

30 January 2006

Ms F Cousins

1195900

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

Dear Mr Lodge

### **Submission on Review of the Health Act 1958 Draft Policy Paper**

Thank you for this opportunity to comment on the Review of the Health Act 1958 – Draft policy paper for consultation which was released in November 2005.

The document released in November for consultation was extremely comprehensive and provided relevant information from the previous round of consultation which has assisted in the provision of the comments below.

Having reviewed the document and the recommendations, the majority of the recommendations are supported; however Council officers wish to submit the following comments for your consideration. Where no reference is made to particular recommendations, it can be taken that agreement with the proposed recommendations exists.

#### **Recommendation 11 – Statement of Objects**

It is suggested that the State of Victoria has a role in promoting and protecting the health of more than just Victorians but also all visitors to Victoria during their stay.

#### **Recommendation 19 – Functions of Municipal Councils**

While the overall functions of Municipal Councils are supported and reflect the broad role they play within the local community, Council officers do not support the inclusion of “provide” immunisation services and should remain as a co-ordination role. Should Municipal Councils be locked into providing immunisation services then this should also be matched with full funding in line with other providers such as GPs.

**Recommendations 23-31 – Officers**

Council officers support the recommendations relating to appointed officers.

The removal of the legislative need to appoint a Medical Officer of Health recognises that Council has many avenues for obtaining medical expertise and provides some flexibility in seeking advice.

The continuation of the requirement for Municipal Councils to appoint an Environmental Health Officer and that this officer be considered an authorised officer for the purposes of the act, acknowledges the important role these officers play in the promotion and protection of public health within the local community.

The appointment of other authorised officers is recognised as an important option for Councils for specific functions under the Act and supports Councils determining the relevant skills and qualifications required to undertake specific functions, however it is acknowledged that non-statutory guidelines relating to competencies and minimum standards of training would be appropriate.

**Recommendations 55-60 – Municipal Public Health Plans**

The ongoing development of Municipal Public Health Plans (MPHPs) recognises the success to date that has been achieved by Municipal Councils and their communities in achieving better health outcomes through this planning process.

Consistency with the Council Plan planning timelines and alignment with the four year Council election cycle is a logical amendment and supported.

Council has always provided a copy of its Municipal Public Health Plan to the Department of Human Services (DHS) and supports this ongoing role. Council officers believe the MPHPs submitted to DHS should be used to identify common health issues at a Regional and State wide level and should inform the rollout of Regional and State wide public health initiatives and policies.

**Recommendations 71 & 72 – Risk Management Approach**

Council officers support the position put forward by the Municipal Association of Victoria (MAV) within their Preliminary Summary.

It is imperative that guidance is provided to Council on the development of an appropriate risk management framework to be used for decision making in relation to public health matters and incorporates the principles of the proposed Act.

**Recommendations 73 -79 – General Statutory Duty**

While overall the “General Duty” provisions recommended within the Draft Policy Paper for consultation are supported, some minor amendments to the wording in Recommendation 77 are suggested.

Council officers would like to see Recommendation 77 sub section (c) have the last two words “of them” removed from the sentence. By including a statement that is subjective to the individual places great onus on the enforcing agency to determine what is practicable for an individual, rather than relying on what is practicable for a reasonable person.

This would include determining a range of elements for that individual such as the state of mental health, financial hardship etc. While these elements should be taken into account in undertaking enforcement action, the community should be able to expect that a standard be maintained when upholding the general duty and therefore suggests that this be based on a reasonable person.

#### **Recommendations 83-92 – Nuisances**

Council officers support the retention of the nuisance provisions within the new Act and the removal of the word ‘annoying’, enabling officers to focus on significant public health issues, however it is noted that alternative means will need to be put in place to capture issues that would now fall outside the scope of the nuisance provisions, such as the introduction of further local laws.

With regard to the introduction of “risk of a nuisance”, Council officers generally support the comments provided by the MAV and are concerned with the level of exposure this would create in terms of liability. Council also recognise the advantage of such a provision when dealing with imminent nuisance that pose a significant risk to health such as asbestos.

In relation to recommendation 89 sub section (g) Council officers would like to propose that the provisions relating to unoccupied land be further extended to include un-contactable owners of land, having regard to the nature of the nuisance, the impact on public health and practicable time for resolution of the issue. This would enable Council officers to act when it cannot contact the owners of the land and it is found that they are out of the country for some time.

#### **Recommendations 95-97 – Risk Management Plans**

While Council officers are supportive of the intended outcomes of risk management plans, consideration must be given to the amount of support required to enable businesses to achieve the development and ongoing implementation of these plans. This level of support has clearly been demonstrated with the introduction of Food Safety Programs under the Food Act 1984 and should be carefully reviewed to determine if the benefits of their introduction outweighs the time spent in support.

The comments provided by the MAV in their Preliminary Summary are supported by Council officers.

#### **Recommendations 98-104 & 144-153 – Registration and Licensing**

Council officers support the continuation of registering and licensing prescribed businesses under the Act.

The removal of hairdressers from requiring registration will initiate implications including that these businesses would no longer be monitored on a regular basis and complaints relating to these businesses would not be investigated. It should be noted that while hairdressers generally have a high standard, this may be due to the ongoing registration and monitoring currently in place. Consideration should also be given to a number of practices conducted by hairdressers that are constantly found not to be in accordance with the Guidelines for Beauty and Body Art businesses, such as the correct disposal of sharps, access to sterilization should equipment require such treatment and the implementation of appropriate cleaning procedures.

Upon review of currently registered businesses 31% of existing hairdressers would still require registration under the proposal due to them conducting other processes such as skin penetration or beauty procedures. Council officers have also calculated that a loss of registration fees would equate to over \$8000 and therefore existing fee structures would need to be reviewed with potential increases in mind.

#### **Recommendations 105-114 – Powers of Inspection**

Council officers support these recommendations.

#### **Recommendations 115-117 – Improvement and Prohibition Notices**

Council officers support the replacement of nuisance abatement notices with the inclusion of prohibition and improvement notices. These notices provide greater scope throughout the Act and Council officers welcome the inclusion of an illustrative list or examples of the types of notices that could be issued to ensure clarity and consistency in the issuing of such notices.

#### **Recommendations 130-133 – Penalties**

Council officers support the introduction of Infringement Notices to add to the suite of enforcement tools. It is believed that close consultation with local government authorised officers should be undertaken with regard to the development of regulations and which offences would enable the issuing of infringement notices.

It is felt that the introduction of infringement notices would require the development of policy guidelines around their use and sufficient training of authorised officers to use these notices appropriately along with other enforcement tools.

#### **Recommendations 136-143 – Appeals**

Council officers do not support the introduction of appeals to the Victorian Civil and Administrative Tribunal (VCAT). While it is acknowledged that due process should enable a person to question and appeal a decision made by an enforcement agency, it should also be recognised that enforcement action taken under the Health Act is in response to public health issues and is not entered into lightly by enforcement agencies. Therefore, it would seem appropriate that an internal review mechanism be in place and should the decision be upheld by the agency further appeal should be made to the magistrates' court. This would maintain an element of consistency across the State and enable appeals to be heard in a timely manner due to the significance of public health issues.

#### **Recommendations 190-202 – Immunisation**

The proposed recommendations relating to Immunisation Status Certificates are generally supported by Council officers, however it should be noted that with the introduction of immunisation status certificates being provided to secondary schools there is a potential increase in the resources required by Municipal Councils to meet the demand for issuing and re-issuing these certificates.

Discussions with the Commonwealth Government should also be had with a view to extending the Australian Childhood Immunisation Register (ACIR) enrollment age to 13, to enable child history statements to be issued by ACIR and considered Immunisation Status Certificates.

**Recommendations 208-242 – Environmental Health**

Council officers support all recommendations within this section except recommendation 226. Council officers believe that Environmental Health Officers remain the appropriate officers under the Food Act 1984.

Should this recommendation be pursued, Council officers support the defining of training and qualifications within the Act to ensure an adequate level of competency is attained prior to the appointment of an authorised officer under the Food Act 1984.

Once again I thank you for the opportunity to provide comments on the Review of the Health Act 1984. If you wish any further information or clarification on any of the points made within this letter, please contact me on 9298 8574 or [fleur.cousins@knox.vic.gov.au](mailto:fleur.cousins@knox.vic.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Fleur Cousins', with a horizontal line underneath.

**Fleur Cousins**  
**Co-ordinator – Health Services**