

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

Recommendations

	Issue	Section reference
1	That the new Act be named the <i>Public Health Act</i> .	1.1
Comment: Agree		
3	That the public health Act recognise the importance of promoting public health.	1.2
Comment: Agree		
5	That the initial print of the public health Act include the explanatory memorandum at the front of the Act (subject to the approval of Parliamentary Counsel).	1.3
Comment: Agree		
6	That the term "health and wellbeing" be defined in the public health Act to include health as a positive condition, not merely the absence of disease, and be inclusive of physical, social and mental wellbeing (both individual and collective) and apply to the provisions in the public health act relating to the following: (a) objects (see 1.6) (b) guiding principles (see 1.7) (c) functions of Secretary, Chief Health Officer and municipal councils (see 1.8 to 1.10) (d) public health inquiries (see 2.1)(e) (e) municipal public health plans (see 3.1)(f) (f) health information management (see 3.6).	1.4
Comment: Agree		
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: Agree		
8	That the public health Act provide that it applies throughout Victoria (including areas that do not form part of a municipal district).	1.5

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
Comment: Agree		
9	That the Governor in Council may declare that a municipal council has specified powers and functions under the public health Act in relation to an area that is outside a municipal district, as if the area was within that municipal council's municipal district. (The Minister for Health would be required to consult with the Minister administering the <i>Local Government Act 1989</i> (Vic), before making a recommendation to the Governor in Council in relation to this issue.)	1.5
Comment: Agree		
10	That the public health Act bind the Crown.	1.5
Comment: Agree		
12	That the provision of evidence-based information to the public about the health of the population be incorporated into the functions of the Chief Health Officer under the new Act, rather than as an object provision.	1.6
Comment: Agree		
19	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: (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 level (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	1.10

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>(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</p> <p>(e) coordinating and providing immunisation services to children living or being educated within the municipal district.</p>	
	Comment: Agree	
20	That the public health Act not re-enact the requirement for municipal councils to report annually to the Secretary, but the requirement to report as required by the Secretary be retained.	1.10
	Comment: Agree	
21	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.	1.10
	Comment: Agree	
22	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).	1.10
	Comment: Agree	
23	That the public health Act not include the legislative requirement that every municipal council appoint a medical officer of health.	1.12
	Comment: Agree. The responsibility and duties of the MOH have significantly decreased over the years with the introduction of nurse immunisers and the availability of medical/expert advice from DHS and other specialist services.	
24	That non-legislative mechanisms be employed to assist municipal councils obtain public health expertise.	1.12

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
Comment: Agree		
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: Agree		
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: Agree		
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
Comment: Agree		
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: Agree		
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: Agree		

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
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: Agree. This allows council the flexibility to appoint a suitably qualified or experienced person to conduct functions under the Act, such as the Investigations Officer position.		
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: Agree, however this process would require considerable consultation.		
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: Agree		
56	The public health Act list matters to be addressed in municipal public health plans as follows: (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	3.1

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>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.</p>	
	<p>Comment: Agree</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: Agree</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
	<p>Comment: Agree</p>	
59	<p>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>.</p>	3.1
	<p>Comment: Agree</p>	
60	<p>That municipal public health plans be required to be consistent with the council plan prepared under section 153A of the <i>Local Government Act 1989</i> (Vic) and municipal strategic statement prepared (Vic) and municipal strategic statement prepared under section 12A of the <i>Planning and Environment Act 1987</i> (Vic) for the municipal district.</p>	3.1

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
Comment: Agree		
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: Agree		
73	<p>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:</p> <p style="text-align: center;"><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></p> <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>	4.2
Comment: Agree		
74	Monitoring compliance with the General Duty in these circumstances would be the responsibility of the registering or licensing authority (Secretary or municipal council).	4.2
Comment: Agree		
76	That the public health Act not impose a General Duty on all people.	4.2
Comment: Agree. This would be too broad.		

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
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 conduct (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 (ix) any other relevant factors. <p>(d) Could specifically exclude harm to self and</p>	4.2

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	hypersensitivities.	
	Comment: Agree	
82	That the public health Act not introduce a “risk to health” offence.	4.3
	Comment: Agree	
83	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.	4.4
	Comment: Agree	
84	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: (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 (d) any refuse (e) any noise or emission (f) any state, condition or activity (g) any other matter or thing.	4.4
	Comment: Agree	
85	That “offensive” be defined as “noxious or injurious to personal comfort” and the reference to “annoying” be removed.	4.4
	Comment: Agree. The recommendation to remove the term ‘annoying’ from the definition of offensive is supported as it is likely to focus Councils resources on health problems rather than trivial amenity-related complaints.	
86	That a risk of a “nuisance” be sufficient to trigger powers.	4.4

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	Comment: This provision would be preventative as well as reactionary.	
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: Agree	
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: Agree	
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) (g) nuisances on unoccupied land (s 47C) (h) regulation-making power (s 47D).	4.4
	Comment: Agree	
90	That it continue to be an offence to cause a "nuisance" (as in s 42).	4.4
	Comment: Agree	
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	4.4

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	notifying the council of the nuisance of any available methods for settling the matter privately (s 43(3)).	
	Comment: Agree	
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: Agree as long as a prohibition or improvement order which can achieve everything that a 'notice to abate' could under the Health Act 1958	
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: Agree	
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: The introduction of RMP would have a significant impact on Council. Similarly with the introduction of Food Safety Programs, the implementation process requires resources to educate and advise business operators, ensure compliance. The plans also will also place an additional burden on businesses which will not be welcomed. The current Guidelines for Personal Care and Body Art Industries are detailed and appear to more than adequately cover the risks associated with most activities.	
96	That the provisions in the public health Act	4.6

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>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:</p> <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. 	
	<p>Comment: The benefit of introducing Auditors is also unclear, particularly if they will not be addressing the adequacy of the plans. Once again this appears to be an additional burden with little benefit.</p>	
97	<p>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.)</p>	4.6
	<p>Comment: A preferable option</p>	
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) 	4.7

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<ul style="list-style-type: none"> (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. 	
<p>Comment: Agree</p>		
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
<p>Comment: Agree</p>		
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
<p>Comment: Agree</p>		

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
101	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.	4.7
Comment: Agree		
104	That regulation-making powers allow for an obligation being imposed on people conducting 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.	4.7
Comment: Agree		
105	That the Secretary or municipal council (as appropriate) must issue the authorised officers with identity cards that: (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).	4.8
Comment: Agree		
106	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	4.8

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	matter or specified class of matter.	
	Comment: Agree	
107	<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 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) (b) if asked to produce his or her card by the occupier of the premises during the exercise of the power. 	4.8
	Comment: Agree	
108	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.	4.8
	Comment: Agree	
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> <ul style="list-style-type: none"> (a) it is not practicable (the premises are vacant) (b) the authorised officer believes on reasonable grounds that immediate entry to the premises is required to ensure: <ul style="list-style-type: none"> (i) the safety of any person; or (ii) the effective exercise of the powers noted below. 	4.8
	Comment: Agree	
110	That the public health Act provide that an authorised officer is able to exercise powers to	4.8

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

Issue	Section reference
<p>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> <ul style="list-style-type: none">(a) enter a place(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	

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	exercising his or her powers, under the public health Act.	
	Comment: Agree	
111	That there is no need to have a warrant to perform any of the above powers.	4.8
	Comment: Agree	
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: Agree	
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

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
Comment: Agree		
115	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.	4.9
Comment: Agree		
116	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.	4.9
Comment: Agree		
117	That failure to comply with an improvement or prohibition notice is an offence under the public health Act.	4.9
Comment: Agree		
119	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”: <ul style="list-style-type: none"> (a) close any premises, place, vehicle or vessel, including a school, children’s services centre or shopping centre (b) direct a person or group of people to enter, not to enter, to stay at or to leave any particular place (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 (d) require the provision of information to investigate the serious risk to public health or 	4.10

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>to address that risk</p> <ul style="list-style-type: none"> (e) inspect any place where a disease may be spread (f) require cleaning or disinfection of any place where the risk may arise (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: Agree	
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 costs 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: Agree	
127	<p>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 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.</p>	4.11
	Comment: Agree	
128	<p>That expenses incurred by a municipal council in the abatement of a nuisance can be recovered from</p>	4.11

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	the occupier of the land, even if there has not been a prosecution.	
	Comment: Agree	
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: Agree. The ability to issue infringement notices will provide a quicker mechanism for dealing with some offences. However this process will require significant consultation with relevant stakeholders prior to implementation.	
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: Agree	
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 conduct that creates an unacceptable risk to public health.	4.12
	Comment: Agree	
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: Agree	
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 175 of the Food Act	4.13

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	1984 (Vic)).	
	Comment: Agree	
136	<p>That the public health Act provide for the following appeal rights in relation to licences and registrations:</p> <ul style="list-style-type: none"> (a) a right of internal review for applicants for decisions by the municipal council/Secretary to: <ul style="list-style-type: none"> (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. (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). 	4.14
	Comment: The appeal mechanism for licences and registrations may be appropriate, but once again it appears that the current time-delays experienced through VCAT would be unacceptable.	
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
	Comment: With the recommendations of the new Public Health Act, improvement and prohibition notices would be subject to appeal through VCAT. This situation would be inappropriate for addressing nuisances as it may lead to extensive time delays which will hold up the process of achieving compliance.	
138	An application for an appeal in relation to	4.14

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>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. 	
	<p>Comment: see above</p>	
144	<p>That the requirement that businesses conducting hairdressing be registered with municipal councils not be re-enacted in the public health Act.</p>	5.1
	<p>Comment: The level of risk generally posed by these activities is relatively low and guidelines/regulations may be appropriate to protect against risks. So although they may not require registration they should still have a responsibility to ensure they do not pose a health risk to clients. Improving the level of education and awareness of basic infection control standards through Industry associations would be required.</p>	
145	<p>That the requirement that a person conducting a business of beauty therapy be registered with municipal councils be re-enacted.</p>	5.1
	<p>Comment: Agree</p>	
146	<p>That businesses conducting tattooing, skin penetration and colonic irrigation be required to be registered with municipal councils.</p>	5.1
	<p>Comment: Agree. A process for the identification, registration and education of colonic irrigation businesses would need to be implemented. EHO staff would also require training/guidelines in assessing the risks associated with these particular activities.</p>	
147	<p>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</p>	5.1

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	the regulations for premises conducting beauty therapy.	
	Comment: Agree	
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
	Comment: Agree	
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: Agree	
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: Council currently conducts a surveillance/monitoring/response to complaints program of swimming pools. It would be appropriate for these operators to be registered and would provide council with some cost recovery.	
154	The public health Act continue to require registration of premises providing accommodation to a high number of people (such as tourist	5.2

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	accommodation and rooming houses).	
	Comment: Agree	
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: Agree	
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 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.	5.2
	Comment: Agree, and believe that facilities provided in holiday/ caravan parks accommodation should be regulated.	
157	That the specific regulatory scheme set out in the Regulations be proportionate to the level of risk associated with that activity.	5.2
	Comment: Agree	
191	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.	5.8

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
Comment: Agree		
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: Agree		
193	That no obligation be imposed on people enrolling in tertiary facilities to provide evidence of immunisation status.	5.8
Comment: Agree		
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: Agree		
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: Agree		
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
Comment: Agree		
197	That there be no offence for a parent or guardian failing to produce immunisation records to the school.	5.8
Comment: Agree		
198	That an immunisation status certificate under the	5.8

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>public health Act include one of:</p> <ul style="list-style-type: none"> (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). 	
	Comment: Agree	
199	<p>That a person authorised to do so by a municipal council must issue an immunisation status certificate to a parent, where:</p> <ul style="list-style-type: none"> (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 municipal district. 	5.8
	Comment: Agree	
200	<p>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.</p>	5.8
	Comment: Agree	
201	That an immunisation status certificate be issued if	5.8

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>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). 	
	Comment: Agree	
202	That an immunisation status certificate must cover the prescribed diseases. The vaccines listed under the National Health and Medical Research Council <i>National Immunisation Program</i> could be prescribed.	5.8
	Comment: Agree	
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: Agree	
204	That exclusion periods from schools and children's services for infectious disease cases and contacts continue to be prescribed.	5.9

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
Comment: Agree		
205	That the Chief Health Officer be given discretion to waive or alter the prescribed periods in individual cases.	5.9
Comment: Agree		
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: <ul style="list-style-type: none"> (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: Agree		
207	That the provisions in the new Act and Regulations be consistent with National Health and Medical 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> .	5.9
Comment: Agree		
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: Agree		
221	That there is a consequential amendment made to section 35(2) of the <i>Meat Industry Act 1993</i> (Vic), 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</i>	6.3

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	<p>1984". (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".)</p>	
	<p>Comment: Agree</p>	
222	<p>That the provisions in Part 15 of the Health Act not be incorporated into either the <i>Meat Industry Act 1993</i> (Vic) or the <i>Food Act 1984</i> (Vic).</p>	6.3
	<p>Comment: Agree</p>	
223	<p>That the <i>Food Act 1984</i> (Vic) be amended so that it is an offence against the <i>Food Act 1984</i> (Vic) for a person to contravene the requirements of section 34(1) of the <i>Meat Industry Act 1993</i> (Vic) at, on or in respect of:</p> <ul style="list-style-type: none"> (a) food premises that are registered under Part 6 (b) food premises that are required to be registered under Part 6. <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>	6.3
	<p>Comment: Agree</p>	
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
	<p>Comment: Agree</p>	
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</p>	6.3

**MOONEE VALLEY CITY COUNCIL SUBMISSION
TO THE HEALTH ACT REVIEW DRAFT POLICY PAPER**

	Issue	Section reference
	into the <i>Food Act 1984</i> (Vic) as new and separate provisions.	
Comment:	Agree	