Municipal Association of Victoria

Public Health and Wellbeing Act 2008

Implementation Toolkit

October 2009



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**Part 1 - Foreword**

**1**

**FOREWORD**

The Municipal Association of Victoria (“**MAV**”) with the support of the Victorian Department of Health

is pleased to provide this “Implementation Toolkit” (“**Toolkit**”) in respect of the *Public Health and*

*Wellbeing Act 2008* (Vic) (“***PHWA***”).

For the most part, the *PHWA* will operate from **1 January 2010**. The *PHWA* will replace the *Health*

*Act 1958* (“***Health Act***”). Some provisions in the *PHWA* (including requirements for and timing of

municipal public health plans) were effective on 1 January 2009. For more information regarding

municipal public health planning, please contact your region‟s Department of Health, Public Health

Manager.

While the role of councils remains largely unchanged under the new legislation, there are a number of

changes that councils will need to be aware of including:





broader changes in policy and emphasis; and

pragmatic and administrative changes.

In particular, the *PHWA* introduces a detailed series of objectives and principles including the

insertion of the “precautionary principle” and the “proportionality principle”. This is a marked

difference from the previous legislation. Councils will therefore need to be familiar with (and balance)

these occasionally competing principles, and be mindful of and adjust to, these broader aspects of the

new legislation.

The purpose of this Toolkit is to assist councils achieve a timely and smooth transition to the new

legislation. In achieving this purpose, the Toolkit includes information to ensure that changes to

delegations, appointments, new fees and forms are put in place either before or immediately after (as

applicable) **1 January 2010**.

Separate guidance material about the *PHWA* will be available prior to 1 January 2010. A series of

training sessions to complement this guidance material will also be held prior to 1 January 2010.

Please note that the *PHWA* has also made consequential amendments to a number of enactments

including the *Food Act 1984* (“***Food Act***”).

The MAV would like to acknowledge the assistance of Russell Kennedy Solicitors and the support of

the Department of Health in the preparation of this Toolkit.

**Rob Spence**

**CHIEF EXECUTIVE OFFICER**

**MUNICIPAL ASSOCIATION OF VICTORIA**

**OCTOBER 2009**

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**Part 1 - Foreword**

***COPYRIGHT & DISCLAIMER***

*The copyright of all original material in this Toolkit, together with the draft template forms, is held by the*

*Municipal Association of Victoria (“****MAV****”). Victorian councils may use and reproduce the template forms in*

*appendices to this Toolkit provided neither the MAV nor Russell Kennedy Solicitors shall suffer or accept any*

*liability in respect of such use.*

*This Toolkit, together with the template forms, is general information and does not constitute legal advice.*

*Receipt of the Toolkit (including the forms) does not give rise to a legal practitioner/client relationship. The*

*Toolkit should not be relied upon for a substitute for legal advice. Whilst Russell Kennedy Solicitors has*

*endeavoured to ensure the accuracy of the information, neither Russell Kennedy Solicitors nor MAV can*

*warrant the accuracy of all information contained herein. Russell Kennedy and MAV disclaim liability for any*

*loss or damage suffered by any person or body acting in reliance on any information contained within this*

*Toolkit or the attached draft template forms.*

*Note: This Toolkit does not discuss changes made to the Health Act 1958 by the Public Health and Wellbeing*

*Act 2008 concerning municipal public health planning. The MAV has other mechanisms in place to assist*

*councils to comply with these changes.*

***Note:*** *The Toolkit has been written at a time when the Public Health and Wellbeing Regulations 2009 are out for*

*public consultation along with the regulatory impact statement. Care should therefore be taken when reading*

*the Toolkit, as the final form of the Regulations, due to be enacted prior to 1 January 2010 may be different to*

*this draft version.*

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Page 2



**Part 2 – How to use this Toolkit**

**2**

**HOW TO USE THIS TOOLKIT**

The Toolkit is primarily concerned with making councils ready for the operation of the new *PHWA*

from 1 January 2010. It also highlights changes that have been made to the law from the *Health Act*

which commence from 1 January 2010.

The Toolkit contains steps for adopting the:









necessary resolutions;

necessary delegations;

new fees; and

new forms,

associated with the new legislation.

While the Toolkit does canvas the broader aspects of the legislation and council and officer powers

and obligations, much of the ongoing or operational information will be found in the more detailed

guidance material.

Significant items requiring councils to take action in preparation for the commencement of the *PHWA*

are highlighted in boxes throughout the Toolkit as being:

**Action Item**

Part 3 of the Toolkit lists the “Action Items” and provides a timeframe for when councils should take

the necessary actions.

Template forms for various purposes under the *PHWA,* referred to throughout Parts of this Toolkit, are

provided as appendices to the Toolkit. For councils participating in the EasyBiz program, the forms

are currently being updated by EasyBiz to reflect the legislative changes.

These forms must be approved by the Council, or the Chief Executive Officer of the council if the

relevant power is delegated. The draft form of delegation at **Appendix 1** grants that power to the

Chief Executive Officer

Some content of these forms are prescribed by the *Public Health and Wellbeing Regulations 2009*

and councils can adopt different forms or modify these template forms provided elements prescribed

in the *Public Health and Wellbeing Regulations 2009* remain. For example different councils may

make delegations in different ways.

**Note:** The Toolkit has been written at a time when the *Public Health and Wellbeing Regulations 2009*

are out for public consultation along with the regulatory impact statement. Care should therefore be

taken when reading the Toolkit, as the final form of the Regulations, due to be enacted prior to 1

January 2010 may be different to this draft version. An up to date copy of the *PHWA* is available

online from the Victorian Legislation and Parliamentary Documents website

[http://www.legislation.vic.gov.au](http://www.legislation.vic.gov.au/) and should be referred to, along with the *Public Health and*

*Wellbeing Regulations 2009* (when enacted) when reading the Toolkit for precise wording of the

sections referred to in the Toolkit.

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**Part 3 – Summary of action required**

**3**

**SUMMARY OF ACTION REQUIRED**

The table below lists the action items for councils in preparation for the commencement of the *PHWA*.

A detailed commentary in relation to the action items is set out throughout this Toolkit.

**Action Items**

**Part of**

**Toolkit**

**Timeframe**

1

It is necessary for councils to update existing delegations or

4

Before 1/1/2010

to prepare new delegations of functions and powers under

the PHWA.

Councils must decide which powers and to which level of

seniority such powers should be delegated.

2

Councils need to appoint one or more environmental health

officers (“**EHOs**”) for the purposes of the *PHWA* who are

suitably qualified and/or trained. A person appointed as an

4

Made before

1/1/2010, to take

effect on 1/1/2010

EHO of a council under the *PHWA* is also automatically an

„authorised officer‟ for the purposes of the *PHWA* and the

*Food Act*.

3

All instruments appointing authorised officers for the

purposes of the *Health Act* need to be re-made so as to

appoint authorised officers for the purposes of the *PHWA.*

EHOs currently appointed under the *Health Act* may be re-

4

Initial appointment

before 1/1/2010, to

take effect on 1

/1/2010

appointed under the *PHWA.*

Council‟s considering the appointment of an authorised

officer who is not an EHO for purposes of the *PHWA,* or the

*Food Act*, should first consider whether the person may need

to exercise the powers of an authorised officer and if they

have the appropriate training and skills. Councils are

encouraged to assess the risks and benefits that may be

associated with the appointment of non-EHOs as authorised

officers.

4

Councils required to issue authorised officers with an identity

card. This applies to the *PHWA* and the *Food Act*. Existing

4

Take effect on

1/1/2010

identity cards containing any reference to the *Health Act*

must be replaced with a reference to the *PHWA*. Cards

should also indicate any additional Acts under which the

EHO is authorised, such as the Food Act.

5

Councils need to prepare template improvement and

prohibition notices.

Relevant council officers need to be trained in the new

enforcement options.

Delegation of power to issue prohibition and improvement

notices needs to be made.

5

Approval for use

from 1/1/2010

Officers to

participate in

training program to

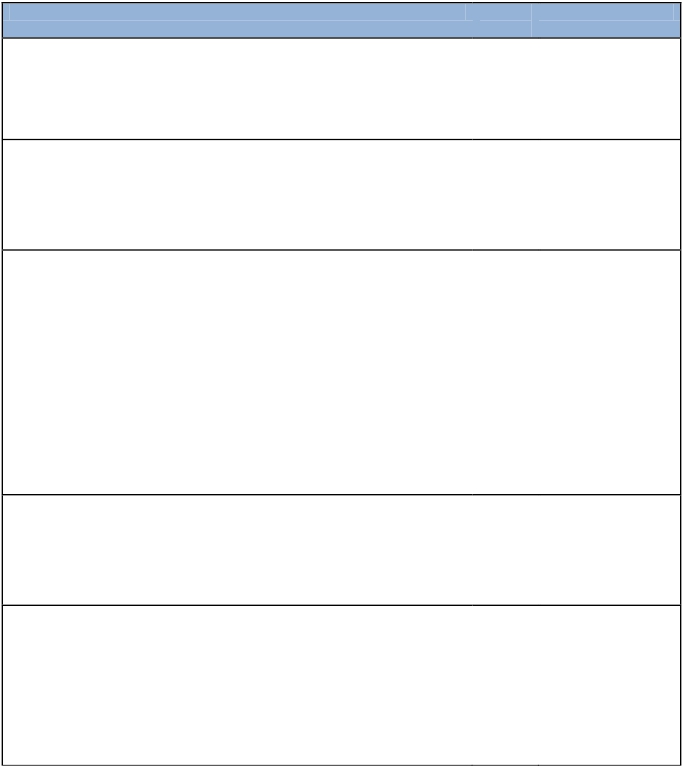
be provided by the

MAV and DOH.

Before 1/1/2010

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Page 4



**Part 3 – Summary of action required**

**Action Items**

**Part of**

**Toolkit**

**Timeframe**

6

7

Prescribed accommodation registered under the *Health Act*

remains registered until that registration expires. After

1 January 2010, renewals, transfers or new prescribed

accommodation facilities must be registered under the

*PHWA*.

Accommodation provided in the course of a person‟s

employment within a class of prescribed accommodation

under the *Public Health and Wellbeing Regulations 2009*

must be registered from 1 January 2010.

Registration requirements could be advertised in council

information bulletins, local newspapers and other media.

Business premises registered under the *Health Act* remain

registered until that registration expires. After 1 January

2010, when a renewal, transfer or new business registration

is sought, the premises must be registered under the *PHWA*.

Colonic irrigation premises (not previously required to be

registered) must be registered from 1 January 2010.

6

7

Internal

administration to

account for the

*PHWA* from

1/1/2010

Application forms

adopted to allow

applications from

1/12/2009

(effective from

1/1/2010)

Internal

administration to

account for

registrations under

the *PHWA* from

1/1/2010

Registration requirements could be advertised in council

information bulletins, local newspapers and other media.

8

Councils need to prepare new application forms for:



-1prescribed accommodation; and



-1registered premises

8

Before 1/1/2010

in readiness for all new registrations, renewals or transfers

from 1 January 2010 which must be made under the *PHWA.*

9

Make resolutions setting fees for registration/renewal/transfer

8

Before 1/1/2010

of prescribed accommodation and registered premises.

10

Councils are required to determine the period of registration

for prescribed accommodation and registered premises.

8

11

Institute procedures whereby any refusal of registration of

8

From 1/1/2010

prescribed accommodation or registered premises is referred

to Council for ratification.

12

Establish internal review policies/procedures to respond to

8

From 1/1/2010

requests for the review of registration decisions.

13

Prepare new certificates of registration to reflect registration

8

Before 1/1/2010

under the *PHWA*.

14

Authorised officers for the purposes of the *PHWA* need to

become familiar with the provisions of the *PHWA* concerning:



-1power to enter premises;



-1procedures to follow in obtaining entry to premises;

9

Officers capable of

exercising powers

from 1/1/2010

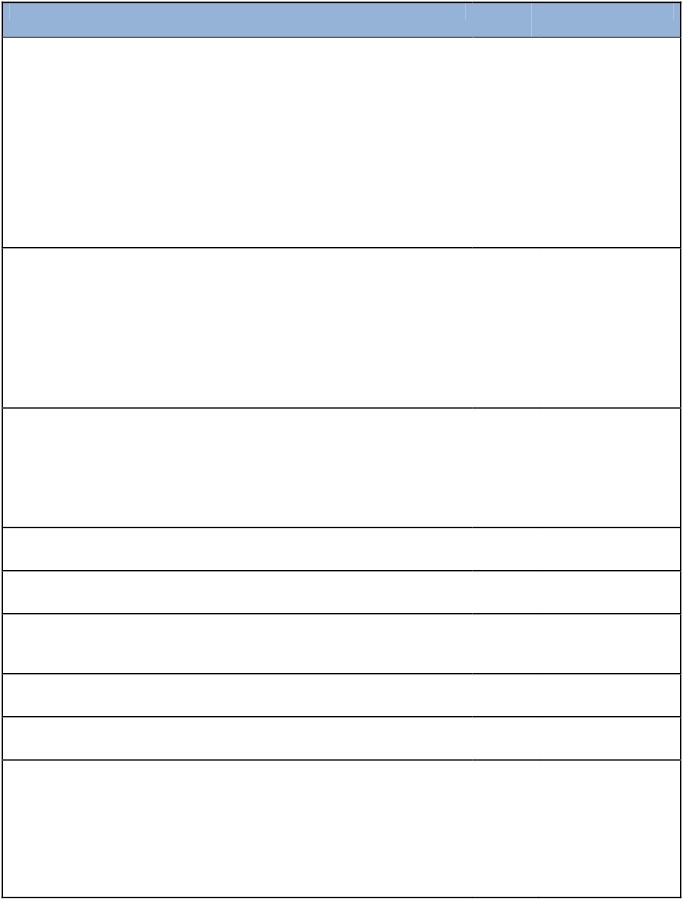
and



powers they may exercise after entry.

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**Part 3 – Summary of action required**

**Action Items**

**Part of**

**Toolkit**

**Timeframe**

15

16

Establish a system for investigating, reviewing and

responding to complaints that arise from the exercise of an

authorised officer‟s power.

Adopt:



-1a receipt for the seizure of a thing by an authorised

9

9

Capable of taking

effect from

1/1/2010

Available from

1/1/2010

officer;



a notice of entry as required under section 172 of

the *PHWA*.

17

Councils and council officers to be aware of the situations

after 1 January 2010 of when they can issue an improvement

notice or a prohibition notice.

10

Officers capable of

exercising powers

from 1/1/2010

Councils to ensure relevant council officers have access to

prohibition and improvement notices.

18

Councils and council officers to be aware of situations in

which infringement notices for offences under the *PHWA* or

the *Public Health and Wellbeing Regulations 2009* apply.

Council officers responsible for processing infringements to

be aware of the process.

10

Infringement

notices available

from 1/1/2010

Officers capable of

exercising powers

from 1/1/2010

Template

infringement

notices prepared

before 1/1/2010

19

Councils and council officers to be aware of how councils can

10

From 1/1/2010

prosecute for a breach of the *PHWA* and *Public Health and*

*Wellbeing Regulations 2009*.

20

Councils to update immunisation status certificates, removing

reference to the *Health Act* and its regulations made to

11

Available from

1/1/2010

include references to the *PHWA* and the *Public Health and*

*Wellbeing Regulations 2009*.

21

Councils need to be prepared for the transitional period to the

12

Ongoing

new legislation.

22

Councils should ensure all documents, websites or other

written material, which refer to the *Health Act* and its

12

Effective from

1/1/2010

regulations, are reviewed and, where appropriate, references

replaced with references to the *PHWA* and *Public Health and*

*Wellbeing Regulations 2009*.

23

Councils to be aware of the changes to the *Food Act* by the

*PHWA.*

Consider resolution regarding appointment under the new

section 59C of the *Food Act* of persons authorised (as

13

Consider in

conjunction with

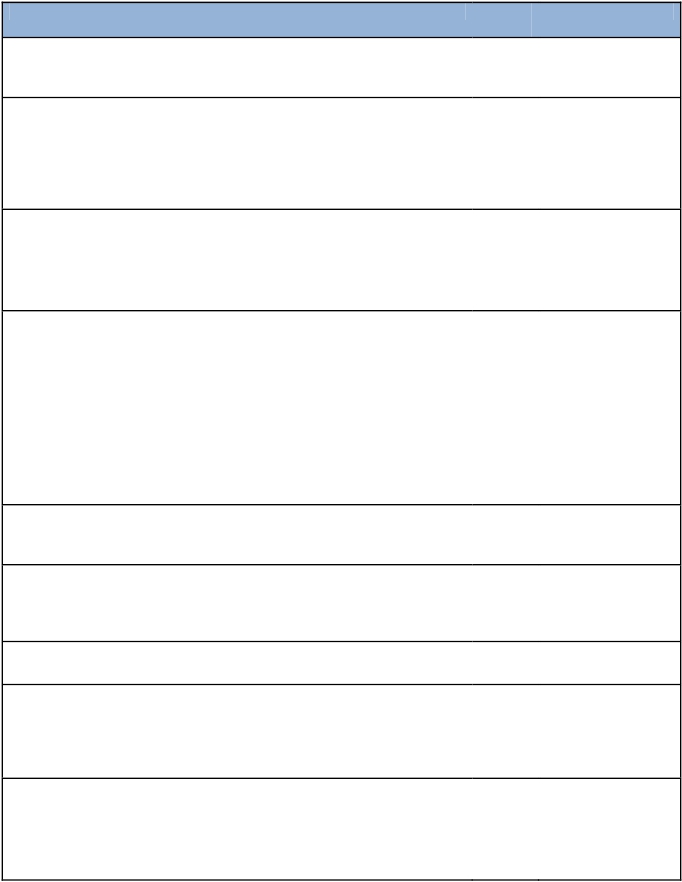
the 2010 broader

*Food Act* changes.

opposed to authorized officers).

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Page 6



**Part 4 – Delegations and appointment of Authorised Officers**

**4**

**4.1**

**DELEGATIONS AND APPOINTMENT OF AUTHORISED OFFICERS**

**Delegations**

**Action Item 1**

It is necessary for councils to update existing delegations or to prepare new delegations of functions

and powers of councils under the *PHWA*.

Councils must decide which powers and to which level of seniority such powers should be delegated.

**Appendix 1** is a **draft instrument of delegation to the Chief Executive Officer of council**. A

**sample resolution approving this delegation** is contained in **Appendix 2**.

In these template delegations, the key delegate of council is the Chief Executive Officer who has the

special capacity, if the delegation so provides, to further delegate or “sub-delegate” Council‟s powers

under the *PHWA* and *Local Government Act 1989*.

Council can delegate its powers to officers other than the Chief Executive Officer (but not the power of

further delegation) but is not required to do so. This is in contrast to the *Food Act* where (arguably) the

Council must delegate individually to officers (not via a “sub-delegation” from the Chief Executive

Officer). ***Food Act* delegations are not dealt with in these template delegations.**

**Appendix 3** is a **draft instrument of delegation from the Chief Executive Officer to officers of**

**council** which, provided the full form of delegation as in **Appendix 1** is adopted by Council, can be

used by the Chief Executive Officer initially and from time to time in the future, to update the

necessary delegations (and authorisations) under the *PHWA* without needing to return each time to

Council.

Please note:







Certain powers have not been specifically granted to authorised officers, EHOs or other

senior officers in the *PHWA*, for example the power to issue prohibition, improvement or

infringement notices or initiate prosecution proceedings. Therefore, those powers will need

to be delegated to the appropriate party. **Appendix 3** provides an example of a form that

can be used to delegate such powers.

Even though the various parts of the *PHWA* are not operative until 1 January 2010, the draft

Council resolutions and delegations are capable of, and should be, adopted at a Council

meeting prior to 1 January 2010. Thereafter, but also before 1 January 2010, the Chief

Executive Officer can and should make the delegations in **Appendix 3** to take effect from

1 January 2010.

If new delegations and authorisations are not in place prior to 1 January 2010, transitional

provisions in the legislation will look after actions between 1 January 2010 until the time that

the new delegations and authorisations are in place. An effort to pass the necessary

resolutions and make the delegations before 1 January 2010 however should be made.

The *PHWA* also makes some significant amendments to the *Food Act* (discussed in Part 13) resulting

in changes that are necessary to council appointments and (potentially) delegations. Delegations

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**Part 4 – Delegations and appointment of Authorised Officers**

made by Councils under the *Food Act* (where necessary) should be made separately to delegations

made under the *PHWA*.

Note that the *Food Act* (section 58A) contains a specific power of delegation which requires direct

delegation from the Council to a council officer.

The templates provided in the Appendices do not therefore contemplate delegations being made

under the *Food Act* as these delegations should be made separately to the *PHWA* delegations.

The table below identifies and summarises the powers in the *PHWA* that are capable of and

appropriate for delegation to relevant officers of council.

Decisions need to be made by the Council as to which council powers are to be delegated beyond the

Chief Executive Officer, to other senior officers, authorised officers or others. As a general

observation, appropriate delegation to the correct officer level in council is a vital element of the

Council‟s ability to ensure actions of council (improvement notices and the like) are not subject to

technical legal challenge. Some powers may be appropriate to delegate to authorised officers

whereas others may be appropriate to delegate to other members of a council‟s administrative staff.

**Section**

**of *PHWA***

**24**

**26**

**27**

**60**

**62**

**64**

**65**

**66**

**71**

**73**

**74**

**75**

**Summary**

Functions of councils.

Matters relating to preparation of municipal public health and wellbeing plan.

Matters relating to inclusion of public health and wellbeing matters in Council Plan or

Strategic Plan.

Duty to remedy nuisances in municipal district.

Investigate a complaint of a nuisance and take appropriate action, including issuing an

improvement notice or prohibition notice or bringing proceedings for an offence against

the *PHWA.*

Power to institute legal proceedings for a nuisance in breach of section 61.

Power to investigate a nuisance outside the municipal district.

Power to enter land that is unoccupied or land where occupier is unknown or cannot be

found to take steps to abate a nuisance.

Approval of form for application for registration, renewal or transfer of prescribed

accommodation or registered premises.

Powers in relation to making decisions on registration of accommodation or registered

premises.

Powers in relation to issuing, renewing or transferring a registration of accommodation or

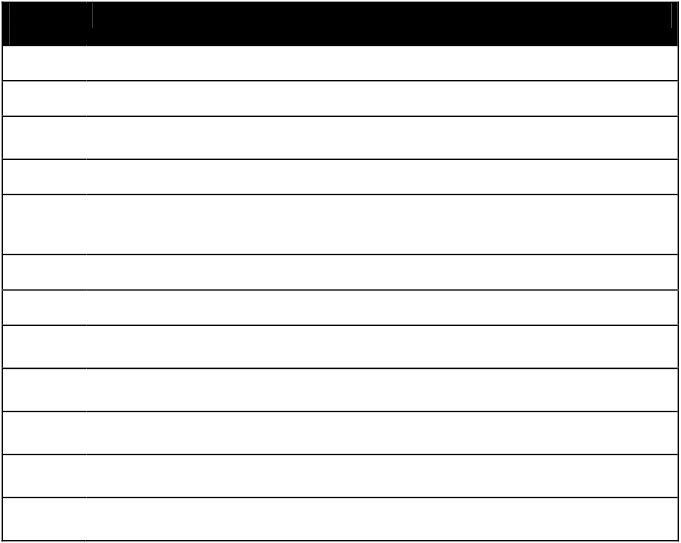
registered premises.

Powers in relation to imposing conditions on a registration of accommodation or

registered premises.

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**Part 4 – Delegations and appointment of Authorised Officers**

**Section**

**of *PHWA***

**76**

**78**

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**185**

**194**

**196**

**197**

**205**

**209**

**219**

**221**

**228**

**229**

**230**

**231**

**Summary**

Powers in relation to refusing to issuing a registration, renewal or transfer of

accommodation or registered premises.

Power to issue replacement certificates of registration for accommodation or registered

premises.

Power to issue immunisation status certificates.

Powers in relation to issuing immunisation status certificates.

Powers and procedures in relation to forfeiture of seized things.

Power to destroy or dispose of seized things.

Procedures for investigating and preparing reports on complaints made.

Power of council to issue an improvement notice or prohibition notice.

Power of council to apply to a Magistrates‟ Court for an injunction compelling compliance

with or restraining contravention of improvement notice or prohibition notice.

Power of council to apply to a Magistrates‟ Court in relation to compliance with

improvement notice or prohibition notice issued in respect of a nuisance.

Powers in relation to internal review of council‟s decision in respect of the issue,

variation, transfer, renewal, cancellation or suspension of a registration of prescribed

accommodation or registered premises.

Power of council to issue an infringement notice in respect of offences prescribed in the

*Public Health and Wellbeing Regulations 2009*.

Power to bring proceedings in a Magistrates‟ Court for an offence against Parts 6, 9 or

10 of *PHWA* or *Public Health and Wellbeing Regulations 2009* made under these parts

committed wholly or partly in council‟s municipal district. \*

Requirements for service of notices by councils.

Ability of council to seek reimbursement of costs including legal costs from legal

proceedings as a result of a contravention.

Power of officer of council to take actions under direction of the Chief Health Officer to

ensure compliance with directions, requirements, improvement notices or prohibition

notices.

Power of councils in relation to recovery of costs in court incurred under section 229.

Power to recover expenses by councils in relation to nuisances.

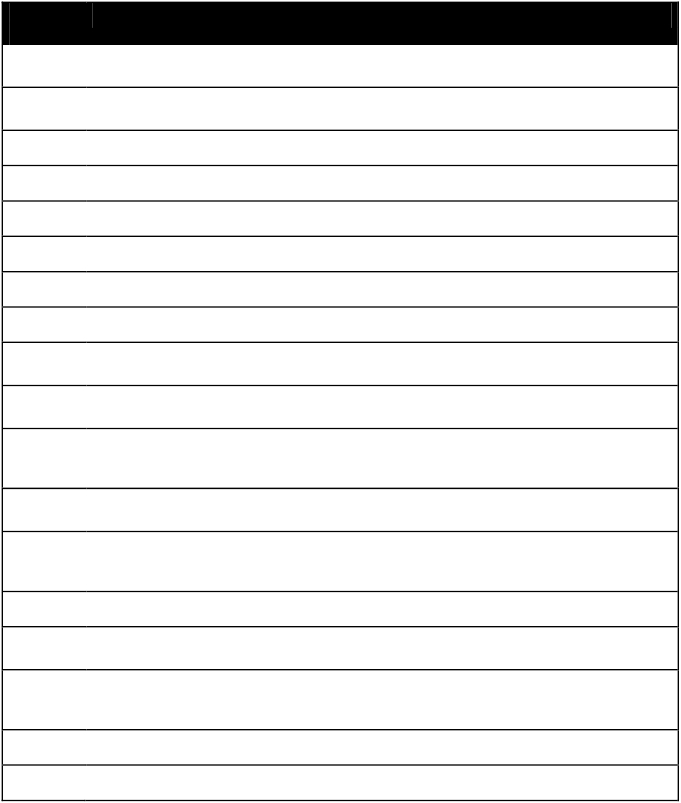
\*Note: authorised officers appointed by councils are automatically entitled to commence proceedings

in the Magistrates‟ Court for a breach of Parts 6, 9 and 10 of the *PHWA* and the Regulations made

under these Parts (section 219).

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**Part 4 – Delegations and appointment of Authorised Officers**

**4.2**

**Authorised Officers**

**Action Item 2**

The *PHWA* requires councils to appoint one or more EHOs for the purposes of the *PHWA* who are

suitably qualified and/or trained. The appointments must take effect on 1 January 2010, so that the

council continues to have authorised officers from that day.

A person appointed as an EHO of a council under the *PHWA* is automatically an „authorised officer‟

for the purposes of the *PHWA* and the *Food Act*.

The appointment of an authorised officer is different to a delegation; various legislation grants power

to an authorised officer, whereas a delegation relates to a council power.

Councils appoint authorised officers for the purpose of various Acts and regulations under section 224

of the *Local Government Act 1989*. For most councils, authorised officers are appointed for multiple

Acts and regulations such as the *Food Act*, *Environment Protection Act 1970*, *Tobacco Act 1987* and

various local laws.

To be appointed as a new EHO under the *PHWA*, a person must hold the qualifications, or

qualifications and experience declared by the Secretary as suitable for the role. The same

qualifications as those that have applied to date under the *Health Act* continue to apply. Existing

EHOs that have these qualifications will continue to be qualified from commencement of the *PHWA*.

The Secretary may declare amended requirements in relation to qualifications.

Once an EHO has been appropriately appointed under the *PHWA*, he or she is also considered to be

an „authorised officer‟ for the purpose of the *PHWA* and the *Food Act.*

The *PHWA* enables persons other than EHOs to be appointed as authorised officers. Authorised

officers complement (but do not replace) the work of EHOs and where appropriate allow suitably

skilled people, such as tradespeople and technicians, to undertake specialised work as authorised

officers. Examples of this include authorising a plumber to address a septic tank concern or an

acoustic engineer to provide advice on a noise related nuisance complaint.

Section 31(2) of the *PHWA* requires councils to be satisfied that persons appointed as authorised

officers are suitably trained and qualified for the work they are undertaking.

If a council is considering the appointment of an authorised officer who is not an EHO for purposes of

the *PHWA*, it should first consider whether the person actually needs to exercise the powers of an

authorised officer and also if they have or first require the appropriate training to meet the obligations

of an authorised officer under the Act. Councils are encouraged to assess the benefits and risks that

may be associated with appointment of non-EHO authorised officers.

The scope of an authorised officer‟s duties can be defined by the council and may be general, limited

(e.g. to specified premises or particular purposes) and may be subject to conditions.

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**Part 4 – Delegations and appointment of Authorised Officers**

**Action Item 3**

All instruments appointing authorised officers for the purposes of the *Health Act* need to be re-made

so as to appoint authorised officers for the purposes of the *PHWA.* These appointments must take

effect on 1 January 2010*.*

EHOs currently appointed under the *Health Act* may be re-appointed under the *PHWA.*

Councils considering the appointment of an authorised officer who is not an EHO for purposes of the

*PHWA,* or the *Food Act*, should first consider whether the person may need to exercise the powers of

an authorised officer and if they have the appropriate training and skills. Councils are encouraged to

assess the risks and benefits that may be associated with the appointment of non-EHOs as

authorised officers.

**Appendix 4** is a sample **instrument of appointment of an EHO or authorised officer made by the**

**Chief Executive Officer** under delegation. It is recommended that the most efficient way for councils

to appoint authorised officers for the purposes of the *PHWA* is to delegate the power to make the

appointment to a senior officer within the council, such as the Chief Executive Officer.

The same EHO can be appointed by two or more councils.

The Secretary to the Department of Health also has the power to appoint authorised officers.

A distinction is drawn between authorised officers appointed by councils and those appointed by the

Secretary. There are functions and powers unique to council appointed authorised officers and to

those appointed by the Secretary, as well as some shared powers

**Action Item 4**

Councils are required to issue their authorised officers with an identity card. This applies to the

*PHWA* and also the *Food Act*.

Existing identity cards containing any reference to the *Health Act* must be replaced with a reference to

the *PHWA*.

Cards should also indicate any additional Acts under which the EHO is authorised, such as the *Food*

*Act*.

The requirements for the content of identity cards remain the same. In accordance with section

224(3) of the *Local Government Act 1989* an identity card issued to an authorised officer must:







contain a photograph of the authorised officer; and

contain the signature of the authorised officer; and

be signed by the member of council staff who has the authority pursuant to delegation to

appoint the authorised officer (typically, this would be the Chief Executive Officer).

The general effect of the legislation is that an authorised officer (including an EHO) must produce his

or her identity card for inspection, in the following circumstances:





before exercising a power under the *PHWA* or the *Food Act*; and

at any time during the exercise of such a power, if asked to do so.

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**Part 4 – Delegations and appointment of Authorised Officers**

This requirement represents a change in the law. Under the existing provisions, authorised officers

were only required to present identity cards “upon request”. It is recommended that all authorised

officers clearly display their identity cards while undertaking their duties for the purpose of these Acts.

In addition, councils are encouraged to consider the design of identity cards to ensure the cards are

easy to read and display.

Forthcoming guidance material will outline in detail all the powers of council authorised officers and

the requirements for the exercise of those powers. This guidance material should be consulted where

relevant.

Council authorised officers are also encouraged to attend the training sessions that will be offered by

the MAV.

**4.2.1 Authorized Officers – *Food Act***

Councils may also separately appoint a person to be an authorized officer for the purposes of the

*Food Act*. As with the *PHWA*, when appointing authorized officers under the *Food Act* who are not

EHOs, the council must be satisfied that the person is suitably qualified, trained or experienced to fulfil

the duties and exercise the powers associated with this role.

Forthcoming guidance material developed for councils by the MAV and the Victorian Department of

Health will describe in the context of the *PHWA* the role of an authorized officer under the *Food Act*,

and the necessary qualifications or training that a person who is not an EHO should have to be

appointed as an authorized officer.

The appointment of such an officer is a significant decision. The responsible exercise of these

powers and functions is critical, to ensure the legislation is enforced appropriately. This can have a

bearing on prosecutions.

Note that major changes are forthcoming to the *Food Act* as a consequence of the *Food Amendment*

*(Regulation Reform) Act 2009* which are expected to commence during 2010.

It is recommended that councils generally await more information on these forthcoming major

changes to the *Food Act* before appointing a person as an authorized officer, unless special

circumstances exist. In the interim, EHOs appointed under the *PHWA* will be able to enforce the

*Food Act.*

The templates provided in the Appendices contemplate the Chief Executive Officer of a council being

given the power to appoint a person to be an authorized officer for the purposes of the *Food Act*.

Note that the templates in the appendices do not contemplate the Chief Executive Officer of a council

being granted the power to make delegations under the *Food Act*. This is because the *Food Act*

contains a specific power of delegation in favour of the Council itself, meaning the Chief Executive

Officer of a council cannot be delegated the power to sub-delegate council‟s powers under the *Food*

*Act*.

The appointment of an authorized officer for the purposes of the *Food Act* by the Chief Executive

Officer is different, because the power to make the appointment for the purposes of the *Food Act* is

contained in section 224 of the *Local Government Act 1989*, not within the *Food Act* itself.

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**Part 5 – Nuisance**

**5**

**5.1**

**NUISANCE**

**Overview**

Division 1 of Part 6 of the *PHWA* substantially (but not identically) re-enacts the *Health Act* obligations

on councils to remedy nuisances in their municipal districts that are liable to be dangerous to health or

offensive.

**5.2**

**Duty to remedy nuisances**

A council still has a duty to remedy as far as is reasonably practicable all nuisances existing in its

municipal district (section 60 of the *PHWA*).

Councils retain the obligation to investigate complaints of nuisances made and councils must

investigate and take any appropriate action. Councils are able to investigate nuisances outside their

municipal district if that nuisance affects that council‟s municipal district.

For nuisances on land that is unoccupied or that is occupied but the owner or occupier is unknown or

cannot be found, a council, under section 66 (similar to the current law), is entitled to enter the land

and take all steps, and do all things necessary to abate the nuisance.

**5.3**

**Enforcement**

Councils retain the power to commence proceedings in the Magistrates‟ Court for a nuisance in their

municipal district that is in breach of the law. Ideally, court proceedings will usually only be issued for

serious or ongoing nuisances.

For general information about issuing prosecution proceedings in a Magistrates‟ Court, refer to the

guidance material for authorised officers.

A complainant, in respect of a nuisance, retains the power to issue proceedings in a Magistrates‟

Court concerning a nuisance where a council has failed to investigate the nuisance within a

reasonable time.

Under the *Health Act* a council could issue a notice to abate a nuisance which was a common

enforcement mechanism. Instead of issuing an abatement notice (which will no longer exist from

1 January 2010) the *PHWA* allows a council to issue an improvement notice or a prohibition notice

instead.

*Note: the PHWA also provides for improvement and prohibition notices to be issued in instances other*

*than nuisances.*

Improvement and prohibition notices are discussed further in Part 10.1 of this Toolkit. **Draft template**

**notices** are also provided in **Appendices 5** and **6**.

The *PHWA* provides councils with the option of referring a nuisance to private settlement. The

council must first form the opinion that the matter is better settled privately. This would include

consideration of the willingness of both parties to engage in mediation, the capacity of both parties,

and any power differential between parties.

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**Part 5 – Nuisance**

**Action Item 5**

Councils need to prepare template improvement and prohibition notices.

Relevant council officers need to be trained in the new enforcement options.

Delegation of power to issue prohibition and improvement notices needs to be made.

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**Part 6 – Prescribed accommodation**

**6**

**PRESCRIBED ACCOMMODATION**

The requirement under Part XII of the *Health Act* for the proprietor of prescribed accommodation to

register that accommodation with the relevant council has been substantially re-enacted in Division 2

of Part 6 of the *PHWA*.

A very broad definition of prescribed accommodation is provided in the *PHWA*, namely:

*(a)*

*(b)*

*(c)*

*any area of land which a person or persons are frequently, intermittently or seasonally*

*permitted to use for camping on payment of consideration and any facilities provided on*

*the land for the use of that person or those persons;*

*any premises used as a place of abode, whether temporary or permanent, fixed or*

*mobile, where a person or persons can be accommodated on payment of consideration;*

*any accommodation provided to an employee in accordance with a term of an award*

*governing the employment of the employee, or a term of the employee's contract of*

*service, for use by the employee during that employment or service;*

The *Public Health and Wellbeing Regulations 2009* prescribe certain categories of accommodation as

exempt from registration and categories which must be registered.

Accommodation that must be registered :

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







residential accommodation;

hotels and motels;

student dormitories;

holiday camps;

rooming houses.

Accommodation which is exempt from registration:

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













a house under the exclusive occupation of the occupier;

self contained flats under the exclusive occupation of the occupier;

temporary crisis accommodation;

hospitals;

nursing homes;

retirement villages;

any vessel, vehicle, tent or caravan;

premises accommodating 5 or less people who are not family members which is not a

rooming house.

The definition of “prescribed accommodation” in the *PHWA* has been expanded to include

accommodation provided to an employee in the course of employment. An example of this would be

accommodation provided for shearers or fruit pickers.

It is an offence to fail to register a prescribed accommodation facility that must be registered (section

67).

Subject to the terms of their appointment, authorised officers can enforce the standards and

requirements for prescribed accommodation listed in the *Public Health and Wellbeing Regulations*

*2009*.

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**Part 6 – Prescribed accommodation**

The process and requirements for registering prescribed accommodation are contained in Division 4

of Part 6 of the *PHWA* and are discussed in Part 8 of this Toolkit.

**Action Item 6**

Prescribed accommodation registered under the *Health Act* remains registered until that registration

expires.

After 1 January 2010, renewals, transfers or new prescribed accommodation facilities must be

registered under the *PHWA*.

Accommodation provided in the course of a person‟s employment within a class of prescribed

accommodation under the *Public Health and Wellbeing Regulations 2009* must be registered from 1

January 2010. Registration requirements could be advertised in council information bulletins, local

newspapers and other media.

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**Part 7 – Registered Premises**

**7**

**REGISTERED PREMISES**

The requirement under Part XIX of the *Health Act* for certain business premises to be registered with

the relevant council has been re-enacted in Division 3 of Part 6 of the *PHWA*. However, the *PHWA*

includes an expanded definition as to which type of premises must be registered.

A person (or other legal entity) conducting the following businesses must register any premises at

which that business is conducted:

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









beauty therapy (e.g. beauty parlours, manicurists and nail treatment salons, waxing salons);

colonic irrigation (a new category);

hairdressing;

involving skin penetration (e.g. body piercing, ear piercing);

involving tattooing; and

business that poses a risk to public health and is a business prescribed in the *Public Health*

*and Wellbeing Regulations 2009* as requiring registration.

The following premises are exempt from registration via the *Public Health and Wellbeing Regulations*

*2009*:

















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

dentists‟ practices;

medical practitioners‟ practices;

registered nurses‟ practices;

podiatrists‟ practices;

acupuncturists‟ practices;

a pathology service;

a business that analyses human tissue, human fluids or human body products for the

diagnosis or treatment of human diseases that is not a pathology service;

a mobile hairdresser (note: principal place of business must still be registered);

a mobile beauty therapist (note: principal place of business must still be registered); and

a hospital/health service (public, private) day procedure centre, multipurpose service or

registered community health centre.

It is an offence not to register a premises if that business must be registered (section 69).

Subject to the terms of their appointment, authorised officers can enforce the standards and

requirements for registered premises listed in the *Public Health and Wellbeing Regulations 2009*.

The process and requirements for registering premises are contained in Division 4 of Part 6 of the

*PHWA* and discussed in Part 8 of this Toolkit.

**Action Item 7**

Business premises registered under the *Health Act* remain registered until that registration expires.

After 1 January 2010, when a renewal, transfer or new business registration is sought, the premises

must be registered under the *PHWA*.

Colonic irrigation premises (not previously required to be registered) must be registered from

1 January 2010. The new registration requirements could be advertised in council information

bulletins, local newspapers and other media.

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**Part 8 – Registration process: prescribed accommodation and**

**registered premises**

**8**

**8.1**

**REGISTRATION PROCESS: PRESCRIBED ACCOMMODATION AND REGISTERED**

**PREMISES**

**Overview**

The process for councils regarding the registration of prescribed accommodation and registered

premises is similar to the current law. However, new forms are required for the grant, transfer and

renewal of registration and certificates of registration.

The transitional arrangements concerning registration of prescribed accommodation and registered

premises made under the *Health Act* are set out in detail in Part 12.1 of this Toolkit.

**8.2**

**Application for Registration**

**Action Item 8**

Councils need to prepare new application forms for:





prescribed accommodation; and

registered premises

in readiness for all new registrations, renewals or transfers from 1 January 2010 which must be made

under the *PHWA*

An application for the issue, renewal or transfer of a prescribed accommodation or registered

premises must be made in the form approved by the Council and it must:







contain the information required by the council;

contain the prescribed particulars in the *Public Health and Wellbeing Regulations 2009*; and

be lodged with the relevant fee.

Unlike the *Health Act* where regulations such as the *Health (Prescribed Accommodation) Regulations*

*2001* provide template application forms for registration, the *Public Health and Wellbeing Regulations*

*2009* does not prescribe any forms. It is up to each council to prepare its own forms which contain

the mandatory particulars from the *PHWA* and the *Public Health and Wellbeing Regulations 2009*.

The following forms contained in the Appendices are template forms that councils can adapt and use

as they see appropriate:

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









**Appendix 8 – template application for registration/renewal of registration of prescribed**

**accommodation**

**Appendix 9 – template application for registration/renewal of registration of registered**

**premises**

**Appendix 10 – template application for transfer of prescribed accommodation**

**Appendix 11 – template application for transfer of registered premises**

**Appendix 12 - template form for certificate of registration/renewal/transfer of**

**prescribed accommodation**

**Appendix 13 - template form for certificate of registration/renewal/transfer of**

**registered premises.**

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**Part 8 – Registration process: prescribed accommodation and**

**registered premises**

**Action Item 9**

Make resolutions setting fees for registration/renewal/transfer of prescribed accommodation and

registered premises.

Registration/renewal/transfer fees (“**fees**”) are not prescribed in *Public Health and Wellbeing*

*Regulations 2009* and councils are able to (and must) make resolutions setting these fees. Councils

need to determine the fees for registration pursuant to section 72 of the *PHWA*.

Fees may be capped by the Governor by an Order in Council (section 72(2)(b)) in this event, councils

cannot make resolutions in excess of these set fees.

The fees need to be established for when the *PHWA* takes effect from 1 January 2010. The power to

set fees cannot be delegated by Council.

The fees may vary according to the size or nature of the prescribed accommodation or registered

premises and whether the application is for the initial issue, the renewal or transfer of that registration.

**Appendix 14** is a **sample Council resolution setting the fees for the registration of prescribed**

**accommodation and registered premises**.

**Action Item 10**

Councils are required to determine the period of registration for prescribed accommodation and

registered premises.

Determining the period of registration is a policy decision that councils need to make.

Registration can be for a period up to 3 years and can differ according to the type of registration

(accommodation or registered premises), whether for the issue, renewal or transfer, or for the type,

nature or size of the accommodation or premises.

When determining the period of registration, councils need to be aware of the various policy

ramifications, which include:







avoiding the decision being open to administrative review, e.g. a decision by a council to set

differing periods of registration for two comparable premises could be open to administrative

review on the basis of unreasonableness;

the desirability of requiring frequent/infrequent review of a registration upon renewal, e.g.

some premises may require more frequent review especially where particularly problematic

such as for some rooming houses; and

the administrative burden of handling applications, the shorter a period of registration, the

greater the administrative burden on councils will be for handling renewals.

Councils should therefore set a clear policy for the period(s) of registration offered.

Before considering an application for registration, a council may (if appropriate):



give an applicant a notice requiring more information (can be in the form of a letter);

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**Part 8 – Registration process: prescribed accommodation and**

**registered premises**





**8.3**

inspect the accommodation or premises;

require that alterations or improvements be made to the prescribed accommodation or

registered premises to ensure compliance with the Act or *Public Health and Wellbeing*

*Regulations 2009*.

**Decisions about registration**

Pursuant to section 76(1) of the *PHWA*, a council can:

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











refuse registration;

issue a registration subject to a conditions;

vary, cancel or suspend a registration;

refuse to transfer;

transfer subject conditions;

refuse to renew;

renew subject to conditions.

Pursuant to section 76(2), a council can make a decision under section 76(1) on any one or more of

the following grounds:











the application does not comply with the Act or *Public Health and Wellbeing Regulations*

*2009*;

the registration holder has failed to comply with any condition of the registration;

an applicant has ceased to provide accommodation or premises that require registration;

there is a risk to the health of persons if the registration is not cancelled or suspended or is

issued, transferred or renewed; or

on any other grounds prescribed in *Public Health and Wellbeing Regulations 2009*.

Where a decision under section 76(1) is made, the council must notify the applicant or registration

holder in writing of the decision and the ground or grounds on which the decision is based. This

notice can be in the form of a letter setting out these details of the decision.

*Note: Section 77 provides that where a decision to refuse an application for*

*registration/renewal/transfer has been made by a delegate of a Council, the decision to refuse the*

*registration is only valid if that decision is later ratified by a resolution of the Council.*

**Action Item 11**

Institute procedures whereby any refusal of registration of prescribed accommodation or registered

premises is referred to Council for ratification.

**Appendix 15** is a **sample Council resolution ratifying the decision of a delegate of a Council to**

**refuse an application for registration/renewal/transfer**.

Pursuant to section 205 of *PHWA*, an applicant or a registration holder who is aggrieved by a decision

made by a council in relation to the issue, renewal, transfer, cancellation or suspension of a

registration is entitled, within 28 days of being notified of the decision made by the council, to apply to

the council for an internal review of that decision.

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**Part 8 – Registration process: prescribed accommodation and**

**registered premises**

Where a review of a council‟s decision is sought, the council must review the decision and can decide

to affirm, vary or revoke the decision. Councils must give written reasons of the decision that they

make on review and state to the applicant for review that they are entitled to apply to the Victorian

Civil and Administrative Tribunal (“**VCAT**”) under section 207 to have that decision further reviewed.

Councils are taken to have affirmed the decision made if the council has not determined an

application for review within 28 days of receiving the application or within the period of time that the

council and applicant agree to for the review of the decision.

Applications for review (in VCAT) must be made within 28 days of:







notification of the decision;

notification of any council review of the decision;

receipt of a statement of reasons or a refusal to provide reasons.

**Action Item 12**

Establish internal review policies/procedures to respond to requests for the review of registration

decisions.

Councils need to have internal review policies and procedures in place to respond to requests for the

review of a decision made in relation to registration.

**8.4**

**Certificate of registration**

**Action Item 13**

Prepare new certificates of registration to reflect registration under the *PHWA*.

Councils need to prepare new certificates of registration that reflect registration under the *PHWA*.

Certificates of registration need to be replaced to incorporate references to and requirements of the

*PHWA* and the *Public Health and Wellbeing Regulations 2009*. Existing registrations remain valid

until expiry.

**Appendices 12** and **13** are **templates for certificate of registration for prescribed**

**accommodation** and **registered premises** respectively.

Registration remains in place until it expires or is earlier cancelled or suspended. Renewal of

registration is required upon the expiry of that registration as determined by the council (maximum

term of 3 years).

Councils need to come to a view regarding time of registration. A standard 3 year grant with lesser

periods is valid; special circumstances could be considered.

Councils can issue a replacement certificate of registration if a certificate is lost, stolen or destroyed.

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**Part 9 – Investigation: powers of entry, search powers, after entry**

**powers and procedures**

**9**

**9.1**

**INVESTIGATION: POWERS OF ENTRY, SEARCH POWERS, AFTER ENTRY POWERS**

**AND PROCEDURE**

**Overview**

**Action Item 14**

Authorised officers for the purposes of the *PHWA* need to become familiar with the provisions of the

*PHWA* which take effect on 1 January 2010 concerning:







power to enter premises;

procedures to follow in obtaining entry to premises; and

powers they may exercise after entry.

Authorised officers have powers under the *PHWA* to take steps to ensure compliance with parts of the

Act and powers to investigate whether there is a breach of the Act or *Public Health and Wellbeing*

*Regulations 2009*.

The powers and procedures for entry into premises differ from the existing powers and procedures

under the *Health Act* in that they are more specific as to what exactly an authorised officer must do

and what authorised officers can do.

The powers of authorised officers to enter premises and to exercise search powers was the subject of

a review by the Victorian Parliament‟s Law Reform Committee. The resulting report on the powers of

entry, search, seizure and questioning by authorised persons was tabled in Parliament on 30 May

2002.

In line with this report, the *PHWA* sets out more clearly the powers of authorised officers, specifically:







the situations in which an authorised officer may enter premises has been made clearer;

procedures that authorised officers must follow when entering premises; and

powers that authorised officers may exercise after obtaining entry.

Forthcoming guidance material and training seminars for EHOs will explain the powers of authorised

officers in detail.

**9.2**

**Complaints and appeals**

**Action Item 15**

Establish a system for investigating, reviewing and responding to complaints which arise from the

exercise of an authorised officer‟s power.

A person can now complain about how an authorised officer has exercised one of his or her powers.

The *PHWA* does not prescribe the structure or requirements of complaint handling, however councils

must consider matters such as natural justice, procedural fairness and accessibility to the complaints

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**Part 9 – Investigation: powers of entry, search powers, after entry**

**powers and procedures**

process for culturally and linguistically diverse communities and for people with a disability. A council

must investigate any complaint made and provide a written report on the results of the investigation to

the person who made the complaint (section 185 of the *PHWA*).

The Victorian Ombudsman‟s office has produced a guide for the Victorian public sector setting out the

basic principles and components to be considered in the design of a complaints system. This can be

found at [http://www.ombudsman.vic.gov.au/www/html/93-foreward.asp.](http://www.ombudsman.vic.gov.au/www/html/93-foreward.asp)

It is not necessary for councils to utilise this guide, but councils can use it for the purpose of

establishing a complaints system. The Ombudsman‟s guide includes an audit tool for councils that

wish to review existing systems in the lead up to the 1 January 2010 introduction of the Act.

The Ombudsman has the power to enquire into or investigate any matter relating to an action taken or

not taken, by an authorised officer (section 186 of the *PHWA*).

Councils must have in place a system for investigating, reviewing and responding to complaints which

arise from the exercise of an authorised officer‟s power. In establishing this system councils must

consider matters such as natural justice, procedural fairness and accessibility to the complaints

process for culturally and linguistically diverse communities and for people with a disability.

**9.3**

**Notices**

**Action Item 16**

Adopt:

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

a receipt for the seizure of a thing by an authorised officer;

a notice of entry as required under section 172 of the *PHWA*.

The powers granted to authorised officers under the *PHWA* allow entry onto premises for various

reasons and once on premises, authorised officers are able to exercise various powers which are

discussed in detail in the forthcoming guidance material and training seminars.

Councils need to adopt a receipt for the seizure of a thing or sample taken by an authorised officer as

required under section 177 of the *PHWA* and a notice of entry as required under section 172 of the

*PHWA*, both of which councils will be required to issue from time to time when authorised officers are

exercising their powers.

**Appendix 16** contains a **template receipt for the seizure of a thing or a sample taken** that

councils may adapt and use.

**Appendix 17** contains a **template notice of entry** that councils may adapt and use.

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**Part 10 – Enforcement: improvement notices; prohibition notices;**

**infringement notices**

**10**

**10.1**

**ENFORCEMENT: IMPROVEMENT NOTICES; PROHIBITION NOTICES; INFRINGEMENT**

**NOTICES**

**Improvement Notices and Prohibition Notices**

**Action Item 17**

Councils and council officers to be aware of the situations after 1 January 2010 of when they can

issue an improvement notice or a prohibition notice.

Councils to ensure relevant council officers have access to prohibition and improvement notices.

The ability of councils to issue an improvement notice or a prohibition notice under section 194 is a

new function of councils.

Under the *Health Act* councils were only able to issue a notice to abate a nuisance. Improvement and

prohibition notices are broader than notices to abate in that a council may issue one of these notices:





in relation to any breach of a provision of the *PHWA* or *Public Health and Wellbeing*

*Regulations 2009*, administered by the council; and

in respect of nuisances.

A council can issue an improvement notice or a prohibition notice if the council believes that:





a person has contravened a provision of the *PHWA* or *Public Health and Wellbeing*

*Regulations 2009* administered by the council in circumstances that mean that it is likely that

the contravention is continuing or will re-occur; or

a person is likely to contravene a provision of the *PHWA* or *Public Health and Wellbeing*

*Regulations 2009* administered by the council.

An improvement notice can require a person to remedy a contravention or likely contravention, or

remedy the matters causing the contravention or likely contravention.

A prohibition notice can prohibit the carrying on of an activity altogether or the carrying on of an

activity in a specified way until a point in time when the council has certified in writing that the

contravention has ceased or that the likelihood of the contravention occurring has passed.

An improvement notice or a prohibition notice must:

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





state the grounds on which it is issued;

specify the provision of the Act or *Public Health and Wellbeing Regulations 2009* that the

council believes has been or is likely to be contravened;

specify the actions or measures that the person is required to take and the timeframe within

which the actions or measures are to be completed;

set out the penalty for non-compliance:

o

120 penalty units (a natural person); or



o 600 penalty units (body corporate); and

state that the issue of the improvement notice or the prohibition notice does not affect any

legal proceedings in relation to an offence under the Act or the *Public Health and Well Being*

*Regulations 2009* which is related to the purpose for which the notice was issued.

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**Part 10 – Enforcement: improvement notices; prohibition notices;**

**infringement notices**

A council can apply to a Magistrates‟ Court for an injunction:





**10.1.1**

compelling a person to comply with an improvement notice or prohibition notice; or

restraining a person from contravening an improvement notice or a prohibition notice

(section 196 of the *PHWA*)

**Nuisance**

There are special provisions concerning improvement notices or prohibition notices issued for the

purposes of a nuisance enabling a council to issue proceedings in a Magistrates‟ Court. These

provisions are summarised in the table below.

**Situation in respect of**

**Remedy**

**Section of**

**nuisance**

**Person served with**

**improvement notice or**

**prohibition notice has not**

**complied**

The Magistrates‟ Court on an application made by

the council:

 can summon the person to appear before the

Court;

 must, if satisfied that the nuisance is likely to

recur, order that the person comply with the

notice and/or carry out works to prevent the

recurrence of the nuisance.

**Act**

**Person served with**

**improvement notice or**

**prohibition notice and**

**nuisance is abated but**

**council is of the opinion that**

**the nuisance is likely to recur.**

**10.1.2**

**Appeal**

If the Magistrates‟ Court has made an order, the

council can:

 enter the land to which the order relates and

abate the nuisance and do whatever is

necessary to give effect to the order; and

 recover the costs and expenses incurred in

giving effect to the order.

It is an offence for a person not to comply with an

order of the Magistrates‟ Court.

Section 197

A person who has been served an improvement or prohibition notice can appeal to a Magistrates‟

Court within 21 days after they are served with the notice. The Magistrates‟ Court must reconsider

the decision to issue the notice and is entitled to hear any relevant evidence (section 208 of the

*PHWA*).

**Appendix 5** contains a **template improvement notice** and **Appendix 6** contains a **template**

**prohibition notice**.

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**Part 10 – Enforcement: improvement notices; prohibition notices;**

**infringement notices**

**10.2**

**Infringement Notices**

**Action Item 18**

Councils and council officers to be aware of situations in which infringement notices for offences

under the *PHWA* or the *Public Health and Wellbeing Regulations 2009* apply.

Council officers responsible for processing infringements to be aware of the process.

A council is entitled pursuant to section 209 of the *PHWA* to *serve* an infringement notice on any

person that the council has reason to believe has committed one of the “infringeable” offences.

The offences in respect of which a council is entitled to issue an infringement notice are prescribed in

Schedule 8 of the *Public Health and Wellbeing Regulations 2009* together with the penalty that

applies.

The offences for which an infringement notice may be issued by a council are identified in the tables

below in Part 10.3 of this Toolkit.

A **template infringement notice** is included in **Appendix 7**.

The form of infringement notice used by a council must comply with section 13 of the *Infringements*

*Act 2006* (Vic.) and regulation 8 of the *Infringements (Reporting and Prescribed Details and Forms)*

*Regulations 2006* (Vic.).

**10.3**

**Prosecution for offences against the Act**

**Action Item 19**

Councils and council officers to be aware of how councils can prosecute for a breach of the *PHWA*

and *Public Health and Wellbeing Regulations 2009*.

Pursuant to section 219 of the *PHWA*, a council or an authorised officer of a council is entitled to bring

proceedings against a natural person or body corporate:





that has committed an offence against Part 6, 9 or 10 of the *PHWA* or the parts of the *Public*

*Health and Wellbeing Regulations 2009* relevant to councils;

that has committed an offence relating to an improvement notice or a prohibition notice

issued by the council.

Prosecution for these offences takes place in the Magistrates‟ Court. As an alternative to prosecution,

offences listed in Schedule 8 of the *Public Health and Wellbeing Regulations 2009* prescribe the

ability of a council to issue an infringement notice for a breach which is discussed above in Part 10.2.

As to the procedure for issuing proceedings for a prosecution in the Magistrates‟ Court, legal advice

should be sought.

The table below lists and summarise all the offences specifically relating to the functions of councils

under the *PHWA* and the *Public Health and Wellbeing Regulations 2009* for which a council is entitled

to commence proceedings for a breach, and specifies maximum penalty. Those offences for which an

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**Part 10 – Enforcement: improvement notices; prohibition notices;**

**infringement notices**

infringement notice is also capable of being issued by a council are identified together with the

infringement penalty.

The penalties for the offences are stated in penalty units. A penalty unit represents an amount of

money that is varied from time to time, typically each financial year. One penalty unit gazetted in the

*Victoria Government Gazette* on 15 May 2009 taking effect on 1 July 2009 is $116.82. A penalty of

60 penalty units for example currently equals $7,009.20.

Reference in the tables below to “person” means a natural person, and reference to “Corporation”

means a body corporate (e.g. company, incorporated association).

**Important note:** at the time of writing, the *Public Health and Wellbeing Regulations* were in draft

format only. The final Regulations as enacted may differ.

**Offences in the *PHWA* Relevant to Councils**

**Section**

**of Act**

**61**

**Summary of Offence**

Offence of causing a nuisance.

**Maximum penalty**

**(prosecution)**

Person: 120 penalty units

**Infringement**

**Notice (Yes / No)**

No

Corporation: 600 penalty units

**67**

Failure to register prescribed

accommodation that must be

registered.

Person: 60 penalty units

Corporation: 300 penalty units

Yes

Person: 4 penalty

units

Corporation: 10

penalty units

**69**

Failure to register business

premises that must be registered.

Person: 60 penalty units

Corporation: 300 penalty units

Yes

Person: 12 penalty

units

Corporation: 10

penalty units

**75**

**176**

Failure to comply with condition of

registration of accommodation or

business premises

Failure without reasonable excuse

to comply with an authorised

officer‟s direction to:



-1produce a document or part

Person: 60 penalty units

Corporation: 300 penalty units

Person: 60 penalty units

Corporation: 300 penalty units

No

No

of a document located on

premises;





operate equipment to access

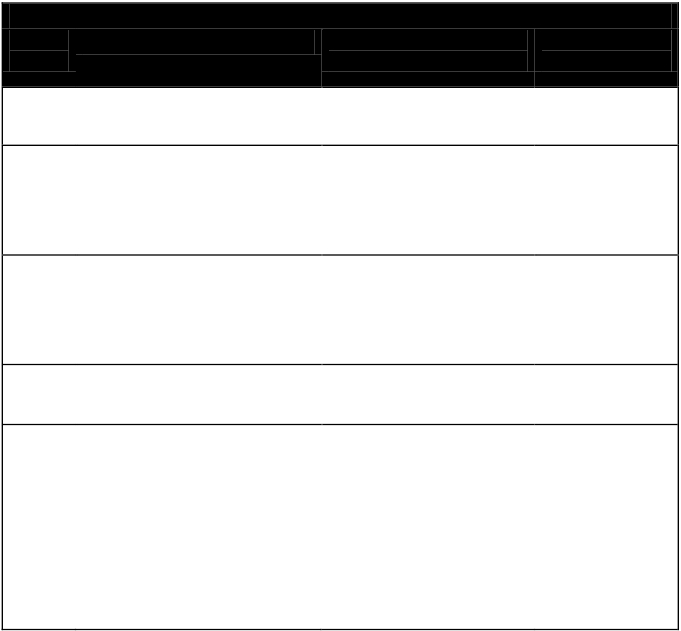
information from that

equipment

answer any questions

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**Part 10 – Enforcement: improvement notices; prohibition notices;**

**infringement notices**

**Offences in the *PHWA* Relevant to Councils**

**Section**

**of Act**

**183**

**Summary of Offence**

Offence of hindering or obstructing

**Maximum penalty**

**(prosecution)**

60 penalty units

**Infringement**

**Notice (Yes / No)**

No

an authorised officer who is

exercising a power under the Act or

regulations.

**184**

Offence of impersonating or

60 penalty units

No

holding out to be an authorised

officer

**193**

Offence of refusing or failing

without a reasonable excuse to

comply with a direction given to a

Person: 120 penalty units

Corporation: 600 penalty units

No

person or a requirement made of a

person by an authorised officer

exercising under authority a public

health risk power.

**194**

**197**

Failure to comply with an

improvement notice or a prohibition

notice

Failure to comply with a

Magistrates‟ Court order in relation

to compliance with an improvement

Person: 120 penalty units

Corporation: 600 penalty units

Person: 120 penalty units

Corporation: 600 penalty units

No

No

notice or prohibition notice.

**203**

Offence of refusing or failing

without a reasonable excuse to

comply with a direction given to a

Person: 120 penalty units

Corporation: 600 penalty units

No

person or a requirement made to a

person by an authorised officer

under authority who is exercising

an emergency power.

**Offences in the *Public Health and Wellbeing Regulations 2009* Relevant to Councils**

**Reg No.**

**Summary of Offence**

**Maximum penalty**

**Infringement**

**Notice (Yes /**

**No)**

**11**

Failure to comply with direction in

20 penalty units

No

relation to mosquito breeding.

**16(1)**

Failure to comply with requirements

20 penalty units

No

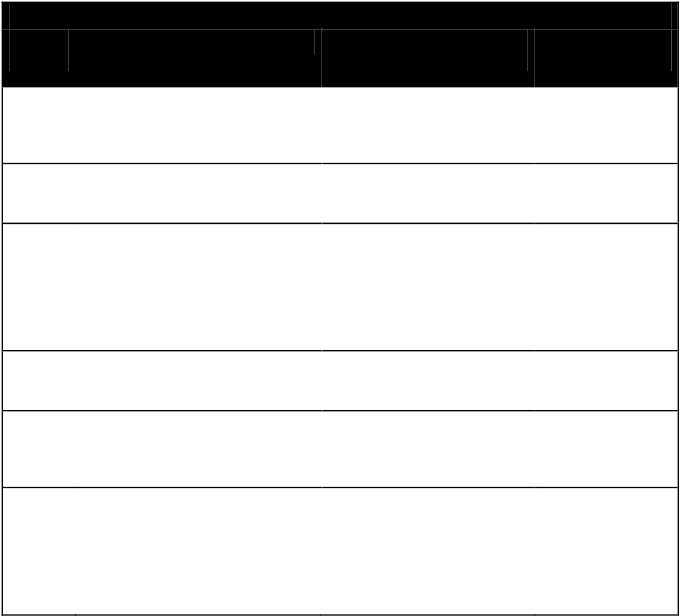
for maximum number of persons in

each bedroom in prescribed

accommodation.

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**Part 10 – Enforcement: improvement notices; prohibition notices;**

**infringement notices**

**Offences in the *Public Health and Wellbeing Regulations 2009* Relevant to Councils**

**Reg No.**

**Summary of Offence**

**Maximum penalty**

**Infringement**

**Notice (Yes /**

**No)**

**16(2)**

A room in prescribed

accommodation must not be used as

a bedroom if it has a floor area of

20 penalty units

Yes

4 penalty units

less than 7.5 square metres

**17**

Failure to maintain prescribed

20 penalty units

No

accommodation (a) in good working

order; and (b) in a clean, sanitary

and hygienic condition; and (c) in a

good state of repair.

**18(1)**

Failure of proprietor of prescribed

20 penalty units

No

accommodation to ensure that each

bedroom and any toilet or bathroom

is cleaned after the bedroom is

vacated for re-use by another

occupier.

**18(2)**

Failure of proprietor of prescribed

20 penalty units

No

accommodation to ensure that all

bed linen is changed with clean linen

(a) at least weekly; and (b) before

the accommodation is vacated for

re-use by another occupier.

**19(1)**

Failure of proprietor of prescribed

accommodation to provide a

continuous and adequate supply of

20 penalty units

Yes

4 penalty units

water to all toilet, bathing, kitchen,

laundry and drinking water facilities.

**19(2)**

Failure of proprietor of prescribed

20 penalty units

No

accommodation to provide a

continuous and adequate supply of

hot water to all bathing, laundry and

kitchen facilities.

**20**

Failure of proprietor of prescribed

20 penalty units

No

accommodation to ensure that

drinking water supplied is fit for

human consumption if the drinking

water was not supplied to the

proprietor by a water supplier.

**21**

Failure of proprietor of prescribed

20 penalty units

No

accommodation to ensure that all

sewage and waste water is

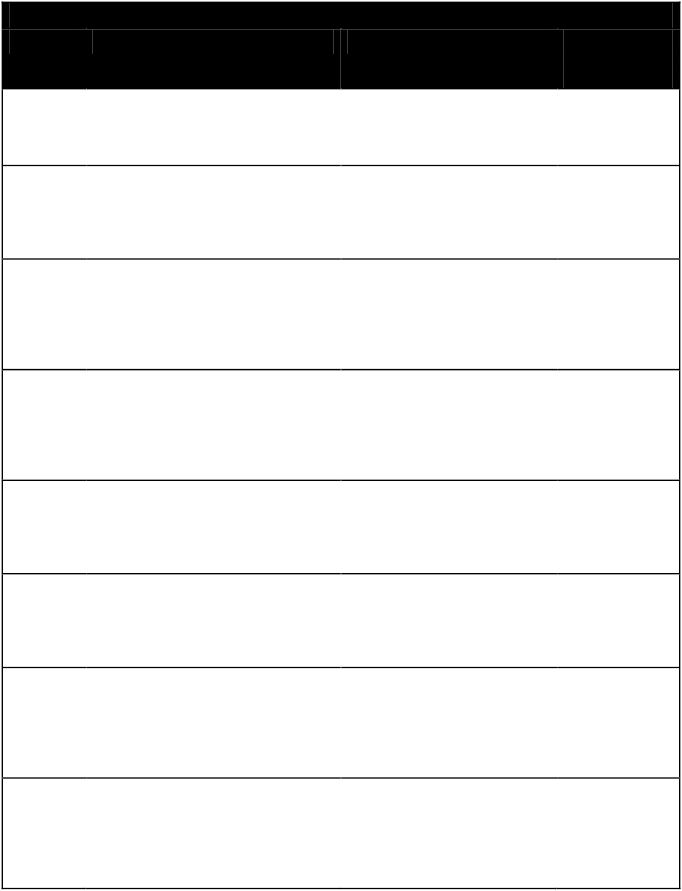
discharged (a) to a reticulated

sewerage system; or (b) to an

approved septic tank system.

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**Part 10 – Enforcement: improvement notices; prohibition notices;**

**infringement notices**

**Offences in the *Public Health and Wellbeing Regulations 2009* Relevant to Councils**

**Reg No.**

**Summary of Offence**

**Maximum penalty**

**Infringement**

**Notice (Yes /**

**No)**

**22**

Failure of proprietor of prescribed

20 penalty units

No

accommodation to provide sufficient

vermin-proof receptacles for the

collection and storage of all rubbish;

and/or to ensure that the receptacles

are regularly cleaned.

**23**

Failure of proprietor of prescribed

20 penalty units

No

accommodation to ensure that all

refuse is regularly removed by a

refuse collection service.

**24**

Failure of proprietor of prescribed

accommodation to provide at least

one toilet, one bath or shower and

20 penalty units

Yes

4 penalty units

one wash basin for every 10 persons

or fraction of that number of persons

occupying that accommodation.

**25(1)**

Failure of proprietor of prescribed

20 penalty units

No

accommodation where not exempted

to keep a register recording the

names and addresses of persons

occupying the accommodation and

the dates of their arrival or

departure.

**25(2)**

Failure of proprietor of prescribed

20 penalty units

No

accommodation to retain register for

at least 12 months after the last

entry in the register.

**26**

Offence of proprietor of prescribed

accommodation stating or causing to

be stated in an advertisement, notice

20 penalty units

Yes

4 penalty units

or sign issued or put up that the

premises are registered or approved

for a class of accommodation that

differs to that set out in the certificate

of registration.

**27**

Failure of proprietor or occupier of

20 penalty units

No

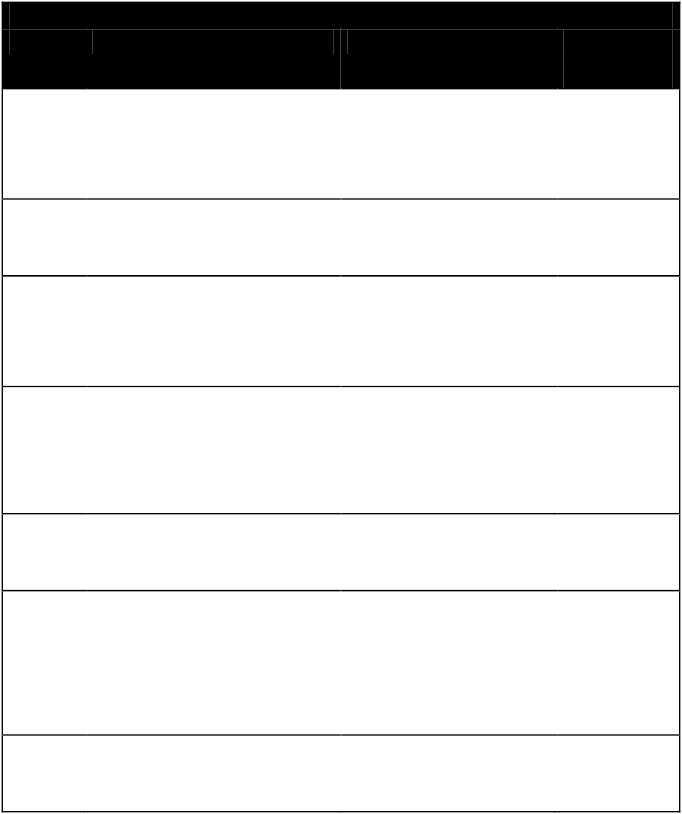
registered premises to ensure that

the premises are kept in a clean and

hygienic state.

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**Part 10 – Enforcement: improvement notices; prohibition notices;**

**infringement notices**

**Offences in the *Public Health and Wellbeing Regulations 2009* Relevant to Councils**

**Reg No.**

**Summary of Offence**

**Maximum penalty**

**Infringement**

**Notice (Yes /**

**No)**

**28**

Failure of proprietor or occupier of

20 penalty units

No

registered premises to ensure:

(a) that an article intended for

penetrating skin is sterile at the

time of use; and

(b) an article which has penetrated

the skin of a person or is

contaminated with blood is:

(i) destroyed or disposed of

immediately in a manner to

prevent infection of another

person; or

(ii) sterilised in accordance with

the requirements set out

before it is used on another

person; and

(c) any article is clean before it is

used on another person.

**29**

Failure of the proprietor or occupier

20 penalty units

No

of registered premises to ensure that

each person in the business who is

engaged in carrying out any

hairdressing or beauty therapy or

similar process or any tattooing, ear

piercing, or other process involving

skin penetration (a) has clean hands;

and (b) has no exposed cuts,

abrasions or wounds before carrying

out the process.

**30**

Failure of proprietor or occupier of

20 penalty units

No

registered premises to ensure that

easily accessible hand washing

facilities are available for use by

staff.

**31(1)**

Failure of proprietor or occupier of

20 penalty units

No

registered premises that provides

tattooing, ear piercing, body piercing

or any other process involving the

penetration of the skin in a living

human to provide information to the

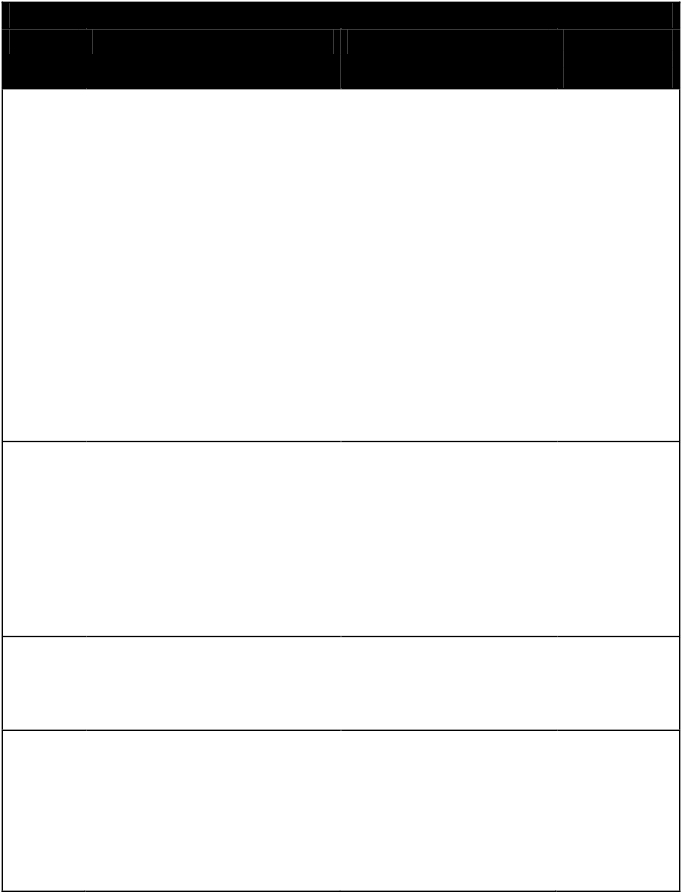
person about the transmission of

infectious diseases before any

process is carried out.

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**Part 10 – Enforcement: improvement notices; prohibition notices;**

**infringement notices**

**Offences in the *Public Health and Wellbeing Regulations 2009* Relevant to Councils**

**Reg No.**

**Summary of Offence**

**Maximum penalty**

**Infringement**

**Notice (Yes /**

**No)**

**31(1)**

Failure of proprietor or occupier of

20 penalty units

No

registered premises that provides

tattooing, ear piercing, body piercing

or any other process involving the

penetration of the skin to ensure that

information provided to a person

about the transmission of infectious

diseases is not misleading.

**32**

Failure of proprietor or occupier of

20 penalty units

No

registered premises that provides

tattooing or body piercing to ensure

that the name and address of each

client is recorded and stored at the

premises for a period of 12 months

following the date of the last body

piercing or tattooing procedure

undertaken by the client at the

premises.

If a person is found guilty of an offence, the council is entitled to seek reimbursement of the costs

(including legal costs) incurred by the council as a result of the contravention (section 228 of *PHWA*).

A person convicted of an offence in the Magistrates‟ Court is entitled to appeal that conviction to the

County Court and beyond.

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**Part 11 – Immunisation**

**11**

**IMMUNISATION**

**Action Item 20**

Councils to update immunisation status certificates, removing reference to the *Health Act* and its

regulations made to include references to the *PHWA* and the *Public Health and Wellbeing*

*Regulations 2009*.

The role of councils in relation to the immunisation of children has been re-enacted. The substantial

change made by the *PHWA* is in relation to the administration of immunisation status certificates.

Councils need to update their immunisation status certificates, removing references to the *Health Act*

and the regulations made under the *Health Act* to include references to the *PHWA* and references,

where applicable, to the *Public Health and Wellbeing Regulations 2009*.

The *PHWA* refers to vaccination against a „vaccine-preventable disease‟ as opposed to a „prescribed

infectious disease‟. This change of terminology results in no practical change. Vaccine-preventable

diseases are listed in regulation 71 of the *Public Health and Wellbeing Regulations 2009*.

As is the case with the current law under Part VII of the *Health Act*, persons authorised by councils

have the power to issue immunisation status certificates which certify information about a child‟s

immunisation status. A significant change made by the *PHWA* however is that immunisation status

certificates issued by the Australian Childhood Immunisation Register (ACIR) are now acceptable in

addition to those issued by councils.

Under regulation 8 of the *Health (Immunisation) Regulations 1999*, councils are currently required to

keep records of the immunisation status certificates that they issue. This requirement has not been

re-enacted.

Council immunisation status certificates are capable of being issued by an authorised person from a

council to a child‟s parent if evidence concerning a child‟s immunisation status is given for each

vaccine preventable disease and the child resides in the municipal district of the council or attends

school in the municipal district of the council.

The form of a council immunisation status certificate remains unchanged except references to the

*Health Act* and any regulations made under the *Health Act* in these certificates will no longer be

current and should be changed.

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**Part 12 – Transitional arrangements**

**12**

**TRANSITIONAL ARRANGEMENTS**

**Action Item 21**

Councils need to be prepared for the transitional period to the new legislation.

Until after the commencement of the *PHWA* and the *Public Health and Wellbeing Regulations 2009*

on 1 January 2010, the *Health Act* and any regulations made under the *Health Act* continue to apply.

**12.1**

**Registration of accommodation and business premises**

Any application for the registration, renewal or transfer of prescribed accommodation or business

premises *made and processed on or before 31 December 2009* must be made under the *Health Act*.

Any application for the registration, renewal or transfer of accommodation or premises *made but not*

*processed until after 1 January 2010* must be made in accordance with the *PHWA*.

Section 243(4) of the *PHWA* provides that any accommodation or business premises registered

before the commencement of the Act (1 January 2010) is taken to be registered as if it were

registered under the *PHWA*. The terms and conditions of any registration that comes under the ambit

of the *PHWA* on the commencement of this Act do not change by virtue of the registration being taken

to be made under the *PHWA*.

After 1 January 2010 the commencement of any enforcement mechanism, including powers of entry

in relation to the registration of accommodation or premises is subject to the provisions of the *PHWA*

regardless of whether the registration in issue was initially made under the *Health Act* or the *PHWA*.

**12.2**

**Enforcement matters**

Any enforcement mechanism concerning provisions of the *Health Act* such as the issue of a notice to

abate a nuisance or legal proceedings commenced in a Magistrates‟ Court prior to the

commencement of the *PHWA* on 1 January 2010 remain in place and subject to the provisions of the

*Health Act*.

Enforcement mechanisms under the *PHWA* can be exercised from 1 January 2010 onwards. For

example, instead of issuing an abatement notice; an improvement notice or a prohibition notice could

now be issued if a nuisance is found to exist.

**12.3**

**Documents and websites**

**Action Item 22**

Councils should ensure all documents, websites or other written material, which refer to the *Health*

*Act* and its regulations, are reviewed and, where appropriate, references replaced with references to

the *PHWA* and *Public Health and Wellbeing Regulations 2009*.

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**Part 12 – Transitional arrangements**

In preparing for the commencement of the *PHWA* on 1 January 2010, councils should ensure all

documents, websites or other written materials which refer to the *Health Act* are reviewed and where

appropriate references to the *Health Act* and/or references to Regulations made under the *Health Act*

should be replaced with references to the *PHWA* and/or the *Public Health and Wellbeing Regulations*

*2009*.

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**Part 13 – Amendments to the Food Act**

**13**

**AMENDMENTS TO THE FOOD ACT**

**Action Item 23**

Councils to be aware of the changes to the *Food Act* by the *PHWA.*

Consider resolution regarding appointment under the new section 59C of the *Food Act* of persons

authorised (as opposed to authorized officers).

Consider changes to the *Food Act* made by the *PHWA* in conjunction with the 2010 broader *Food Act*

changes.

Councils and authorised officers need to be aware of the changes to the *Food Act* made by the

*PHWA* which commence on 1 January 2010. Of these changes none appear to require any new

delegations. A new section 59C (inserted in the *Food Act*) relates to a “person authorised by the

Council” who may act to require compliance with directions. This is not however a normal delegation

under the *Food Act* or the same as an “authorized officer”. A resolution authorising the Chief

Executive Officer or another officer for this purpose is appropriate.

Refer to Part 4 of this Toolkit for a full discussion regarding the appointment of authorised officers

under the *PHWA* and the *Food Act*, and the steps that must be taken regarding identity cards.

**Note**: further and significant changes to the *Food Act* have been made by the *Food Amendment*

*(Regulation Reform) Act 2009* which are due to commence on a date yet to be proclaimed (expected

to be some time in 2010). Councils should seek separate and appropriate guidance in respect of

these forthcoming changes.

The template delegations in the Appendices relating to the *PHWA* do not contemplate delegations

being made under the *Food Act*. Separate delegations need to be made which might be

contemplated by councils upon commencement of the changes made by the *Food Amendment*

*(Regulation Reform) Act 2009*.

The table below summarises the significant changes to the *Food Act* made by the *PHWA*.

**Section**

**of**

***PHWA***

**251**

**253**

**Change made to *Food Act***

The definition of an authorized officer in section 4(1) the *Food Act* is substituted to include

an EHO appointed by a council under section 29 of the *PHWA*.

Section 20(1) of the *Food Act* is substituted and replaced with new provisions. The major

change for councils is the addition of new subsections (1B) and (1C) enabling councils

under section 224(1) of the *Local Government Act 1989* to appoint a person to be an

authorized officer for the purposes of the *Food Act* if a person is suitably qualified or

trained to be appointed as an authorized officer.

Note : an EHO appointed under the *PHWA* is automatically an authorized officer for the

purposes of the *Food Act*. This new provision allows for the appointment of non-EHO

authorised officers.

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**Part 13 – Amendments to the Food Act**

**Section**

**Change made to *Food Act***

**of**

***PHWA***

This change needs to be reflected in instruments of appointment and delegations prepared

by councils relating to the *Food Act* for the appointment of any new non-EHO authorised

officers.

The discussion in Part 4 of this Toolkit outlines the matters councils need to consider in

appointing such an authorized officer under the *Food Act*. In summary-





it must be clear that the person needs to exercise the statutory powers and

functions of an authorised officer under that Act; and

the person must have suitable qualifications or training. This should relate not

only to the person‟s expertise about food safety, but also regarding their ability to

properly exercise those powers and functions.

It is recommended that councils generally await guidance material before appointing a

person as a (“non-EHO”) authorized officer, unless special circumstances exist.

**253**

**257**

**258**

Sections 20(3), 20(3A) and 20(4) of the *Food Act* are substituted and replaced with new

provisions.

The new provisions require authorized officers to be issued with identity cards. The same

requirements for identity cards for authorised officers under the *PHWA* apply - see Part 4

above of this Toolkit.

As is the case with the *PHWA*, before exercising any power under the *Food Act* an

authorized officer is now required to produce their identity card for inspection.

A new section 45AC is to be inserted in the *Food Act* which states that the “Secretary, a

council, an authorized officer or a member of the police force may bring proceedings for an

offence under this Act”.

This new section specifically clarifies the role of councils in enforcing the *Food Act.* It

means that instruments of appointment and delegations made by councils may need to be

altered to reflect this new section, if persons other than authorized officers are to bring

proceedings for *Food Act* offences.

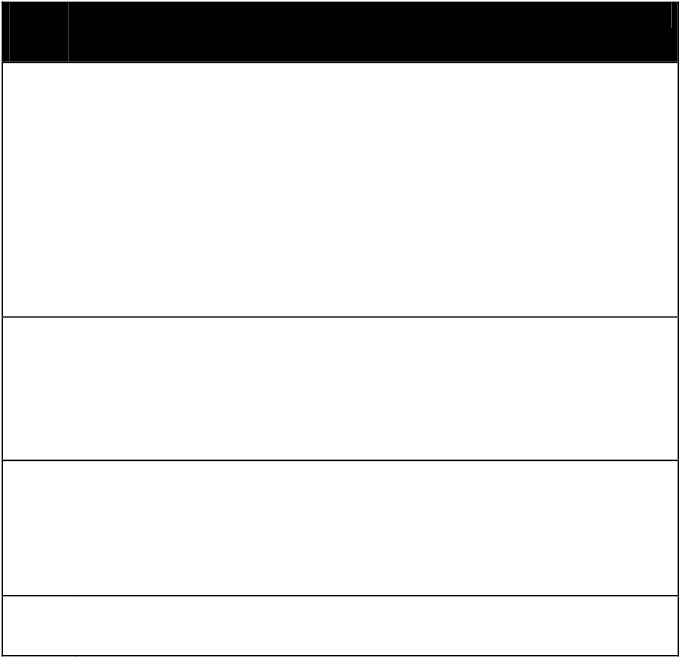
A new section 50AB is to be inserted in the *Food Act* which allows the Chief Executive

Officer of a council to sign an evidentiary certificate similar to those capable of being

prepared under the *PHWA*.

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**Part 13 – Amendments to the Food Act**

**Section**

**of**

***PHWA***

**261**

**Change made to *Food Act***

Section 59 of the *Food Act* is substituted and replaced with new sections. The current

section 59 incorporates provisions of the *Health Act* as forming part of the *Food Act*.

New section 59 of the *Food Act* creates an offence for a person to give false or misleading

statements to the Secretary, a council or an authorized officer.

New section 59A of the *Food Act* creates an offence for destroying or damaging records.

New section 59B of the *Food Act* concerns the validity and effect of notices, orders and

other documents issued where there is an error misdescription or irregularity.

New section 59C of the *Food Act* gives the Secretary or councils the power to take the

actions necessary to ensure compliance with directions made in relation to food premises

under sections 19 or 19B of the Act, and the Secretary or those authorised by the

Secretary (likely to be councils) the power to ensure compliance with orders under Part 7

of the Act (eg recalls). This section also provides a mechanism by which the Secretary

and/or councils are entitled to recover reasonable costs when ensuring compliance.

Instruments of appointment and delegations made by councils may need to be altered to

reflect these new sections. Further guidance material about this new provision will be

provided as part of the implementation of the broader *Food Act* reforms arising from the

*Food Amendment (Regulation Reform) Act 2009*.

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**Appendices**

**APPENDICES**

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**Appendix 1 - Template instrument of delegation**

**Appendix 1 - Template instrument of delegation**

**INSTRUMENT OF DELEGATION**

In exercise of the power conferred by section 98(1) of the *Local Government Act* 1989 (“**Act**”) the

**[insert council name]** (“**Council**”) has delegated to the member of Council staff holding, acting in or

performing the position of Chief Executive Officer of the Council (“the Chief Executive Officer”), the

powers, duties and functions set out in this Instrument of Delegation.

AND declare that

1

2

this Instrument of Delegation is authorised by a resolution of Council passed on

………………………………………….;

the Chief Executive Officer is delegated the power to:







determine any issue;

take any action; or

do any act or thing;

arising out of or connected with any duty imposed, or function imposed or power conferred,

on Council by or under:

2.1

2.2

the *Public Health and Wellbeing Act 2008* and any Regulation pursuant to that Act;

section 224 of the *Local Government Act 1989*.

3

this delegation:

3.1

3.2

3.3

comes into force immediately it is dated and the common seal of the Council is

affixed to this Instrument of Delegation;

remains in force until Council resolves to vary or revoke it;

must be exercised in accordance with any guidelines or policies which Council from

time to time adopts.

4

the member of the Council‟s staff occupying the position or title of or acting in the position of

Chief Executive Officer may delegate to a member of the Council‟s staff any of the powers,

duties or functions (other than the power of delegation conferred by section 98(3) of the Act)

which this Instrument of Delegation delegates to him or her.

DATED this

day of

20##

**[INSERT COUNCIL COMMON SEAL CLAUSE/PROVISION]**

***Note on template preparation:* This template does not provide for the delegation of council’s**

**powers under the *Food Act* to the Chief Executive Officer. See Part 4 of this Toolkit. The**

**delegation of council’s powers under the *Food Act* is a specific power of the Council which**

**means delegations under the *Food Act* must be made by the Council itself. Councils ought**

**therefore make separate resolutions (where required) conferring the delegation of powers**

**under the *Food Act* to appropriate officers. This does not apply to the appointment of**

**authorized officers under the *Food Act* which occurs in accordance with section 224 of the**

***Local Government Act 1989*.**

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**Appendix 2 - Template resolution of council approving a delegation**

**Appendix 2 - Template resolution of council approving a delegation**

**DRAFT RESOLUTION**

The **COUNCIL OF [insert Council name]** (“**Council**”) at its meeting of ………………... day of

……………………………………………….20## HEREBY RESOLVES:

1

2

3

4

5

6

Pursuant to the powers conferred by section 98(1) of the *Local Government Act 1989*, the

Council delegates to the member of Council‟s staff holding, acting in or performing the

position of Chief Executive Officer the powers, duties and functions as set out in the

Instrument of Delegation presented to this Council meeting and attached to this resolution

(“**Instrument of Delegation**”).

The delegations in the Instrument of Delegation come into force immediately upon the

affixing of the common seal of Council to the Instrument of Delegation and the dating of that

document, and the Council authorizes and directs those actions;

The functions, powers and duties of the Council which are delegated in the Instrument of

Delegation are subject to and must be exercised in accordance with any requirements, limits

and restrictions set out in the Instrument of Delegation;

The delegations set out in the Instrument of Delegation remain in force until the Council

resolves to vary or revoke same.

Pursuant to section 93(3) of the *Local Government Act 1989*, the delegations set out in the

Instrument of Delegation includes the power to further delegate those powers, duties and

functions to members of Council staff.

**[If required]**Pursuant to section 224 of the *Local Government Act 1989* to appoint the Chief

Executive Officer as:

6.1

6.2

an Authorised Officer for the purposes of *Public Health and Wellbeing Act 2008*;

an Authorized Officer for the purposes of the *Food Act 1984*.

**[AFFIX COUNCIL COMMON SEAL AND SIGN]**

***Notes on template preparation:* This draft resolution does not provide for existing instruments**

**of delegation concerning the *Health Act 1958* to be revoked.**

**Section 242(2) of the *PHWA* is a savings provision that has the effect of providing that all**

**delegations made under the *Health Act* remain in place as if the *Health Act* had not been**

**repealed, but are subject to the *PHWA*. This savings provision allows all ongoing or residual**

**matters concerning the *Health Act* to remain unaffected.**

**Councils may (or may not) choose to revoke the *Health Act* delegations at some appropriate**

**future date once all residual matters are finalised.**

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**Appendix 3 - Template instrument delegation by CEO**

**Appendix 3 - Template instrument of delegation by CEO**

**INSTRUMENT OF DELEGATION**

This Instrument of Delegation is made by the Chief Executive Officer who is authorised to make this

delegation by a resolution of Council passed on …………………………..;

In exercise of the power conferred by section 98(3) of the *Local Government Act* 1989 (“**Act**”) the

Chief Executive Officer of **[insert Council name]** (“**Council**”) delegates to the member of the

Council‟s staff holding, acting in or performing the position or office set out in the left column of the

Table in this Instrument of Delegation the power to:

(a)

(b)

(c)

determine any issue;

take any action; or

do any act or thing –

arising out of or connected with any duty imposed, or function imposed or power conferred on Council

by or under the relevant Part, Division, Section or clause of the Act or Regulation specified in the

middle column of the Table in this Instrument of Delegation,

AND declare that

7

this delegation:

7.1

7.2

7.3

7.4

comes into force on 1 January 2010;

remains in force until varied or revoked;

**[delete if not applicable]**must be exercised in accordance with any requirements,

limits and restrictions specified in the right column of the Table in this Instrument of

Delegation;

must be exercised in accordance with any direction, guideline or policy which the

Chief Executive Officer or Council from time to time makes or adopts.

**TABLE**

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|  |  |  |
| --- | --- | --- |
| **Office** | **Legislative/Regulatory Provision** | **Limitations** |
| ***Environmental health***  ***officer - Public Health***  ***and Wellbeing Act***  ***2008*** | ***Example only***  *Public Health and Wellbeing Act 2008*:  Sections: 24, 26, 27, 60, 62, 64, 65, 66,  71, 73, 74, 75, 76, 78, 147, 148, 181, 182,  185, 194, 196, 197, 205, 209, 219, 221,  228, 229, 230, 231. |  |
| ***Authorised officer –***  ***Public Health and***  ***Wellbeing Act 2008*** |  |  |

**Appendix 3 - Template instrument delegation by CEO**

DATED this

**APPROVED** by the **CHIEF EXECUTIVE**

**OFFICER**:

)

)

day of

20##

Chief Executive Officer

***Notes on template preparation:* Councils must decide which powers and to which level of**

**seniority such powers should be delegated. For example powers may be delegated to an**

**environmental health officer whereas an authorised officer may not require a full suite of**

**delegations. In some cases the legislated powers of an “authorised officer” will be adequate**

**and no delegation will be required.**

**This template instrument of delegation does not allow for the Chief Executive Officer to make**

**delegations of council’s powers under the *Food Act*. As discussed in Part 4 of this Toolkit, the**

**delegation of powers under the *Food Act* is a power of the Council itself.**

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|  |  |  |
| --- | --- | --- |
| **Office** | **Legislative/Regulatory Provision** | **Limitations** |
| ***Director of [Council***  ***title]*** |  |  |
| ***Manager of [Council***  ***title]*** |  |  |

**Appendix 4 - Template instrument of appointment of authorised**

**officer made under delegation**

**Appendix 4 - Template instrument of appointment of authorised officer made under**

**delegation**

**INSTRUMENT OF APPOINTMENT**

1

2

3

I am the Chief Executive Officer of the **[??]** Council (“**Council**”).

I am authorised to make the appointments and authorisations set out in this Instrument of

Appointment and Authorisation (“**Instrument**”) by the terms of an Instrument of Delegation

made by the Council pursuant to a resolution of the Council passed on ……….. day of

…………….. 20…….

By this Instrument:

3.1

3.2

3.3

I appoint the person named in the left column;

pursuant to the provision set out in the middle column;

to the position set out in the right column;

in the Table in this Instrument (“**Table**”), to undertake all steps necessary to carry out the

functions, powers or duties of the positions identified in the Table.

4

5

Dated

A reference to an Act in the Table 2 includes reference to any subordinate instrument made

under that Act.

This Instrument takes effect on 1 January 2010 and shall continue to have effect according to

its terms until otherwise amended, or revoked, by any subsequent instrument in writing made

pursuant to the authority of the Council.

**TABLE**

2009

**[insert name]**

Chief Executive Officer

**[??]** Council

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|  |  |  |
| --- | --- | --- |
| **Appointed/Authorised**  **person** | **Authorising**  **Provision** | **The position** |
| **[insert name/names]** | Section 224 - *Local*  *Government Act 1989* | The position of an **authorised officer** pursuant to  the provisions of the:  (a) *Local Government Act* 1989;  (b) *Public Health and Wellbeing Act 2008.* |
| **[insert name/names]** | Section 29 - *Public*  *Health and Wellbeing*  *Act 2008* | The position of an **environmental health officer**  pursuant to the provisions of the *Public Health*  *and Wellbeing Act* 2008**.** |
| **[insert name/names]** | Section 224 – *Local*  *Government Act 1989* | The position of an **authorized officer** pursuant to  the provisions of the *Food Act 1984*. |

**Appendix 5 - Template improvement notice**

**Appendix 5 - Template improvement notice**

**[COUNCIL LOGO/ID]**

***Section 194 Public Health and Wellbeing Act 2008 (Vic)***

**IMPROVEMENT NOTICE**

You, ...................................................................................................................................................... (name)**:**

have contravened ............ ....................................................................... **[specify breach of section**

***Public Health and Wellbeing Act*/Regulations]** in circumstances that make it likely that the

contravention is continuing or will re-occur; or

are likely to contravene ........................................................................................................**[section**

***Public Health and Wellbeing Act*/Regulations]**

**Grounds on which the issue of the Improvement Notice is based:** ..............................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**You are required to take the following actions/measures:** ...........................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

You must take the action/measures specified within............... days of the date of this notice.

If you do not take the actions and measures specified, you will have contravened this Improvement Notice and

such a contravention carries a penalty of 120 units (for a natural person) or 600 penalty units (for a corporation)

**IMPORTANT NOTES**

You may appeal against the issue of this Improvement Notice to the Magistrates‟ Court. You must do so within

21 days after this notice is served on you. Section 208 of the *Public Health and Wellbeing Act 2008* (Vic)

applies.

If you appeal against the issue of this Improvement Notice you are still required to take the actions/measures

required until the Magistrates‟ Court makes a determination on the appeal. Section 208 of the *Public Health and*

*Wellbeing Act 2008* (Vic) applies.

The issue of this Improvement Notice does not affect any proceeding for an offence against the *Public Health*

*and Wellbeing Act 2008* (Vic) in connection with any matter in respect of which this Improvement Notice is

issued. Section 195 of the *Public Health and Wellbeing Act 2008* (Vic) applies.

**Signature :** ……….……........................................................................ **Date:** ………….…………………………

**[Council Delegate]**

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**Appendix 6 - Template prohibition notice**

**Appendix 6 - Template prohibition notice**

***Section 194 Public Health and Wellbeing Act 2008 (Vic)***

**[COUNCIL LOGO/ID]**

**PROHIBITION NOTICE**

**You,** ....................................................................................................................................................... (name)**:**

have contravened .....................................................................................**[specify relevant**

**section/Regulation breached]** in circumstances that make it likely that the contravention is continuing

or will re-occur; or

are likely to contravene ........................................................................................................**[specify**

**relevant section/Regulation breached]**

**Grounds on which the issue of the Prohibition Notice is based:** .........................................................

.........................................................................................................................................................

.........................................................................................................................................................

**You are prohibited from:** ...................................................................................................................................

..............................................................................................................................................................................

**Period of prohibition:**

\*Permanent/\***[insert date or event]**.................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**Failing to comply with this notice carries a penalty of 120 units (for a natural person) or 600 penalty**

**units (for a corporation).**

**IMPORTANT NOTES**

You may appeal against the issue of this Prohibition Notice to the Magistrates‟ Court. You must do so within 21

days after this notice is served on you. Section 208 of the *Public Health and Wellbeing Act 2008* (Vic) applies.

If you appeal against the issue of this Prohibition Notice you must still comply with this notice until the

Magistrates‟ Court makes a determination on the appeal. Section 208 of the *Public Health and Wellbeing Act*

*2008* (Vic) applies.

The issue of this Prohibition Notice does not affect any proceeding for an offence against the *Public Health and*

*Wellbeing Act 2008* (Vic) in connection with any matter in respect of which this Prohibition Notice is issued.

Section 195 of the *Public Health and Wellbeing Act 2008* (Vic) applies.

**Signature :** ……….……........................................................................ **Date:** ………….…………………………

**[Council Delegate]**

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**Appendix 7 - Template infringement notice**

**Appendix 7 - Template infringement notice**

***Section 209(2) Public Health and Wellbeing Act 2008 (Vic)***

**[COUNCIL LOGO/ID]**

**INFRINGEMENT NOTICE**

**TO:**

**ADDRESS:**

**YOU HAVE COMMITTED AN OFFENCE UNDER [RELEVANT SECTION/REGULATION] OF [THE *PUBLIC***

***HEALTH AND WELLBEING ACT 2008 (Vic)/*RELEVANT REGULATIONS]**

**You must pay the infringement penalty by the due date.**

**If you do not pay the infringement penalty by the due date further enforcement action may be taken**

**against you and you may incur further costs.**

**IMPORTANT INFORMATION**

***Right to have the matter determined by the Court***

You are entitled to decide to have this matter heard and determined in the Magistrates‟ Court.

If you are a child within the meaning of the *Infringements Act 2006* (Vic) you are entitled to have this matter dealt with by the

Children's Court in accordance with the *Children, Youth and Families Act 2005* (Vic).

If you want this matter to be heard and determined by the Court you must notify the issuing officer before the due date of the

infringement penalty.

***Internal Review***

You, or a person acting on your behalf with your consent, may apply to have the decision to serve this infringement notice on

you internally reviewed.

***Payment Plan***

You may be eligible for a payment plan under Section 46 of the *Infringements Act 2006* (Vic) (unless you are a body

corporate). To apply for a payment plan an application stating your reasons must be made in writing before the due date of

the infringement penalty.

***Further Information***

Further information about this infringement notice and information relating to eligibility for payment plans and applying for an

internal review can be obtained from:

**[NAME OF COUNCIL: must insert telephone number; address; and if available, a website address;]**

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|  |  |
| --- | --- |
| **DATE OF OFFENCE** |  |
| **TIME OF OFFENCE** |  |
| **LOCATION OF OFFENCE** |  |
| **DESCRIPTION OF OFFENCE** |  |
| **INFRINGEMENT PENALTY** | **$ [prescribed in Regulations]** |
| **DUE DATE** | **[must be a period not less than 28 days after the infringement notice has**  **been served]** |

|  |  |
| --- | --- |
| **[Council] reference number:** |  |
| **Date of issue:** |  |

**Appendix 7 - Template infringement notice**

**PAYMENT OPTIONS**

**[The infringement notice must state the**

**manner in which the infringement**

**penalty may be paid]**

***Note on template preparation:* The form of infringement notice used by a council must comply**

**with section 13 of the *Infringements Act 2006* (Vic.) and Regulation 8 of the *Infringements***

***(Reporting and Prescribed Details and Forms) Regulations 2006* (Vic.).**

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|  |  |
| --- | --- |
| **Issuing officer:** | **[Name/identifying reference of issuing officer]** |
| **Signature** |  |

**Appendix 8- Template application form for the registration of**

**prescribed accommodation**

**Appendix 8 - Template application form for the registration of prescribed**

**accommodation**

**Section 71 *Public Health and Wellbeing Act 2008***

**Regulation 15 *Public Health and Wellbeing Regulations 2009***

**[COUNCIL LOGO/ID]**

**APPLICATION FOR \*REGISTRATION/\*RENEWAL OF REGISTRATION OF**

**PRESCRIBED ACCOMMODATION**

*Please complete this form and provide it to* ***[name of Council]*** *together with:*





*the* ***registration/renewal fee (as applicable)****; and*

*a* ***plan of the accommodation premises*** *drawn to a scale of not less than 1:100*

*which shows the proposed use of each room.*

**Business proprietor’s name** (if company include ACN)**:**

..............................................................................................................................................................................

**Type of prescribed accommodation:**

Please tick any of the categories listed below that are applicable:

residential accommodation

student dormitory

hotel/motel

holiday camp

hostel

rooming house

Other (specify) \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPLICANT DETAILS**

**Business or trading name** (if different to proprietor‟s name)**:**............................................................................

..............................................................................................................................................................................

**Proprietor’s address:** ........................................................................................................................................

..............................................................................................................................................................................

**Prescribed accommodation (premises) address** (if different to proprietor‟s address)**:** ..................................

..............................................................................................................................................................................

**Contact person:** .................................................................................................................................................

**Postal address:** ..................................................................................................................................................

**Telephone:** .........................................................

**Fax:** ................................................................

**Email:** ..................................................................................................................................................................

**FEE AMOUNT**

**[INSERT AMOUNT OF FEE PAYABLE]**

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**Appendix 8- Template application form for the registration of**

**prescribed accommodation**

**OFFICE USE ONLY**

**Registration number:** ........................................................................................................................................

**Date of registration/renewal:** ............................................................................................................................

**Renewal due:** ......................................................................................................................................................

**Conditions of registration/renewal:** .................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**Signature of proprietor(s):** ……........................................................................ **Date:** …………………………

**[Name of Council]** will only use the personal information you provide in or with this form for matters relating to your

registration in accordance with the *Information Privacy Act 2001* (Vic).

**PAYMENT OPTIONS**

**TAX INVOICE**

**[INSERT PAYMENT OPTIONS- e.g. payment by credit card, B-PAY, etc.]**

**[INSERT COUNCIL CONTACT DETAILS]**

***Note on template preparation:* Whilst councils are free to create their own application form,**

**the application form must contain the prescribed particulars in Regulation 15 of the *Public***

***Health and Wellbeing Regulations 2009*.**

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**Appendix 9- Template application form for the registration of**

**registered premises**

**Appendix 9 - Template application form for the registration of registered premises**

**Section 71 *Public Health and Wellbeing Act 2008* (Vic)**

**[COUNCIL LOGO/ID]**

**APPLICATION FOR \*REGISTRATION/\*RENEWAL OF REGISTRATION OF**

**REGISTERED PREMISES**

*Please complete this form and provide it to* ***[Name of Council]*** *together with the* ***registration/renewal fee (as***

***applicable)***.

**Business proprietor’s name** (if company include ACN)**:**

..................................................................................................................................................................................

**Type of prescribed (business) premises:**

Please tick any of the categories listed below that are applicable to your business:

Beauty therapy

Business involving skin

penetration

Colonic irrigation

Tattooing

Hairdresser

Other (specify)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Describe how the business premises will be/is used:**

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**APPLICANT DETAILS**

**Business or trading name** (if different to proprietor‟s name)**:** ...........................................................................

..............................................................................................................................................................................

**Proprietor’s address:** .........................................................................................................................................

..............................................................................................................................................................................

**Premises address** (if different to proprietor‟s address)**:** ....................................................................................

..............................................................................................................................................................................

**Contact person:** .................................................................................................................................................

**Postal address:** ..................................................................................................................................................

**Phone:** ................................................................ **Fax:** ...................................................................................

**Email:** ..................................................................................................................................................................

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**Appendix 9- Template application form for the registration of**

**registered premises**

**FEE AMOUNT**

**[INSERT AMOUNT OF FEE]**

**OFFICE USE ONLY**

**Registration number:** ........................................................................................................................................

**Date of registration/renewal:** ............................................................................................................................

**Renewal due:** ......................................................................................................................................................

**Conditions of registration/renewal:** .................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**Signature of proprietor(s):** ……........................................................................ **Date:** …………………………

**[Name of Council]** will only use the personal information you provide in or with this form for matters relating to your

registration in accordance with the Information Privacy Act 2001 (Vic).

**PAYMENT OPTIONS**

**TAX INVOICE**

**[INSERT PAYMENT OPTIONS- e.g. payment by credit card, B-PAY, etc.]**

**[INSERT COUNCIL CONTACT DETAILS]**

***Note on template preparation:* Whilst councils are free to create their own application form,**

**the application form must contain the prescribed particulars in Regulation 15 of the *Public***

***Health and Wellbeing Regulations 2009*.**

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**Appendix 10 - Template application for transfer of registration of**

**prescribed accommodation**

**Appendix 10 - Template application for transfer of registration of prescribed**

**accommodation**

**Section 71 *Public Health and Wellbeing Act 2008***

**[COUNCIL LOGO/ID]**

**APPLICATION FOR TRANSFER OF REGISTRATION OF PRESCRIBED**

**ACCOMMODATION**

*Please complete this form and return it to* ***[name of Council]*** *together with the* ***transfer of registration fee***.

**Registration number:** ........................................................................................................................................

**Applicant (new business proprietor’s) name** (if company include ACN)**:** ......................................................

..............................................................................................................................................................................

**Type of accommodation:**

Please tick any of the categories listed below that are applicable:

residential accommodation

student dormitory

hotel/motel

holiday camp

hostel

rooming house

Other (specify) \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Prescribed accommodation address:** .............................................................................................................

..............................................................................................................................................................................

**DETAILS OF FORMER PROPRIETOR**

**Business proprietor’s name** (if company include ACN)**:** ..................................................................................

..............................................................................................................................................................................

**Business/trading name** (where different to new proprietor‟s name)**:** ................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**Proprietor’s address:** ........................................................................................................................................

..............................................................................................................................................................................

**Contact person:** .................................................................................................................................................

**Postal address:** ..................................................................................................................................................

**Telephone:**........................................................ **Fax:** ......................................................................

**Email:** ..................................................................................................................................................................

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**Appendix 10 - Template application for transfer of registration of**

**prescribed accommodation**

**APPLICANT (NEW PROPRIETOR) DETAILS**

**Business/trading name** (where different to proprietor‟s name)**:** .......................................................................

..............................................................................................................................................................................

**Proprietor’s address:** ........................................................................................................................................

..............................................................................................................................................................................

**Contact person:** .................................................................................................................................................

**Postal address:** ..................................................................................................................................................

**Telephone:**.......................................................... **Fax:** ....................................................................

**Email:** ..................................................................................................................................................................

**TRANSFER OF REGISTRATION FEE**

**[INSERT DETAILS OF FEE PAYABLE]**

**OFFICE USE ONLY**

**Date of transfer:** .................................................................................................................................................

**Renewal of registration due:** ............................................................................................................................

**Conditions of transfer of registration:** .............................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**Signature of former proprietor(s):** .................................................................... **Date:** …………………………

**Signature of new proprietor(s):** ........................................................................ **Date:** …………………………

**[Name of Council]** will only use the personal information you provide in or with this form for matters relating to your

registration in accordance with the Information Privacy Act 2001 (Vic).

**PAYMENT OPTIONS**

TAX INVOICE

**[INSERT PAYMENT OPTIONS- e.g. payment by credit card, B-PAY, etc.]**

**[INSERT COUNCIL CONTACT DETAILS]**

***Note on template preparation:* Whilst councils are free to create their own application form,**

**the application form must contain the prescribed particulars in Regulation 15 of the *Public***

***Health and Wellbeing Regulations 2009*.**

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**Appendix 11 - Template for application for transfer of registration of**

**registered premises**

**Appendix 11 - Template for application for transfer of registration of registered**

**premises**

**Section 71 *Public Health and Wellbeing Act 2008* (Vic)**

**[COUNCIL LOGO/ID]**

**APPLICATION FOR TRANSFER OF REGISTRATION OF REGISTERED**

**PREMISES**

*Please complete this form and return it to* ***[Name of Council]*** *together with the transfer of* ***registration fee***.

**Registration number:** ........................................................................................................................................

**Applicant (new business proprietor’s) name** (if company include ACN)**:**

..............................................................................................................................................................................

**Type of business premises:**

Please tick any of the categories listed below that are applicable to your business:

Beauty therapy

Business involving skin

penetration

Colonic irrigation

Tattooing

Hairdresser

Prescribed business posing risk

to public health

**Describe how the business premises is used by new proprietor:** ...............................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**Premises address:** .............................................................................................................................................

..............................................................................................................................................................................

**DETAILS OF FORMER PROPRIETOR**

**Business proprietor’s name** (if company include ACN)**:** ..................................................................................

..............................................................................................................................................................................

**Business/trading name** (where different to proprietor‟s name)**:** .......................................................................

..............................................................................................................................................................................

**Proprietor’s address:** ........................................................................................................................................

..............................................................................................................................................................................

**Contact person:** .................................................................................................................................................

**Postal address:** ..................................................................................................................................................

**Telephone:**..................................................... **Fax:** .........................................................................

**Email:** ..................................................................................................................................................................

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**Appendix 11 - Template for application for transfer of registration of**

**registered premises**

**APPLICANT (NEW PROPRIETOR) DETAILS**

**Business/trading name** (where different to proprietor‟s name)**:** .......................................................................

..............................................................................................................................................................................

**Proprietor’s address:** ........................................................................................................................................

..............................................................................................................................................................................

**Contact person:** .................................................................................................................................................

**Postal address:** ..................................................................................................................................................

**Telephone:**............................................................ **Fax:** ..................................................................

**Email:** ..................................................................................................................................................................

**REGISTRATION FEE**

**[INSERT DETAILS OF REGISTRATION FEE]**

**OFFICE USE ONLY**

**Date of transfer:** .................................................................................................................................................

**Renewal of registration due:** ............................................................................................................................

**Conditions of transfer of registration:** .............................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**Signature of former proprietor(s):** .................................................................... **Date:** …………………………

**Signature of new proprietor(s):** ........................................................................ **Date:** …………………………

**[Name of Council]** will only use the personal information you provide in or with this form for matters relating to your

registration in accordance with the *Information Privacy Act 2001* (Vic).

**PAYMENT OPTIONS**

**TAX INVOICE**

**[INSERT PAYMENT OPTIONS- e.g. payment by credit card, B-PAY, etc.]**

**[INSERT COUNCIL CONTACT DETAILS]**

***Note on template preparation:* Whilst councils are free to create their own application form,**

**the application form must contain the prescribed particulars in Regulation 15 of the *Public***

***Health and Wellbeing Regulations 2009*.**

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**Appendix 12 - Template for certificate of registration prescribed**

**accommodation**

**Appendix 12 - Template for certificate of registration prescribed accommodation**

***Section 74 Public Health and Wellbeing Act 2008 (Vic)***

**[COUNCIL LOGO/ID]**

**CERTIFICATE OF REGISTRATION PRESCRIBED ACCOMMODATION**

**Registration number: [insert Registration number]**

**[insert Council name]** \***registers/\*renews/\*registers upon transfer [delete as applicable] the**

**prescribed accommodation situated at [insert address]**

**Registration granted to: [insert name of proprietor]**

*Address of proprietor*:

*Business/trading name* (if any):

**Type of premises: [select as applicable]**

(a)

**Conditions of Registration:**

**[insert conditions]**

**This Registration expires on [insert registration expiry date] subject to the *Public Health and***

***Wellbeing Act 2008* (Vic)**

**Signed:** ............................................................................................................................................

**[Council Delegate]**

**Date:**………………………………………………

**[INSERT COUNCIL CONTACT DETAILS]**

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**Appendix 13 - Template for certificate of registration registered**

**premises**

**Appendix 13 - Template for certificate of registration registered premises**

***Section 74 Public Health and Wellbeing Act 2008 (Vic)***

**[COUNCIL LOGO/ID]**

**CERTIFICATE OF REGISTRATION REGISTERED PREMISES**

**Registration number: [insert Registration number]**

**[insert Council name] \*registers/\*renews/\*registers upon transfer [delete as applicable] the**

**business premises situated at [insert address]**

**Registration granted to: [insert name of proprietor]**

*Address of proprietor*:

*Business/trading name* (if any):

**Type of premises: [select as applicable]**

(a)

(b)

(c)

(d)

(e)

(f)

beauty therapy

colonic irrigation

hairdressing

skin penetration

tattooing

prescribed business posing a risk to public health

**Conditions of Registration:**

**[insert conditions]**

**This Registration expires on [insert registration expiry date] subject to the *Public Health and***

***Wellbeing Act 2008* (Vic)**

**Signed:** ............................................................................................................................................

**[Council Delegate]**

**Date:**………………………………………………

**[INSERT COUNCIL CONTACT DETAILS]**

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**Appendix 14 - Template resolution of council setting fees for**

**registration/renewal/transfer of prescribed**

**accommodation and registered premises**

**Appendix 14 - Template resolution of council setting fees for**

**registration/renewal/transfer of prescribed accommodation and registered premises**

**RESOLUTION OF COUNCIL**

The **COUNCIL OF [insert Council name]** (“**Council**”) at its meeting of ……………. day of

………………………………… 20## HEREBY RESOLVES:

1

2

3

4

That pursuant to section 72 of the *Public Health and Wellbeing Act 2008* the Council resolves

to set the fees in respect of the issue, transfer or renewal of registration of prescribed

accommodation and registered premises as provided in this resolution.

That the fees set in this resolution will apply from 1 January 2010 until otherwise varied in

accordance with either, paragraph 3 of this resolution or a further resolution of this Council.

In any case where a maximum amount of any specified fee or class of fees is set out and

such amount less than any such specified fee or class of fees set by this resolution, that fee

set by the resolution shall be reduced to the maximum amount set by the Order in Council.

The specified fees applying to the particular class of fees set by this resolution for the

purposes of section 72(1)(a) are as follows:

4.1

Prescribed accommodation – new application

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

4.2

Prescribed accommodation – renewal

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

4.3

Prescribed accommodation – transfer

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

4.4

Registered premises - new application

**[insert as applicable]**

**[Type/size]**

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$**[Amount]**

**per annum or part**

**thereof**

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**Appendix 14 - Template resolution of council setting fees for**

**registration/renewal/transfer of prescribed**

**accommodation and registered premises**

4.5

Registered premises - renewal

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

4.6

Registered premises - transfer

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

5

The specified fees applying to the particular class or category set by this resolution for the

purposes of section 72(1)(c) are as follows: [Note: only applies where Secretary has

delegated administrative authority to a council for an area outside that council‟s municipal

district].

5.1

Prescribed accommodation – new application

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

5.2

Prescribed accommodation – renewal

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

5.3

Prescribed accommodation – transfer

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

5.4

Registered premises - new application

**[insert as applicable]**

**[Type/size]**

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$**[Amount]**

**per annum or part**

**thereof**

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**Appendix 14 - Template resolution of council setting fees for**

**registration/renewal/transfer of prescribed**

**accommodation and registered premises**

5.5

Registered premises - renewal

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

5.6

Registered premises - transfer

**[insert as applicable]**

**[Type/size]**

$**[Amount]**

**per annum or part**

**thereof**

**[AFFIX COUNCIL COMMON SEAL AND SIGN]**

***Notes on template preparation:***

***(1)***

***(2)***

***Relevant fees may be applied for different types and sizes of premises. Council to***

***decide based on experience and assessment.***

***Item 5 relates to delegations from the Secretary of the Department of Health and may***

***or may not apply.***

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**Appendix 15- Template resolution of council ratifying refusal of**

**registration/renewal/transfer**

**Appendix 15 - Template resolution of council ratifying refusal of**

**registration/renewal/transfer**

**RESOLUTION OF COUNCIL**

The **COUNCIL OF [insert Council name]** (“**Council**”) at its meeting of ................................... day of

......................................... 20## HEREBY RESOLVES:

**[PRESCRIBED ACCOMMODATION]**

That pursuant to section 77 of the *Public Health and Wellbeing Act 2008* the Council hereby ratifies

the decision of its delegate made on **[insert date of refusal]** under section 76 of that Act to refuse to

[\*issue a registration/\*renew a registration/\*transfer a registration] of prescribed accommodation

required to be registered under Division 2 of Part 6 of that Act in respect of an application made to

Council dated **[insert date of application]** concerning the premises situated at **[insert premises**

**address]**.

**[OR**

**REGISTERED PREMISES ]**

That pursuant to section 77 of the *Public Health and Wellbeing Act 2008* the Council hereby ratifies

the decision of its delegate made on **[insert date of refusal]** under section 76 of that Act to refuse to

[\*issue a registration/\*renew a registration/\*transfer a registration] of premises required to be

registered under Division 3 of Part 6 of that Act in respect of an application made to Council dated

**[insert date of application]** concerning the premises situated at **[insert premises address]**.

[AFFIX COUNCIL COMMON SEAL AND SIGN]

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**Appendix 16 - Template receipt for the seizure of a thing or sample**

**taken**

**Appendix 16 - Template receipt for the seizure of a thing or sample taken**

***Section 177 Public Health and Wellbeing Act 2008* (Vic)**

**[COUNCIL LOGO/ID]**

**RECEIPT FOR SEIZED THINGS AND SAMPLES TAKEN**

**To:** ............................................................................................................................................................... (name)

**Of:** ............................................................................................................................................................ (address)

**I** ........................................................................................................................................... (name & title of officer)

**an Authorised Officer appointed by [insert name of Council] , under the *Public Health and Wellbeing Act***

***2008* (Vic) give notice that at [time] on this day:**

seized the following (including any document):

..............................................................................................................................................................................

..............................................................................................................................................................................

took sample(s) of/from the following:

..............................................................................................................................................................................

..............................................................................................................................................................................

**I seized the thing(s) and took any relevant sample because I believe that:**

the seizure is required to determine whether there has been a contravention of the *Public Health and*

*Wellbeing Act 2008* (Vic) or its Regulations.

the seized thing may be used as evidence in a possible prosecution for a contravention of the *Public*

*Health and Wellbeing Act 2008* (Vic) or its Regulations.

the seizure is required to minimise a risk to the health of any person.

**I took a sample of/from the thing(s) for:**

examination

analysis

measurement

testing

**Other reason for sample(s) taken (if any):** ...............................................................................................................

..............................................................................................................................................................................................

..............................................................................................................................................................................................

**Signature of authorised officer:** …………………………………………**Date:** ……………………………………

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**Appendix 17 - Template for notice of entry**

**Appendix 17 - Template for notice of entry**

***Section 172 Public Health and Wellbeing Act 2008* (Vic).**

**[COUNCIL LOGO/ID]**

**NOTICE OF ENTRY**

I, ………………………………………………………………….. **[name of authorised officer]** being an authorised

officer for the purposes of the *Public Health and Wellbeing Act 2008* (Vic) pursuant to a power under section

\*169(3)/\*190(1)(c)/\*229 **[delete as appropriate]** of this Act entered premises situated at:

....................................................................................................................... **[insert address of premises]** on

…………………………………………. **[date]** at ……………………………….. **[time]**.

Entry to these premises was for the purposes of: ................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**[state reason for entry]**

Whilst on the premises, .......................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

..............................................................................................................................................................................

**[insert description of all things done while on the premises]**

I departed the premises at ………………………………………………. **[insert time of departure]**.

Further details of my entry onto the premises can be obtained by contacting me during office hours at:

**[insert name of Council, contact address, contact phone/fax/email]**

**Signature of authorised officer:** …………………………………………**Date:** ……………………………………

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