the power to (at any reasonable time) exercise the following “general enforcement powers”:</p> <p>(a) enter a place</p>	4.8

Issue	Section reference
<ul style="list-style-type: none"> (b) stop and search any person, animal, vehicle, vessel or other means of conveyance (c) inspect, examine and make enquiries at the place (d) examine or inspect any thing at the place (e) bring any equipment or materials to the place that may be required (f) seize any thing, including a document, at the place, where: <ul style="list-style-type: none"> (i) the seizure is required to determine whether there has been a contravention of the Act; or (ii) the seized thing may be used as evidence for a possible prosecution; or (iii) the seizure is required to minimise a risk to health (g) seal a place or thing (h) take a sample of any thing at the place (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. 	

	Issue	Section reference
	Comment: It is important that these powers are exercised in accordance with other laws e.g. documents are managed in accordance with privacy laws.	
111	That there is no need to have a warrant to perform any of the above powers.	4.8
	Comment: The powers are very invasive therefore it would be an additional safeguard if a warrant was required in order to exercise such 'enforcement powers'.	
112	<p>That the following provisions apply for seized things:</p> <ul style="list-style-type: none"> (a) the authorised officer must provide a receipt for any seized thing in the prescribed form (b) seized things may be held for up to 60 days, unless: <ul style="list-style-type: none"> (i) the Magistrates' Court extends the period of seizure, on the application of an authorized officer; or (ii) the thing had to be destroyed by the Secretary or council (for example, due to contamination) (c) the seized things should be returned (if 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. 	4.8
	Comment: There should be documented procedures and safeguards around reasons for the non-return of seized goods.	
113	<p>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:</p> <ul style="list-style-type: none"> (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. 	4.8
	Comment: HSC supports this.	

	Issue	Section reference
114	<p>That the public health Act include offences regarding:</p> <ul style="list-style-type: none"> (a) impersonating an authorised officer (b) failure to answer questions of an authorised officer without a reasonable excuse (c) knowingly providing an authorised officer, council, Secretary or Chief Health Officer with information that is false or misleading (d) interference with, or obstruction of, an authorised officer (e) failure of a person that is required to keep records to (upon request by an authorised officer) provide the records to the authorised officer. 	4.8
Comment: HSC supports this.		
115	<p>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.</p>	4.9
Comment: Similar comments apply to recommendations 115 to 117 with respect to improvement and prohibition notices. Clearly it is important that while we pursue the public health consideration, actions should not be taken that are arbitrary, unreasonable or discriminatory.		
116	<p>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.</p>	4.9
Comment: See comment at 115.		
117	<p>That failure to comply with an improvement or prohibition notice is an offence under the public health Act.</p>	4.9
Comment: See comment at 115.		

	Issue	Section reference
118	<p>That the public health Act provide for additional powers where:</p> <p>(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.</p> <p>(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.</p>	4.10
<p>Comment: Recommendations 118 to 125 give the Chief Health Officer strong powers where there is a serious risk to public health. HSC believes that this is necessary and justified.</p>		
119	<p>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”:</p> <p>(a) close any premises, place, vehicle or vessel, including a school, children’s services centre or shopping centre</p> <p>(b) direct a person or group of people to enter, not to enter, to stay at or to leave any particular place</p> <p>(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</p> <p>(d) require the provision of information to investigate the serious risk to public health or to address that risk</p> <p>(e) inspect any place where a disease may be spread</p> <p>(f) require cleaning or disinfection of any place</p>	4.10

	Issue	Section reference
	<p>where the risk may arise</p> <ul style="list-style-type: none"> (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: See comment at 118.	
120	<p>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”:</p> <ul style="list-style-type: none"> (a) treat any person (b) administer prophylaxis (including vaccination) to the person, subject to any of the following exceptions: <ul style="list-style-type: none"> (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) 	4.10

	Issue	Section reference
	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: See comment at 118.	
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: See comment at 118.	
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: See comment at 118.	
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: (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).	4.10
	Comment: See comment at 118.	
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”: (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)	4.10

	Issue	Section reference
	<ul style="list-style-type: none"> (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: See comment at 118.	
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: See comment at 118.	
126	<p>That if a person is prosecuted and found guilty of contravening the public health Act, the following provisions apply:</p> <ul style="list-style-type: none"> (a) a municipal council or the Secretary could seek reimbursement of costs it has incurred as a result of the contravention (such as clean-up costs) (b) if a municipal council or the Secretary is awarded legal costs, it could seek payment for the costs incurred by its officers to investigate the contravention. 	4.11
	Comment: HSC shares the concerns expressed by some parties that cost recovery should not be too burdensome and has the potential to scapegoat individuals. These issues are complex and HSC considers that it is necessary for a court to make these decisions.	
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	4.11

	Issue	Section reference
	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.	
	Comment: See comment at 126.	
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: See comment at 126.	
129	That there should also be further consideration regarding whether other cost recovery provisions would be appropriate, having regard to the provisions in the <i>Environment Protection Act 1970</i> (Vic) and the <i>Health Act 1958</i> (Vic).	4.11
	Comment: See comment at 126.	
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: Recommendations 130 to 133 deal with penalties and are supported by HSC. HSC agrees that higher penalties should be imposed on bodies corporate rather than on individuals. It can be assumed that bodies corporate have more resources and would benefit financially from their activities, so the higher penalties are justified.	
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: See comment at 130.	
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	4.12

	Issue	Section reference
	conduct that creates an unacceptable risk to public health.	
	Comment: See comment at 130.	
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: See comment at 130.	
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 <i>Food Act 1984</i> (Vic)).	4.13
	Comment: Recommendations 134 and 135 deal with defences and the decision has been that the public health Act not introduce a defence of due diligence. HSC does not have the expertise to comment on this.	
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: It seems reasonable that blood and tissue donation forms should be approved by the Secretary to enable national unity for when blood crosses borders.	
136	That the public health Act provide for the following appeal rights in relation to licences and registrations: (a) a right of internal review for applicants for decisions by the municipal council/Secretary to: (i) refuse to grant, extend or vary a licence/registration (ii) vary, suspend or cancel a licence/registration (iii) impose certain conditions on a licence/registration.	4.14

	Issue	Section reference
	<ul style="list-style-type: none"> (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). 	
	<p>Comment: Recommendations 136 to 143 deal with appeals. It is important where the state is pursuing the relevant purposes in the public interest that there be adequate checks and balances. The recommendations dealing with appeal sections therefore become extremely important so that the public health Act is not arbitrary and that there is sufficient outside scrutiny. HSC believes that the appeal rights to VCAT and to the Supreme Court are adequate.</p>	
137	<p>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.</p>	4.14
	<p>Comment: See comment at 136.</p>	
138	<p>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:</p> <ul style="list-style-type: none"> (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. 	4.14
	<p>Comment: See comment at 136.</p>	
139	<p>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.</p>	4.14

	Issue	Section reference
	Comment: See comment at 136.	
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: See comment at 136.	
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: See comment at 136.	
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: See comment at 136.	
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: See comment at 136.	
144	That the requirement that businesses conducting hairdressing be registered with municipal councils not be re-enacted in the public health Act.	5.1

	Issue	Section reference
	<p>Comment: In relation to recommendations 144 to 153, HSC has some concerns about the activities of some “therapists” who are conducting practices which could be dangerous to public health. The HSC jurisdiction is uncertain when it comes to beauty therapists, tattooists and skin penetration or colonic irrigation. While complaints may be taken to the Health Services Commissioner against any health service provider, it is problematic sometimes in determining whether these kinds of therapists are health services providers or not. Currently the <i>Health Services (Conciliation and Review Act) 1987</i> does give the Commissioner adequate discretion in this regard. The important issue of infection control is already dealt with in other Acts and overseen by the registration boards. However beauty therapists and tattooists are not registered practitioners. It is appropriate that the new Act includes powers for the Department to regulate therapists who are not registered in the public interest. This can work alongside the complaint resolution mechanism with HSC.</p>	
145	That the requirement that a person conducting a business of beauty therapy be registered with municipal councils be re-enacted.	5.1
	<p>Comment: See comment at 144.</p>	
146	That businesses conducting tattooing, skin penetration and colonic irrigation be required to be registered with municipal councils.	5.1
	<p>Comment: See comment at 144.</p>	
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
	<p>Comment: See comment at 144.</p>	
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

	Issue	Section reference
	Comment: See comment at 144.	
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: See comment at 144.	
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: See comment at 144.	
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: See comment at 144.	
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	5.1

	Issue	Section reference
	possibility of a serious harm happening to another person (such as the spread of sexually transmissible infections).	
	Comment: See comment at 144.	
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: See comment at 144.	
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: Recommendations 154 to 157 deal with prescribed accommodation. One of the difficult issues here is that if requirements are too strict, supportive residential accommodation at the very poor end of the scale simply close down. This means that residents have nowhere else to go. The correct balance needs to be struck between the provision of accommodation and public health issues. HSC supports recommendations 154 to 157.	
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: See comment at 154.	
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 <i>Children and Young Persons Act 1989</i> or	5.2

	Issue	Section reference
	<p>the or the <i>Intellectually Disabled Persons' Services Act 1986</i>. 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.</p>	
	<p>Comment: See comment at 154.</p>	
157	<p>That the specific regulatory scheme set out in the Regulations be proportionate to the level of risk associated with that activity.</p>	5.2
	<p>Comment: See comment at 154.</p>	
158	<p>That the following principles apply in relation to the investigation and control of infectious diseases:</p> <ul style="list-style-type: none"> (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). 	5.3
	<p>Comment: It is logical to make the general principles applicable to the investigation and control of infectious diseases and therefore recommendation 158 is supported.</p>	
159	<p>That the following people be authorised to exercise contact tracing powers for a notifiable condition under the public health Act:</p> <ul style="list-style-type: none"> (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. <p>These powers authorise the collection, use and disclosure of personal information and health information.</p>	5.3

	Issue	Section reference
	<p>Comment: Clearly authorised officers of the Department of Human Services need powers to collect, use and disclose personal information and health information and there is a safeguard in that both the authorized officers of the Department and authorized officers of council are subject to directions of the Secretary. Again, the potential for privacy violations are high and therefore the Secretary will need to balance the danger to the public with the concerns about individuals.</p>	
160	<p>That contact tracing powers extend to permit information to be obtained from:</p> <ul style="list-style-type: none"> (a) the person with the condition and their contacts (b) any other person who has or may have relevant information, including: <ul style="list-style-type: none"> (i) business records (ii) other records held about the person. 	5.3
	<p>Comment: The use of business records leads to real privacy concerns. Safeguards will be required to ensure a person’s career is not unduly compromised and a balance needs to be struck between the usefulness of such records and the impact on the person or their professional colleagues.</p>	
161	<p>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 <i>Public Health Act 2005 (Qld)</i>).</p>	5.3
	<p>Comment: It is important that the Act is clear about what action may be taken when contact tracing is authorised and the HSC supports incorporating the provision, modelled on the Queensland <i>Public Health Act 2005</i>.</p>	
162	<p>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.</p>	5.3

	Issue	Section reference
	<p>Comment: It is difficult to imagine a situation where the Coroner would not have jurisdiction in the circumstances which are anticipated by recommendation 162. Another way of tackling this is to make sure the Coroner does have jurisdiction. However there will be cases where there is need for very quick action to be taken and in those cases, it is appropriate that the Chief Health Officer can require a suitably qualified registered medical practitioner to conduct the autopsy.</p>	
163	<p>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 <i>Coroners Act 1985 (Vic)</i>.</p>	5.3
	<p>Comment: Recommendation 163 is supported as it respects the rights of next of kin.</p>	
164	<p>That the provisions in the public health Act relating to compulsory testing orders and authorisations:</p> <ul style="list-style-type: none"> (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". 	5.4
	<p>Comment: The conditions set out in paragraphs (a) and (b) are already in the Act and are supported. Paragraph (c) applies to occupational incidents and it makes sense to apply that whether the person is a care-giver or a custodian. HSC has no objection to paragraph (d) including a volunteer or "Good Samaritan".</p>	
165	<p>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</p>	5.4

	Issue	Section reference
	provisions.	
	Comment: Recommendation 165 contains sufficient safeguards including the concept of “a law to the contrary” and court orders and subpoenas. The court should be given a discretion in this regard.	
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: Public health order powers are clearly needed where an infectious disease or condition poses a serious risk to public health.	
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: The re-enactment of section 121(1) is necessary for public health and safety and it is appropriate that the powers should be transferred to the Chief Health Officer given the medical expertise of that person. The reasonable belief concept is still applicable.	
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: These powers are extremely coercive and there would need to be protection in the form of some kind of independent review.	
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

	Issue	Section reference
	<p>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.</p>	
	<p>Comment: Clearly if such coercive powers are used, there is a need for timeliness in the interest of the person being tested as well as in the public interest. The HSC is concerned about the apparent lack of external review.</p>	
170	<p>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.</p>	5.5
	<p>Comment: Once again, the powers in this section are potentially very coercive and a balance needs to be struck making sure that public health interests really do outweigh the civil liberty issues. The HSC is concerned that administrative guidelines will not be sufficient.</p>	
171	<p>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.</p>	5.5
	<p>Comment: The non-retention is supported by the HSC. HSC also considers it important that people from whom samples have been taken are given clear explanation about what the sample will be used for and the fact that it will be destroyed. There will need to be training and support for people exercising these powers.</p>	
172	<p>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:</p>	

	Issue	Section reference
	<ul style="list-style-type: none"> (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 	
	<p>Comment: HSC in its submission on this issue supported re-enactment of automatic review of isolation and detention orders. The power for the Chief Health Officer to order a person to undergo treatment is coercive. It would need to be established that the treatment was necessary to avert a serious or imminent danger to the public. Unless there is a mental health issue involved, a person should not be required to undergo treatment if they do not choose to do so if there is not a serious threat to other members of the public.</p>	
173	<p>That the public health Act provide that orders may be subject to the reasonable conditions the Chief Health Officer considers appropriate.</p>	5.5
	<p>Comment: It is unclear what “reasonable conditions” actually means. This is very subjective.</p>	
174	<p>That the general structure of the provisions indicate that the powers provided form a general hierarchy from the least to most restrictive, although there would be flexibility to allow powers to be used as needed to protect public health.</p> <p>As a result of this hierarchy, a restrictive order may not be imposed unless the Chief Health Officer believes:</p> <ul style="list-style-type: none"> (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. 	5.5

	Issue	Section reference
	<p>In practice, the way powers are used will be affected by:</p> <ul style="list-style-type: none"> (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. 	
	<p>Comment: HSC supports in principle powers forming a hierarchy from the least to the most restrictive. This is contained in other legislation such as the <i>Mental Health Act</i>. The flexibility is also desirable if there is a serious risk to public health. The HSC supports the hierarchy as listed in paragraphs (a) to (f).</p>	
175	<p>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.</p>	5.5
	<p>Comment: While force should never be used unless it is absolutely necessary, HSC accepts that sometimes this will have to be done if there is a serious risk.</p>	
176	<p>That the public health Act require that all public health orders be reviewed by the Chief Health Officer, at intervals not exceeding 28 days.</p>	5.5
	<p>Comment: This is supported by HSC.</p>	
177	<p>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.</p>	5.5

	Issue	Section reference
	<p>Comment: The recommendation is that the authorized officer, who is a registered medical practitioner, may seek a warrant to apprehend a person and take the person to a place named in the warrant. Is this anticipating that it would be the registered medical practitioner who takes the person there? Assistance from the police will be required in such situations.</p>	
178	<p>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.</p>	5.5
	<p>Comment: This is supported by HSC.</p>	
179	<p>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 <i>Crimes Act 1958</i> (Vic) for prosecutions of this nature.</p>	5.5
	<p>Comment: HSC is satisfied by this proposal and agrees that the offence of knowingly and recklessly infecting another person fits better with the <i>Crimes Act</i> than with the <i>Health Act</i>. The <i>Crimes Act</i> would have a higher standard of proof.</p>	
180	<p>That the term “notifiable disease” be replaced by the term “notifiable condition” in the public health Act.</p>	5.6
	<p>Comment: This is supported as “disease” is limited and “notifiable condition” covers a wider range.</p>	
181	<p>That notifiable conditions (notifiable diseases) continue to be prescribed in a schedule to the regulations.</p>	5.6
	<p>Comment: HSC supports the continuation of notifiable conditions being prescribed in a schedule to the regulations.</p>	
182	<p>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.</p>	5.6

	Issue	Section reference
	Comment: This is necessary in the event of new or emerging diseases.	
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: HSC supports the retention of the requirement of pathology laboratories and registered medical practitioners to notify the Secretary of a notifiable condition. HSC is puzzled about why the notification goes to the Secretary rather than to the Chief Health Officer.	
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: Hospitals should be required to have processes in place to ensure notification requirements are met. This will be useful for hospitals if they have to make difficult decisions that clash with patient confidentiality.	
185	That the public health Act not re-enact the HIV-specific pre and post-test counselling provisions.	5.7
	Comment: HSC agrees that legislative requirements for pre-test counselling is not required and agrees with the concern that it could present obstacles to the introduction of the screening program.	
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 registered medical practitioners, and nonmedical practitioners who have completed an approved course.	5.7
	Comment: This proposal is that the Act include a regulation making power for post-test counselling for prescribed diseases and prescribed people. Given that we do not know what diseases are included, it is difficult to make any comment.	
187	That the public health Act not include specific	5.7

	Issue	Section reference
	<p>privacy provisions for human immunodeficiency virus (the privacy framework for all health records provided in the <i>Health Records Act 2001</i> (Vic) would apply).</p>	
	<p>Comment: HSC supports the privacy framework in the <i>Health Records Act 2001</i> applying to human immunodeficiency virus.</p>	
188	<p>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.</p>	5.7
	<p>Comment: HSC agrees that the courts can rely on their own general powers in making decisions about whether evidence is given <i>in camera</i>.</p>	
189	<p>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.</p>	5.7
	<p>Comment: HSC supports this recommendation.</p>	
190	<p>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.</p>	5.8
	<p>Comment: All health records should be accurate to comply with the <i>Health Records Act 2001</i> privacy principles. HSC agrees that retaining the provisions in Children's Services Regulations will make them more accessible to proprietors and will assist them in being aware of their obligations.</p>	
191	<p>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.</p>	5.8

	Issue	Section reference
	Comment: The current requirement for the production of an immunisation status certificate by parents in a primary school setting is reasonable.	
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: HSC supports this as well.	
193	That no obligation be imposed on people enrolling in tertiary facilities to provide evidence of immunisation status.	5.8
	Comment: HSC agrees this would be very difficult without a birth immunisation register. Strategies will always be required to encourage immunisation through education and by making the services flexible.	
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: This is supported.	
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: HSC supports this, although it may not actually be necessary given there are already obligations to keep accurate health records under the <i>Health Records Acts 2001</i> .	
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

	Issue	Section reference
	Comment: HSC agrees that section 144(2) is unnecessary. It is unclear however what happens where a parent does not produce immunisation certificate given that this is a requirement of the Act.	
197	That there be no offence for a parent or guardian failing to produce immunisation records to the school.	5.8
	Comment: Immunisation is in the public interest and sometimes some people have real concerns about it. In seeking to provide a service for the good of the person, the state has to be careful not to be too coercive as this may have undesired results and alienate the public. HSC supports recommendation 197 that there not be an offence for a parent or guardian failing to produce immunisation records to the school.	
198	That an immunisation status certificate under the public health Act include one of: (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).	5.8
	Comment: This is supported.	
199	That a person authorised to do so by a municipal council must issue an immunisation status certificate to a parent, where: (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	5.8

	Issue	Section reference
	municipal district.	
	Comment: This is also supported.	
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: This is supported.	
201	<p>That an immunisation status certificate be issued if the parent or guardian of the child produces for each prescribed infectious disease:</p> <ul style="list-style-type: none"> (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). 	5.8
	Comment: This is supported.	
202	That an immunisation status certificate must cover	5.8

	Issue	Section reference
	the prescribed diseases. The vaccines listed under the National Health and Medical Research Council <i>National Immunisation Program</i> could be prescribed.	
	Comment: This proposal is consistent with national requirements and is supported.	
203	That a parent or guardian be required to notify the school if their child is infected or comes into contact with a person infected with a vaccine preventable or excludable infectious disease.	5.9
	Comment: This is supported. However the recommendation does not make clear what would happen if the parent of guardian does not notify the school.	
204	That exclusion periods from schools and children's services for infectious disease cases and contacts continue to be prescribed.	5.9
	Comment: This is supported.	
205	That the Chief Health Officer be given discretion to waive or alter the prescribed periods in individual cases.	5.9
	Comment: This is supported.	
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: (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.	5.9
	Comment: This is supported.	
207	That the provisions in the new Act and Regulations be consistent with National Health and Medical	5.9

	Issue	Section reference
	Research Council <i>Guidelines on the Recommended Minimum Periods of Exclusion from School, Preschool and Child Care Centres of Infectious Disease Cases and Contacts</i> .	
	Comment: This is nationally consistent and is therefore supported.	
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: The Health Services Commissioner does not have any expertise in offensive waterways.	
209	That the public health Act include a consequential provision repealing section 275 of the <i>Melbourne and Metropolitan Board of Works Act 1958</i> (Vic) (which refers to Division 4 of Part 4 of the Health Act).	6.1
	Comment: No comment.	
210	That a separate regulation-making power regarding rats and mice, as is currently contained in section 87 of the Health Act, not be included in the public health Act.	6.1
	Comment: No comment.	
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: This is supported.	
212	That, subject to the amendments noted below, Parts 5A and 5B of the <i>Building Act 1993</i> (Vic) be transferred to the public health Act.	6.2
	Comment: No comment.	
213	That responsibility for registration transfer from the	6.2

	Issue	Section reference
	Building Commission to the Secretary to the Department of Human Services.	
	Comment: No comment.	
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: HSC agrees that cooling tower systems should be registered. They also require regular inspection. Legionnaire's disease is a very serious disease and a significant public health risk.	
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 <i>Building Act 1993</i> (Vic).	6.2
	Comment: This is supported.	
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: This is supported.	
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 could be made subject to conditions.	6.2
	Comment: Unclear as to when an exemption would be necessary.	
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	6.2

	Issue	Section reference
	warm water systems).	
	Comment: This is supported.	
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: This is supported.	
220	That the public health Act not re-enact Part 15 of the Health Act.	6.3
	Comment: HSC makes no comment on recommendations 220 to 227 as these are outside our jurisdiction and expertise.	
221	That there is a consequential amendment made to section 35(2) of the <i>Meat Industry Act 1993 (Vic)</i> , so that the reference to "consulting the Minister administering the <i>Health Act 1958</i> " is changed to "consulting the Minister administering the <i>Food Act 1984</i> ". (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: See comment at 220.	
222	That the provisions in Part 15 of the Health Act not be incorporated into either the <i>Meat Industry Act 1993 (Vic)</i> or the <i>Food Act 1984 (Vic)</i> .	6.3
	Comment: See comment at 220.	
223	That the <i>Food Act 1984 (Vic)</i> be amended so that it is an offence against the <i>Food Act 1984 (Vic)</i> for a person to contravene the requirements of section 34(1) of the <i>Meat Industry Act 1993 (Vic)</i> at, on or in respect of: (a) food premises that are registered under Part 6 (b) food premises that are required to be	6.3

	Issue	Section reference
	<p>registered under Part 6.</p> <p>The penalty would be the same as it is for a breach of section 34(1) of the <i>Meat Industry Act 1993</i> (Vic) (100 penalty units; subsequent offence 500 penalty units or 12 months imprisonment).</p>	
	Comment: See comment at 220.	
224	<p>That the authorised officers under the <i>Food Act 1984</i> (Vic) could prosecute a person under the provision outlined in recommendation 223 above and the provisions in Part 5 of the <i>Food Act 1984</i> (Vic) (Analysts) and Part 8 (Legal Proceedings) would apply to these prosecutions.</p>	6.3
	Comment: See comment at 220.	
225	<p>That, following further analysis of the provisions in Part 20 of the <i>Health Act 1958</i> (Vic) and Parts 8 (Vic) and Parts 8 and 9 of the <i>Food Act 1984</i> (Vic), consequential amendments be made to the <i>Food Act 1984</i> (Vic) so that the relevant provisions of Part 20 of the Health Act (as amended) are inserted into the <i>Food Act 1984</i> (Vic) as new and separate provisions.</p>	6.3
	Comment: See comment at 220.	
226	<p>That consideration be given to whether the <i>Food Act 1984</i> (Vic) should be amended, in line with the proposed provisions in the public health Act, to provide that a municipal council may appoint an authorised officer under the <i>Food Act 1984</i> (Vic), if the council is satisfied that the authorized officer has the training or experience required to perform his or her functions. The competencies regarding training or experience would not be specified in the Act.</p>	6.3
	Comment: See comment at 220.	
227	<p>That consideration be given to whether the <i>Food Act 1984</i> (Vic) should be amended, in line with recommendations 8 and 9 above to provide:</p>	6.3

	Issue	Section reference
	<ul style="list-style-type: none"> (a) That the <i>Food Act 1984</i> (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 <i>Food Act 1984</i> (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 <i>Local Government Act 1989</i> (Vic), before making a recommendation to the Governor in Council in relation to this issue.) 	
	Comment: See comment at 220.	
228	That the public health Act retain the current licensing requirements, with the additional aspects noted below.	6.4
	Comment: Recommendations 228 to 241 relate to pest control. HSC does not have jurisdiction or expertise in this area so no comment is made.	
229	<p>That the public health Act continue to provide for the licensing of trainee pest control operators where applicants are:</p> <ul style="list-style-type: none"> (a) undergoing prescribed training (for example completion of units of competency as specified in the <i>National Standard for Licensing of Pest Management Technicians (1999)</i> or completion of a prescribed course as listed in the current Health (Pest Control) Regulations 2002 (Vic)) (b) operating under the prescribed supervision of a person who is licensed as a pest control operator to use those pesticides. 	6.4
	Comment: See comment at 228.	
230	<p>That pest control operator licences be issued for a period of up to 3 years and may be subject to conditions relating to:</p> <ul style="list-style-type: none"> (a) pesticide use, including uses that are for purposes noted in section 108C(1A) of the 	6.4

	Issue	Section reference
	<p>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.</p> <p>(b) minimum competency standards</p> <p>(c) compliance with the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic) and (Vic) and the <i>Occupational Health and Safety Act 2004</i> (Vic).</p>	
	Comment: See comment at 228.	
231	That it be an offence for a pest control operator to contravene a condition of his or her licence.	6.4
	Comment: See comment at 228.	
232	<p>That pest control operator licences be issued for a period of up to 3 years and may be subject to conditions relating to:</p> <p>(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.</p> <p>(b) minimum competency standards compliance with the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic) and (Vic) and the <i>Occupational Health and Safety Act 2004</i> (Vic).</p>	6.4
	Comment: See comment at 228.	
232	That the public health Act contain a provision allowing the Secretary to issue endorsements on	6.4

	Issue	Section reference
	<p>licences for pest control operators to use a prescribed chemical product, within the meaning of section 30 of the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic).</p>	
	<p>Comment: See comment at 228.</p>	
233	<p>That, in exercising his or her discretion to issue an endorsement on a licence, the Secretary must be satisfied that the pest control operator is competent to use the prescribed chemical product for which the endorsement is to be issued. The Secretary to the Department of Human Services would need to consult with the Secretary to the Department of Primary Industries before issuing an endorsement on a licence to use a prescribed chemical product within the meaning of section 30 of the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic), if that chemical could (Vic), if that chemical could not be used for a purpose covered by section 108C(1) (such as a herbicide).</p>	6.4
	<p>Comment: See comment at 228.</p>	
234	<p>That the Secretary be given the power to cancel, suspend, refuse to grant or vary a licence under the new Act on any of the following grounds:</p> <ul style="list-style-type: none"> (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 <i>Occupational Health and Safety Act 2004</i> (Vic), the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> (Vic) or corresponding interstate legislation) (Vic) or corresponding interstate legislation) (e) the Secretary is no longer satisfied that the person is a fit and proper person 	6.4

	Issue	Section reference
	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: See comment at 228.	
235	That pest control operators be required to keep prescribed records for a prescribed period of, say, up to 7 years.	6.4
	Comment: See comment at 228.	
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
	Comment: See comment at 228.	
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
	Comment: See comment at 228.	
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
	Comment: See comment at 228.	
239	That the public health Act provides that an employer of a pest control operator is guilty of an offence if the pest control operator contravenes the provisions of the Act relating to pest control. This would be subject to a due diligence defence	6.4

	Issue	Section reference
	analogous to section 17E of the <i>Food Act 1984</i> (Vic).	
	Comment: See comment at 228.	
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: See comment at 228.	
241	That the public health Act not introduce an offence provision relating to damaging a person's property.	6.4
	Comment: See comment at 228.	
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: HSC agrees that precautions against fire are not suitable for the public health Act.	