



**Victorian Farmers Federation**

*25 years - Fighting for Farmers*

*Submission to*

**Department of Human Services –  
Public Health**

***Review of the Health Act 1958***

*November 2004*

## **The Victorian Farmers Federation**

The Victorian Farmers Federation is Australia's largest state farmer organisation, and the only recognised, consistent voice on issues affecting rural Victoria.

The VFF represents 21,000 farmer members, representing 15,000 farm enterprises. The VFF consists of an elected Board of Directors, a member representative General Council to set policy and eight commodity groups representing dairy, grains, pastoral, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peers to direct each of the commodity groups and are supported by Melbourne-based staff.

Each VFF member is represented locally by one of the 230 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views on hundreds of industry and government forums.



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## General Comments

The Victorian Farmers Federation appreciates the opportunity to provide comment to the Review of the Health Act.

Our organisation is interested in the review and how the administration of the Act has the potential to impact upon normal farming practices.

Farming is the foundation of the rural economy and agriculture makes a very large contribution to the Victorian economy. The gross value of agricultural production in Victoria increased in 2000-01 to \$8.3 billion, representing a 21.8 per cent rise on 1999-2000<sup>1</sup>.

Exports of food and fibre represent almost one third of Victoria's total exports. In 2001-02, food and fibre exports reached \$7.6 billion, an increase of 40 per cent over the previous two years. The strong growth in agricultural productivity and exports brings the industry closer to the Government's target of \$12 billion food and fibre exports by 2010.

There are 35,229 agricultural businesses in Victoria representing 25 per cent of the nations' farms<sup>2</sup>. Agriculture is a major employer in rural and regional Australia, providing one in ten regional jobs and contributing as much as 50 per cent of total employment opportunities in regions outside major towns. The Victorian agriculture sector paid an estimated \$652.8 million in wages, salaries and entitlements for employees in 2000-01<sup>3</sup>.

Many rural communities depend upon agriculture for their prosperity. Agriculture contributes more than 30 per cent of employment in 66 per cent of small non-coastal towns, and more than half of total employment in 28 per cent of small non-coastal towns.<sup>4</sup>

Although the definition of health used in this review appears to be a very broad one, this organisation is adamant that the Health Act should not deal with issues more appropriately managed by other legislation. There are a number of issues raised in this review that are already being managed by other Acts, and should continue to be managed in this way. Legislation for the protection of health should be enabling rather than proscriptive.

The VFF is particularly interested in participating in a review of Part III of the Health Act, where legislation for nuisances is covered. It is this part of the Act which impacts most significantly on the operations of our members.

However, depending on changes to the definition of "health" and potential implementation of a number of broad changes, there is potential for major impacts on farming which will need to be considered during the preparation of legislative amendments.

This submission provides specific comment on areas of the review that at this stage will or have potential to impact upon our members and their farming businesses. However, we are concerned about the potential for the review to impact upon our farming businesses in a range of unforeseen ways, and our concern is not limited to the areas raised in this submission. The open nature of the review lends towards differing interpretations and a great deal of this review could potentially impact upon farming businesses.

The VFF would welcome further discussion on any of the issues raised in our submission, and further discussion about aspects of the review that have the potential to impact on farming businesses as the review progresses.

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<sup>1</sup> Australian Bureau of Statistics, *Agricultural Commodities 2000-01*, Canberra, 2002, table 15, page 19.

<sup>2</sup> ABS, *Agricultural Commodities 2000-01*, Canberra, 2002, table 1, page 5.

<sup>3</sup> ABS, *Agriculture 1999-2000*, Canberra, 2001, table 4.15, page 41.

<sup>4</sup> ABARE (2001), *Country Australia*, p 38

## **1 Part III Nuisance Provisions**

The current nuisance provisions within the Health Act are extremely broad. The provisions apply to any nuisance which is dangerous to health or offensive. The definition of offensive is extremely broad, covering anything which is considered “noxious, annoying or injurious to health.”

The VFF has numerous examples of members who have experienced extreme interference in the course of their normal farming business by individuals using these nuisance provisions to complain. As they currently stand, the nuisance provisions place no onus on the complainant to justify or substantiate a complaint, and each complaint must be responded to by Municipal Councils.

We believe there are a significant number of vexatious complaints resulting from unrealistic expectations of the nature of the rural environment rather than any legitimate application of the intent of the Health Act. These complaints result in a significant drain on Council resources, and have a negative effect on agricultural productivity. Farmers can spend considerable time in responding to the complaints, continual complaints can bring uncertainty to the ongoing operation of the farm, and an adversarial environment can be created.

In 2000, the Victorian Farmers Federation was a participant on the “Right to Farm Working Group” established to address a growing range of right to farm issues emerging in agricultural areas. The nuisance provisions of the Health Act emerged as a key problem requiring review.

The VFF believes the nuisance provisions of the Health Act should be amended to cover only acts which are ‘harming to health’ rather than simply ‘offensive’ or ‘annoying.’

Complaints about offensive odours or noises are most appropriately dealt with through the powers of the Environmental Protection Act. The EPA has the technical knowledge, and established processes and guidelines for dealing with offensive behaviour.

‘Annoying’ acts are best dealt with through mediation at a local level.

## **2 Role of Municipal Councils in Administering the Health Act**

Neighbourly disputes are best dealt with at a local level. Some Municipal Councils will not have the expertise to deal with technical issues to do with acts which are harming to health.

Local laws can be established to prevent ‘annoying’ or ‘offensive’ acts by Councils. The VFF believes that Councils should have clear direction to prevent overzealousness in development of local laws to restrict normal activities.

The training of environmental health officers should not be unduly proscribed by Health Act legislation. Different Municipal Councils will require environment officers with different training and skills appropriate to their own area.

The threshold of determining an activity to be ‘annoying’ should take into consideration the nature of the area in which the activity takes place. For example if a farmer is carrying out a standard industry practice, with appropriate care and diligence in an area that is zoned for agricultural activities the farmer should have some protection from vexatious complainants. Further, councils should not make local laws that impede a landowner in carrying out activities on his/her land that could be reasonably expected to occur given the zoning, and nature of the area.

## **3 Precautionary Principle**

The discussion regarding the adoption of a ‘precautionary principle’ on page 13 has the potential to have widespread impacts for agriculture, depending on how it is applied. It could be used to restrict the uptake of new technology or to prevent actions which are not demonstrably linked to a health risk.

In particular, the VFF is concerned about the potential of incomplete or lacking science on a new technology preventing its use. Many of the potential health or other risks associated with the uptake of new technology are already addressed through a range of legislative and regulatory measures.

In addition, issues such as loss of biodiversity and global warming mentioned as examples in the review paper are extremely subjective and constitute an extremely broad definition of 'health.' They are also more appropriately managed using the range of existing incentives, legislation and regulation already in place or being further developed.

#### **4 Duty of Care**

Legislation addressing duty of care should set the minimum required standards for the protection of health. The clear focus of legislation should be on preventing any foreseeable harm to health. It is more appropriate for incentive programs to be used to encourage positive actions to improve public health above and beyond agreed minimum standards.

The VFF is concerned by the example used in 7.2.5 regarding chemical spray drift and statutory duty of care for safeguarding public health. Codes of practice are developed to ensure potential risks to public health from some normal and legitimate farming activities such as chemical spraying are appropriately managed. Chemical spraying is a legitimate farming activity which can result in vexatious or unsubstantiated complaints. Agreed codes of practice are based on best practice standards and are regularly reviewed. Compliance with agreed codes of practice should constitute an appropriate duty of care for the protection public health, and compliance should constitute a legitimate defence against complaints.

#### **5 Polluter Pays**

Pages 14 and 15 of the Review of the Health Act cover a "polluter pays" principle. There are significant implications for our members if this is used to address nuisance complaints. Farmers can incur significant costs in dealing with vexatious complaints that do not result in a demonstrable or significant health impact. The VFF would not support this principle being applied to matters such as the nuisance provisions as they currently apply.

The VFF is supportive of a process of 'beneficiary pays' for health benefits derived from the adoption of new practices that result in external health benefits for the wider community.

#### **6 Risk Management Plans**

The benefits for the development of risk management plans are unclear from this document. In our view this has the potential to be an additional lot of red tape for our members in managing their day to day business. We do not see the need to add any form of additional mandatory reporting requirements on landowners unless a clear and significant benefit is provided to both the landowner and the community.

#### **7 Cost Recovery**

Penalties for public health offences should be commensurate with the probable impact.

#### **8 Access to 1080**

The VFF is seeking additional advice from the Department of Sustainability and Environment, but we are of the understanding that any changes to the distribution of 1080 poison, which is used for the control of pest animals would require an amendment to the Health Act. There are currently additional restrictions on the distribution of 1080 that is not commensurate with other S7 chemicals. At present only DSE staff can distribute this poison.

We would like to flag this as an important issue for our membership. It would be a significant improvement in the control of pest animals in Victoria if an amendment could be included to allow Rural Merchandise outlets to sell the poison to landowners (provided they have appropriate permits).

## **9 Cooling Towers**

The dairy industry is aware of the interest of Department of Human Services in the management of cooling towers. The United Dairyfarmers of Victoria (UDV) have been working with the Department of Human Services and Dairy Food Safety Victoria to develop an auditing process for farm cooling tower systems. The VFF supports the continuation of this consultative and cooperative approach for the development of auditing procedures. This process should be continued to finalise management procedures for cooling towers on dairy farm properties and for milk factories.