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Monday 30 January 2006

Mr Stephen Lodge  
Manager  
Legislation Review Unit  
Public Health  
Department of Human Services  
GPO Box 1670N  
MELBOURNE VIC 3001

Dear Mr Lodge

**RE: Review of Health Act 1958 – Response to Draft Policy Framework**

Hume City Council welcomes the opportunity to comment on the Review of the Health Act 1958 – Response to draft Policy Paper (the Paper).

I note that the invitation to Hume City Council to make a submission was extended by the Australian Institute of Environmental Health on the 9 December 2005, with a closing date of 23 December 2005. Following strong concern expressed by Local Government about this timeline, I understand the date for submissions was extended to 30 January 2006. It should be noted that the final Hume City Council meeting for 2005 was on Monday 12 December, (with Agenda papers printed on 7 December) and there are no meetings of Council in January each year. This means that the submission prepared by Council officers is subject to final endorsement by Council, at its meeting on the 13 February 2006.

Please find below Hume City Council's response to each of the key sections of the Paper.

Health Planning

The alignment of the Municipal Public Health (MPH) Plan with the Council Plan is supported. This proposal creates a logical step that many Councils already have in place to efficiently link planning for the health and wellbeing of the community with the overarching strategic plan for a municipality.

Complaints

The proposal to retain the nuisance provisions, and to strengthen the response to public health risks is supported.

However, the proposal to introduce "risk of a nuisance" requires further clarification and assessment of the real value and potential difficulties of such an approach. The proposal could expose Councils to considerable liability as nuisances are often difficult to prove and quantify in a court of law, let alone nuisances which have not yet occurred. This means that in instances where action was taken by Council, but is unable to be proven because the nuisance had not yet occurred, Council could be exposed to considerable legal challenges with associated costs. Furthermore, clear

guidelines will be required to identify what risks are actionable to ensure consistency across municipalities and create certainty and reliability in environmental health management.

For this proposal to be viable a clear policy and procedural framework for investigations will need to be established by the State Government. The introduction of 'risk of a nuisance' will also have increased workload implications for Council officers in investigating complaints, resulting in an additional cost impost on Local Government.

Therefore this policy direction could only be supported with appropriate resources from the State government, including additional funding and the provision of clear guidelines to identify what risks are actionable. This would ensure capacity to identify and take action on potential risk and ensure consistency across municipalities to create certainty and reliability in environmental health management.

### Penalties

The introduction of an alternative enforcement mechanism other than prosecution is supported. The proposal to issue Penalty Infringement Notices (PINs) will provide an intermediate step to achieve compliance and enhance the suite of enforcement tools available to Council. The development of the penalty system, including offences that will be subject to PINs must be determined in partnership with Local Government to ensure it is viable, practical and effective.

The proposal to use the PERIN system should be reviewed, in light of experience of its effectiveness in relation to penalties for car parking offences. The huge outstanding debt for parking fines attests to the limitations of the PERIN system. Therefore other options for collecting fines should be investigated for offences committed under the Health Act.

### Registered Premises

It is noted that the proposed amendments to registration of prescribed premises will be limited to those that pose a public health risk. However, it will be important for the State Government to ensure that there is no reduction in health standards in the operations of hairdressers as a result of deregistration and no inspections. If the Department of Human Services still want Local Government involvement in the monitoring of standards, then additional funds would need to be provided for this purpose, as fees from hairdressers would no longer be collected by Councils.

The proposal will also entail a re-examination of the current registration fee structure for registered premises by Council. This will lead to a rise in fees for high risk activities, particularly those that require more intensive time and effort in monitoring standards before registration can be granted or renewed.

### Appeals

The proposal that decisions on licences and registrations; as well as improvement and prohibition notices, will be able to be appealed at the Victorian Civil and Administrative tribunal (VCAT) is of concern.

Decisions to cancel or suspend registration on public health grounds often have urgency because of the public health imperative that other decisions appealable to VCAT do not. VCAT decisions also do not provide the precedence or consistency of

decisions that the court system, which is the avenue available for appeal of decisions under the Health Act. Given the unique circumstances surrounding decisions made under the Health Act to protect and promote public health and safety in a local area, any appeal process must support rapid response and consistency. Therefore Hume City Council supports the current appeal arrangements.

### Immunisation

The proposal to extend the current requirement for a parent or guardian to provide an immunisation status certificate ("ISC") on enrolment in secondary school will have a resource impact on schools; and to a lesser extent Councils. Schools in areas where there are relatively high rates of transience or families that spend lengthy periods of time outside Australia (eg communities with high rates of extended visits to country of origin), will experience increased administration requirements in holding, transferring and sourcing ISCs up to seven years after the certificate has been issued. Additional funding should be provided to agencies that experience additional resource demands as a result of the proposal to extend the ISC requirement to secondary school.

There is in-principle support for recognition of Councils as a "provider" of immunisation services in a municipality. However, Councils who do not currently provide immunisation services should not be compelled to do so under any proposed amendments to this provision. Further, Councils that do provide immunisation programs should be appropriately supported and funded by the State Government.

Hume City Council is particularly concerned and highly dissatisfied with the current funding arrangements for immunisation. Any additional cost impost, including any increase in administrative demands associated with extending ISC to secondary school, will compromise this Council's capacity and commitment to the immunisation program.

It is noted that the State Government does not fund Local Government at full cost recovery for the provision of immunisation services, which includes ISC administration. This Council, and many other Councils, provide immunisation services and should be rewarded for doing so.

Current State Government funding arrangements effectively penalise Councils that do provide immunisation by not fully funding the costs of service provision, with the result that Councils have to divert significant funds to immunisation services. Hume City Council currently provides a subsidy of \$140,000 annually or 55% of the full cost of the service. This is particularly onerous for less affluent Councils with disadvantaged, outer suburban and/or growth areas. However, it is in these areas with poor access to General Practitioners that immunisation services are most needed. Local government is further disadvantaged by current funding arrangements by the Commonwealth Government that provides an incentive to General Practitioners (GPs) for childhood immunisation programs, but not to Local Government. The State Government has a role in advocating to the Commonwealth Government for equitable treatment of Local Government in their role of providing childhood immunisation.

### Workforce

The opportunity for Councils to nominate other Officers as "authorised officers" for particular roles is supported. This would provide flexibility and increase the capacity of Councils to be appropriately responsive, particularly as across the sector there are

workforce shortages in the training and the recruiting of Environmental Health Officers.

### Risk Management Plans

It is the experience of Hume City Council that strengthening existing external regulation is more effective than self-regulation. Therefore the introduction of Risk Management Plans (RMPs), which is a self regulated approach, is not preferred.

However, should the State Government pursue self regulation in relation to Risk Management, then Hume City Council would require appropriate funding and a service agreement to undertake this new responsibility. It is suggested that the current arrangements between State and Local Governments in relation to the Tobacco Act would be an appropriate model on which to base RMP funding and service agreements.

### **Conclusion**

Thank you for the opportunity to comment on the draft policy paper for the Review of the Health Act 1958. Hume City Council has a strong commitment to ensuring the health and wellbeing of its community, and is highly active s. The draft policy paper will generally assist Council in its public health role and responsibilities to fulfil this commitment, subject to appropriate resources and enforcement framework.

If you require further information please contact Ms Antoinette Mertins, Manager Community Support & Health on 9205 2551.

Yours faithfully



**NICOLE MAHONY**  
**DIRECTOR CITY COMMUNITIES**