Government of **Western Australia**
Department of **Health**

Public Health Act 2016 handbook

A resource for local government authorised officers









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Disclaimer

This document provides general guidance on aspects of the *Public Health Act 2016*. This guide is not a substitute for reading the Public Health Act and should not be regarded as legal advice.

Legal advice relevant to the user's circumstances should be obtained when necessary. It is the responsibility of users to inform themselves of any updates to the handbook and the relevant legislation applying, and to ensure that they rely on information that is current.

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Feedback

Any feedback related to this handbook should be emailed to publichealthact@health.wa.gov.au

Contents

Contents ii
Purpose of this handbook 1
The role of local government and public health 1
Staged implementation 7
PART A – THE PUBLIC HEALTH ACT 8
The *Public Health Act 2016* 9
Parts of the Public Health Act relevant to local government enforcement agencies 9
Meeting local governments obligations under the Public Health Act 9
Part 1 – Preliminary 11
Objects and principles 11
Crown is bound 14
Part 2 – Administration 14
Functions of enforcement agencies 14
Delegation of powers [section 21] 15
Reporting requirements [section 22] 17
Appointment of environmental health officers [section 17] 19
Designation of authorised officers [section 24] 19
Part 3 – general public health duty 24
Consequences of failure to comply with the general public health duty 28
Part 4 – serious public health risks and material public health risks 30
Part 5 – public health plans 32
Part 6 - public health policies 37
Part 7 – public health assessments 39
Part 8 – registration and licensing 41
Part 9 – notifiable infectious diseases and related conditions 44
Part 10 – non-infectious diseases and physical or functional abnormalities 45
Part 11 – serious public health incident powers 46
Part 12 – public health emergencies 49
Part 13 – compensation and insurance 53
Part 14 – improvement notices and enforcement orders 54
Overview of enforcement action 54
Infringement notice 57
Improvement notice [section 212] 58
Enforcement order [section 216] 64
Legal action through the courts 69

Part 15 – inquiries 69
Part 16 - Powers of entry, inspection and seizure 70
Powers of entry and inspection 70
Powers of seizure 75
Obtaining a warrant 78
Part 17 – Crown exemptions 80
Part 18 – liability, evidentiary and procedural provisions 81
Improvement notices may be given to Crown 82
Enforcement orders and Crown agencies 82
Deciding whether to prosecute 82
Part 19 – miscellaneous 84
Part 20 – transitional savings provisions 86
Glossary 87
PART B - TEMPLATES 88
Approved forms 89
1. Improvement Notice 91
2. Notice of Compliance 93
3. Notice of Non-Compliance – Improvement Notice 94
4. Enforcement order 95
5. Certificate of Clearance 97
6. Notice of Non-Compliance – Enforcement Order 98
Non-mandatory forms 99
1. Certificate of authority template 101
2. Notice of seizure template 102
3. Acknowledgement of occupier's consent to enter premises template 103
4. Risk management plan template 104
PART C – Risk assessment for authorised officers 105
Principles of risk assessment 106
What is risk asssessment? 107
Identifying the issue 107
Hazard assessment 107
Exposure assessment 108
Risk characteristics 109
Health risk assessment matrix / framework 109
Risk management 112
Risk communication 113

Table of Figures.

Figure 1: Tiered system to managing public health risks under the *Public Health Act 2016* 3
Figure 2: The Public Health Act provides a graduated approach to enforcement 5
Figure 3: Enforcement action that can be taken following a breach of the general public health duty 28
Figure 4: Summary of the Strategic Community Plan and Corporate Business Plan model under the Local Government Act 1995..... 35
Figure 5: The public health planning guide for local government provides support to local government on meeting the requirements of Part 5 of the Public Health Act..... 36
Figure 6. Process for issuing an Improvement notice 63
Figure 7. Process for issuing an enforcement notice. 68

Tables

Table 1 A summary of the tiered approach to penalties under Part 4 of the *Public Health Act 2016* 5
Table 2: Public health principles 12
Table 3: Powers or duties that may be delegated under the Public Health Act..... 16
Table 4: Summary of the offence framework provided in Part 4 of the Public Health Act 2016 to be applied by a court of law 30
Table 5. Relationship between State public health plans and local public health plans 33
Table 6: Summary of powers of entry under section 240 and examples of possible application 71
Table 7 Summary of the powers to assist authorised officers with investigations. 74
Table 8 List of forms approved by the Chief Health Officer for use by enforcement agencies ... 89
Table 9 Non- mandatory forms 99
Table 10 Example public health risk management table..... 104
Table 11 Health consequence table adapted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA 110
Table 12 Risk likelihood table adopted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA 111
Table 13 Risk matrix (qualitative)..... 112

Purpose of this handbook

This handbook is one of a series of resources released as part of the implementation of the *Public Health Act 2016* (the 'Public Health Act'). The document summarises key provisions of the Public Health Act and also provides practical guidance to persons who are authorised ('authorised officers') to enforce the legislation.

The intention is to update this handbook throughout the staged implementation of the Public Health Act, particularly after new subsidary legislation is created under the Act. Therefore, it is important that local governments regularly refer to the Department of Health's website www.health.wa.gov.au to ensure they are using the most up-to-date version.

How to read this Handbook

This Handbook is divided into three key parts:

Part A – The *Public Health Act 2016*

Part A summarises the intended purpose of each Part of the Public Health Act, as well as the implications and application for local government enforcement agencies and authorised officers. Part A aims to provide clarification of key provisions and practical examples, wherever possible, to help authorised officers apply the legislation.

Part B – Templates

Part B provides a series of templates that are:

- prescribed by the Act, and approved by the Chief Health Officer, which means they cannot be modified, or
- non-mandatory forms, which means they are not mandatory to use, and can be modified to suit local governments' requirements.

Part C – Risk assessment for authorised officers

Part C provides an overview of the principles of risk assessment and guidance on applying a risk assessment process to public health risks. The central theme of the Public Health Act is the philosophy of minimising harm to public health. Although not a requirement of the Act, there may be some occasions that an authorised officer may wish to use a more structured approach to assessing potential public health risks.

The role of local government and public health

Western Australian local governments have a long-standing statutory responsibility for public health and environmental health protection under the *Health (Miscellaneous Provisions) Act 1911*, the *Food Act 2008,* the *Tobacco Products Control Act 2006,* and a range of subsidary legislation, by regulating environmental and public health matters. These laws place specific obligations on local governments to administer and enforce them.

Local governments undertake a range of activities intended to protect and promote the health of communities, and also have a role in considering how planning the built environment can be undertaken in a way that promotes health. A growing focus for local governments is considering the social determinants of health on the wellbeing in communities.

Key public and environmental health activites that commonly involve some level of enforcement or oversight by local government may include:



Food safety



Wastewater management



Event risk management



Personal safety



Hazard management



Emergency management



Pest and vector control



Air quality



Contaminated land



Recreational water quality



Public buildings



Promoting physical activity and wellbeing

Department of Health's partnership with local government

The WA Department of Health has a long-standing partnership with the environmental health services within local government. Public health regulation in WA has been delivered effectively and efficiently since the inception of the original Health Act in 1911.

The Department of Health's close partnership with local government environmental health professionals has ensured that local governments employ persons with the necessary qualifications to enforce public health legislation within a local government district.

The Public Health Act 2016

The *Public Health Act 2016*, together with the supporting *Public Health (Consequential Provisions) Act 2016*, will repeal much of the outdated *Health Act 1911* (which has been renamed the *Health (Miscellaneous) Provisions Act 1911)* and are designed to better protect and promote the health of all Western Australians.

The Public Health Act is a modern statutory tool in Western Australia to ensure the long-term protection of public health and, in turn, the realisation of healthier and safer communities.

Local government has a crucial role in being the lead enforcement agency responsible for managing public health matters at a localised level under the Public Health Act. This includes:

- Matters related to the built environment (asbestos, public buildings, cooling towers).
- Body art and personal apperance services (tattoo parlours, body piercers and beauty therapists).
- Events and mass gatherings (concerts, festivals and other community events).
- Pest and vector control (mosquito management, rodents, midgies and other vectors).
- Water quality and wastewater issues (septics, recreational waters, aquatic facilities).
- Emergency management (cyclones, bushfires, contamination).

Compliance framework

The Public Health Act provides a tiered system of regulatory compliance to assist local governments to protect and manage public health, as shown in Figure 1.

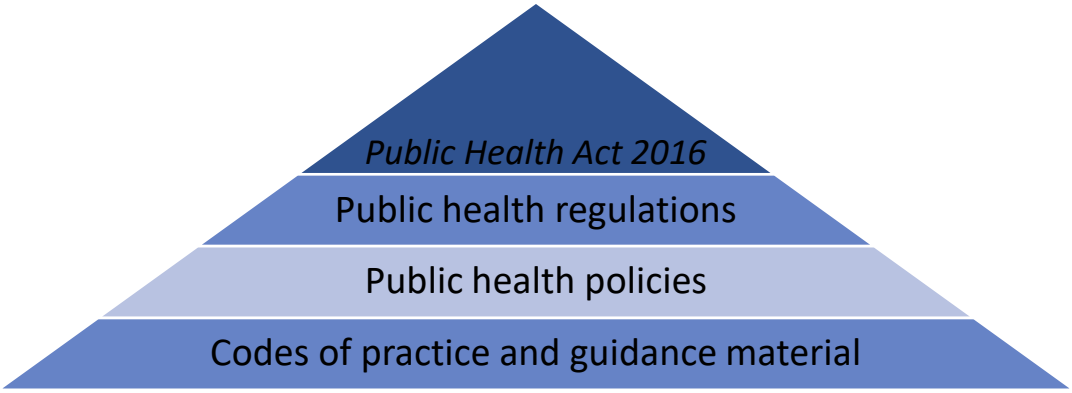


Figure 1: Tiered system to managing public health risks under the *Public Health Act 2016*

Regulations will be made to manage specific public health risk activities such as asbestos management, water quality protection or public events management. The Public Health Act also enables the Minister for Health to issue public health policies for any purpose relating to the objects of the Act.

Local laws

Local laws related to public health can be made under the *Local Government Act 1995*. The power to make local laws for health matters no longer falls under the *Health (Miscellaneous Provisions) Act 1911* or Public Health Act.

Risk based approach – general public health duty

At the heart of the Public Health Act is the general public health duty, which represents a risk-based approach to public health law.

The general public health duty imposes a legal duty on every person in WA to ensure that their actions (including any omissions) do not cause harm to the health of others. The general public health duty is purposefully drafted in very broad terms to capture anything that adversely impacts upon public health, regardless of the cause.

The general public health duty overcomes the limitations of the *Health (Miscellaneous Provisions) Act 1911* because it is not prescriptively limited and is able to be applied to emerging risks that may cause harm to public health.

This serves to ensure that the Public Health Act will continue to be relevant as societal needs, requirements and expectations evolve and change. In this way, the general public health duty is the mechanism that operates to “future proof” the legislation.

Definition of public health

The Public Health Act defines public health to mean the health of individuals in the context of:

(a) the wider health and wellbeing of the community, and
(b) the combination of safeguards, policies and programmes designed to protect, maintain, promote and improve the health of individuals and their communities to prevent and reduce the incidence of illness and disability.

In light of this definition, the general duty does not apply in respect of harm that endangers the health of an individual in circumstances where that harm is caused by the individual’s own actions (or omissions). An example of this may be a situation where a person does not take their prescribed medication or smokes a cigarette on their private property.

Environmental health officers

People with environmental health qualifications continue to be recognised as having the appropriate tertiary qualifications and experience to manage the various public and environmental health risks and statutory responsibilities, as well as assess and interpret scientific evidence required.

The Environmental Health Directorate of the WA Department of Health has a long standing partnership with the environmental health profession, who are recognised as leaders in maintaining environmental health standards within local government.

Authorised officers

A person must be designated as an ‘authorised officer’ to enforce specific provisions of the Public Health Act on behalf of local government.

It is acknowledged that some activities traditionally undertaken by people with environmental health qualifications under the *Health (Miscellaneous Provisions) Act 1911* can be undertaken by other types of authorised officers, often under the supervision of environmental health officers. Such authorised officers may undertake a set of responsibilities under the Public Health Act.

This means local government can employ people with a range of qualifications and experience to exercise specific powers under the Public Health Act. It is important to ensure that authorised officers have suitable qualifications and experience to enforce public health legislation and apply the risk based principles of the Public Health Act.

Graduated enforcement tools

The Public Health Act provides a range of new enforcement tools to support a graduated response to enforcement action by local government that is proportionate to the public health risk. These include:



Figure 2: The Public Health Act provides a graduated approach to enforcement

Where a person fails to comply with an enforcement order, a local government may take any action it reasonably believes necessary (in accordance with section 219(2)) to ensure that the order is complied with, and recover the costs incurred as a debt from the person who failed to comply.

Tiered penalties

There is a tiered approach to penalties related to serious and material public health risks, for individuals as well as a body corporate, based on the:

- degree of risk to public health; and
- the knowledge of the person as to the outcome or likely outcome of their conduct.

These penalties under the Public Health Act (Table 1) are significantly higher than penalties under the *Health (Miscellaneous Provisions) Act 1911*, and aim to deter unlawful conduct.

The highest penalties apply where the relevant risk to public health is caused intentionally and with knowledge that harm to public health would result. These are the most serious types of offences under the Public Health Act.

Table 1 A summary of the tiered approach to penalties under Part 4 of the *Public Health Act 2016*

Degree of knowledge	Serious Public Health Risk maximum penalty	Material Public Health Risk maximum penalty
Knows will cause	Maximum penalty $250 000 3 years imprisonment Daily penalty $50 000	Maximum penalty $100 000 2 years imprisonment Daily penalty $20 000
Ought reasonably to know will cause	Maximum penalty $100 000 2 years imprisonment Daily penalty $20 000	Maximum penalty $75 000 Daily penalty $15 000
That causes, or will cause, or is likely to cause	Maximum penalty $50 000 Daily penalty $10 000	Maximum penalty $40 000 Daily penalty $8 000

Body corporate offenders are liable to fines of 5 times the maximum penalty in accordance with the *Sentencing Act 1995*.

Autonomy to recover fees and charges

Much of the administration of public health occurs locally with inspections and the issuing of notices and orders being the responsibility of local government. This results in administration and enforcement costs which were not formerly recoverable by local government through the *Health (Miscellaneous Provisions) Act 1911*.

Section 294 authorises enforcement agencies that are local governments to impose and recover fees or charges in respect of their performance of functions as enforcement agencies under the Public Health Act and regulations.

Such fees or charges are to be imposed and recovered in accordance with the framework provided by Part 6 Division 5 Subdivision 2 of the *Local Government Act 1995*.

Uniformity of chargeable fees by local governments across the State may not always be possible due to the size and varying conditions across WA (e.g. the costs associated with driving to undertake an inspection in the Shire of Gingin will be significantly different to that of the Town of Bassendean).

It is acknowledged that the imposition of uniform fees may create unfair disadvantages to some local governments, which is why the authority to set fees has been passed on to local government. This reflects the successful approach taken in the *Food Act 2008*. This gives local governments the flexibility to take account of the difference in costs of services across the State, the capacity of local businesses to pay, and the policy of local governments on charging for services.

Public health planning

The Public Health Act requires both the State and local governments to prepare public health plans that identify the public health needs of people within their areas and strategies to meet those needs.

This supports the growing focus across Australia for policy makers and local governments to consider the determinants of health and health inequity in communities.

It also ensures that local governments are familiar with the prevailing public health issues in their communities and can implement a strategic direction in performing their functions under the Public Health Act in order to adequately respond to these issues.

To minimise the number of separate planning processes required of local government, the local public health plans may be integrated with existing planning processes under the *Local Government Act 1995*.

Reporting on performance under the Public Health Act

It is a statutory requirement for local government to provide reports to the Chief Health Officer on its performance of functions under the Public Health Act. This not only provides a level of accountability to ensure local governments are meeting their functions under the Public Health Act, but will help to gauge the level of consistency with which public health law is being administered across WA, and identify knowledge gaps and areas for future policy development.

Chief Health Officer may give direction to local government

Where the Chief Health Officer considers that there is, or is likely to be, a material public health risk in a local government district and the Chief Health Officer cannot reach an agreement with the local government as to the measures that are to be taken by the local government to

prevent, control or abate that risk, then the Chief Health Officer can give directions to the local government.

If the local government fails to comply with the direction the Chief Health Officer may do anything necessary to prevent, control or abate the risk. Any costs incurred by the Chief Health Officer are to be taken as a debt due to the State by the local government and are recoverable in a court of competent jurisdiction.

The Chief Health Officer may also take action in relation to the risk without consulting the local government in urgent circumstances. Costs incurred by the Chief Health Officer in this situation are not recoverable from the local government.

Where local government does not undertake its public health functions

Local governments are accountable to ratepayers and residents for the effective management of their local area. The Public Health Act places specific accountabilities on local governments to enforce public health law on behalf of ratepayers. Failure to do so may be considered negligent and a failure to deliver effective duty of care.

Staged implementation

There is a significant amount of work required to transition to the regulatory framework under the Public Health Act. Therefore, implementation is to occur in a staged manner following Royal Assent, which occurred on 25 July 2016.

This means that the *Health (Miscellaneous Provisions) Act 1911*, and regulations made under that Act, will continue to be an enforcement tool until all the provisions of the Public Health Act are proclaimed.

There are several stages of implementation:

- **Stages 1 and 2** (25 and 26 July 2016): Commencement of binding the Crown and various technical matters on Royal Assent (25 July 2016) and the day after Royal Assent.
- **Stage 3** (24 January 2017): Commencement of key administration matters.
- **Stage 4** (20 September 2017): Commencement of provisions relating to infectious diseases and related conditions, prescribed conditions of health, serious public health incident and emergency powers.
- **Stage 5**A (4 June 2024): Commencement of provisions relating to public health plans, registration and licensing, improvement notices and enforcement orders and local government fees and charges. Regulations under the *Health (Miscellaneous Provisions) Act 1911* that were assessed as being a low public health risk were repealed and replaced with guidelines in some cases.
- **Stage 5B** (anticipated for year 2026): Commencement of all remaining provisions including provisions relating to public health policies and public health assessments. New regulations relating to environmental health will also commence.

The staged implementation is explained in more detail in the “Timeline for implementation of the Public Health Act guideline” available on the Department’s website https://www.health.wa.gov.au/About-us/Public-Health-Act/Timeline-to-implement-the-Public-Health-Act-2016/Stage-5-phased-implementation.

PART A

Public Health Act 2016



The *Public Health Act 2016*

The *Public Health Act 2016* is supported by the *Public Health (Consequential Provisions) Act 2016* which provides for the consequential amendment of the *Health Act 1911* and a range of other Acts. The *Health Act 1911* has been renamed the *Health (Miscellaneous Provisions) Act 1911*, and will remain in operation in an amended and limited form.

Copies of all Acts can be downloaded or purchased from the WA legislation website WALW - Home (legislation.wa.gov.au).

Parts of the Public Health Act relevant to local government enforcement agencies

The main Parts of the Public Health Act relevant to the functions of local government include:

- Part 1 - Preliminary
- Part 2 - Administration
- Part 3 – General public health duty
- Part 4 – Serious public health risk and material public health risk
- Part 5 – Public health plans
- Part 8 – Registration and licensing
- Part 9 – Notifiable and infectious disease and related conditions
- Part 14 – Improvement notices and enforcement orders
- Part 16 – Powers of entry, inspection and seizure
- Part 18 – Liability, evidentiary and procedural provisions
- Part 19 – Miscellaneous
- Part 20 – Transitional and savings provisions

Local government must decide if an authorised officer needs to be designated to enforce the following Parts of Public Health Act in the local government district:

- Part 3 – General public health duty
- Part 8 – Registration and licensing
- Part 9 – Notifiable and infectious disease and related conditions
- Subsidary legislation under the Public Health Act.

The Public Health Act provides the following enforcement tools for authorised officers designated by local government:

- Part 14 – Improvement notices and enforcement orders
- Part 16 – Powers of entry, inspection and seizure.

Subsidiary legislation may also allow local government officers to issue infringement notices under the *Criminal Procedure Act 2004*. Local government officers will require a separate designation for this purpose.

Meeting local governments obligations under the Public Health Act

Key actions that must be initiated by local government to support the implementation of the Public Health Act include:

Action	Provision
Familiarise with the functions of local government	section 16
Delegate powers and duties of the local government, as required	section 21
Designate authorised officers to enforce the Public Health Act and regulations on behalf of the local government	Part 2 Division 4
Familarise and be prepared to report on functions under the Public Health Act	section 22
Prepare a local public health plan	Part 5

The remainder of this handbook summarises each Part of the Public Health Act, providing additional information for those Parts relevant to local government.

Part 1 – Preliminary

Objects and principles

Section 3 outlines the objects of the Public Health Act and the principles to be considered in the pursuit of those objects. They help to ensure the Public Health Act is administered in a manner that maximises the protection, promotion and improvement of public health and the reduction of preventable illness.

What is meant by having regard to the objects and principles?

Throughout the Public Health Act it states that persons exercising functions under the Public Health Act, such as authorised officers, must have regard to the objects and principles.

This means the objects and principles need to be considered during decision-making processes and prior to taking any action under the Public Health Act. The weight or consideration to be given to the objects and principles is left to the decision-maker's discretion depending on the circumstance. Not all matters will be relevant, however they should be given consideration.

Failure to be guided by the objects or principles of the Public Health Act can be the basis for review of a decision.

Objects

The objects outline the underlying purpose of the Public Health Act.

Having regard to the objects means that decision-makers are being consistent with the intended purpose of the Public Health Act.

The objects of the Act are to:

1. promote and improve public health and wellbeing and to prevent disease, injury, disability and premature death
2. protect individuals and communities from diseases and other public health risks and to provide, to the extent reasonably practicable, a healthy environment for all Western Australians
3. promote the provision of information to individuals and communities about public health risks
4. encourage individuals and communities to plan for, create and maintain a healthy environment
5. provide for the prevention or early detection of diseases and other public health risks, and certain other conditions of health
6. support programmes and campaigns intended to improve public health
7. facilitate the provision of information to decision-making authorities about public health risks and benefits to public health that may result from certain proposals
8. provide for the collection, disclosure and use of information about the incidence and prevalence of diseases, other public health risks in the State and certain other conditions of health, for research or public health purposes
9. reduce the inequalities in public health of disadvantaged communities

10. provide for functions in relation to public health to be performed by the State and local governments.

Principles

The principles are intended to underpin any decisions made, or actions carried out, under the Public Health Act. Anyone who exercises powers or functions under the Public Health Act must do so having regard to the principles. There are five principles:

Table 2: Public health principles

Principle	What it means
Sustainability principle	**Ensure that our decisions and actions not only benefit people today, but do not have adverse consequences for future generations.** It means we have a responsibility to consider public health, social, economic and environmental needs simultaneously in the decisions we make to ensure that our decisions and actions not only benefit people today, but do not have adverse consequences for future generations. Although public health needs should weigh most significantly on the minds of decision-makers in the context of the Act, other interests should not be dismissed or assumed to have been considered.
Precautionary principle	**When there is limited scientific evidence it is better to 'err on the side of caution' to protect public health.** It means where there is a possible threat to public health (e.g. an outbreak of a new strain of an infectious disease) but there is a lack of scientific evidence or certainty about the nature of the threat, then action to prevent or control the threat should not be delayed until more is known. Cost effective steps should be taken to prevent, control or abate the threat until evidence emerges that no harm will result. If in doubt, it is better to 'err on the side of caution'. A more thorough overview of the precautionary principle is detailed in the "Environmental Health Risk Assessment Guideline 2012" published by Environmental Health Australia.

Principle	What it means
Principle of proportionality	**Decisions and responses should be made proportionate to the public health risk present.** This principle is concerned with protecting individuals from unjustified encroachment upon their rights. However, when protecting against a risk to public health, if the public interest outweighs the rights of an individual, this can justify action being taken, subject to any specific constraints in the Public Health Act.
Principle of inter-generational equity	**The present generation should ensure that public health is maintained or enhanced to ensure future generations benefit.** This principle requires an agency responsible for public health and wellbeing to maintain a high standard of public health, and continually strive to enhance public health in order that succeeding generations will benefit. Many decisions made to protect and advance public health have significance for future generations and in these cases, long term impacts need to be considered. Recognition of the need to consider long term impacts can support and strengthen initiatives employed to secure more immediate benefits. For example, local strategies to create safer local neighbourhoods (by improving lighting, footpaths, cycle-ways and traffic flow) will encourage people to become more active, while also reducing their dependence on motor vehicle use, decreasing greenhouse gas emissions.

Principle relating to local government	**The functions of local governments in relation to public health should be acknowledged and respected.**
	This principle acknowledges the substantial contribution of local government to the promotion, improvement and protection of public health through its involvement in a range of activities. These include:
	• planning processes
	• environmental monitoring and management
	• health promotion
	• more traditional public health concerns such as:
	  ○ waste management
	  ○ prevention of infectious diseases
	  ○ food safety and
	  ○ monitoring drinking water quality

Crown is bound

Section 5 of the Public Health Act provides for the binding of the Crown, which means that the State and its authorities are required to comply with the legislation. It applies the principle that everyone is subject to the same public health standards.

Who is the Crown?

The Crown refers to the executive arm of government and includes Ministers, public service departments and officers and other persons acting on behalf of the government.

Whether a particular person, body or agency is 'the Crown' will depend upon the circumstances of each case, including consideration of any relevant statutory provisions.

What is meant by binding the Crown?

This means that the Public Health Act applies to the government and those acting on its behalf.

Whilst there are restrictions in the Public Health Act on the enforcement actions that can be taken in respect of the Crown (e.g. the Crown cannot be prosecuted and cannot be given an enforcement order), the legislation applies to the Crown as it applies to all individuals. If the Crown cannot comply, it can seek an exemption from the Minister for Health under Part 17 of the Public Health Act. However, the Crown cannot be exempted from certain provisions of the Public Health Act including provisions related to notifiable infectious diseases and public health emergencies.

Crown authorities may seek an exemption from compliance with the Act under certain circumstances.

Part 2 – Administration

Functions of enforcement agencies

Local government has always been the frontline of operational activities in traditional public health matters, with the State Department of Health having primarily a policy and advisory role within the legislative framework.

Part 2 of the Act recognises the roles and functions of both State and local government and provides for arrangements where responsibility for public health is shared between both agencies.

Functions of the Chief Health Officer [section 6]

The Chief Health Officer has the following functions in relation to the administration of the Public Health Act:

- To initiate, support and manage public health planning for the State.
- To develop and implement policies and programmes to achieve the objects of the Public Health Act.
- To provide advice or recommendations to the Minister, community, or to any other person or body on matters relevant to public health.

- To provide advice or recommendations to the Minister on possible changes to the Public Health Act, or the regulations that the Chief Health Officer considers appropriate or necessary.
- To perform the functions that are conferred on the Chief Health Officer by or under the Public Health Act.
- To administer the Public Health Act in accordance with its objects and principles.

Functions of local government [section 16]

Local government has the following functions in relation to the administration of the Public Health Act:

- To initiate, support and manage public health planning for its local government district (i.e. in accordance with the Public Health Act and the Local Government Act 1995).
- To develop and implement policies and programmes to achieve the objects of the Public Health Act within its local government district.
- To perform the functions that are conferred on local governments by or under the Public Health Act.
- To administer and enforce the Public Health Act within its local government district in accordance with the objects and principles of the Public Health Act.

Chief Health Officer may give direction to local governments [section 7]

Where there may be discrepancies about the management of a particular material public health risk in a local government district, the Chief Health Officer has a number of powers under section 7 to direct local governments to manage that risk.

Any costs incurred by the Chief Health Officer are to be taken as a debt due to the State by the local government and is recoverable in a court of competent jurisdiction.

Chief Health Officer can act without local government agreement in urgent circumstances [section 8]

There may be certain circumstances where the Chief Health Officer may need to take immediate action to prevent, control or abate a material public health risk, without first seeking agreement with the local government. In such cases any costs incurred by the Chief Health Officer that may result from such remedial action cannot be recovered from the local government.

Conditions or restrictions on functions [section 20]

Under section 20(1) of the Public Health Act, the Chief Health Officer may impose conditions or restrictions on the performance of functions by a local government enforcement agency. This must be in writing and after consultation with the local government.

Delegation of powers [section 21]

There are a number of provisions in the Public Health Act which give decision-making powers to:

- a local government enforcement agency
- the Chief Health Officer.

The Public Health Act enables the enforcement agency to delegate these decision-making powers to a person employed at a lower level.

Under section 21(1) of the Public Health Act, local government may delegate a power or duty to:

- the Chief Executive Officer (CEO) of the local government
- an authorised officer designated by the local government.

Decisions are generally delegated to a level which ensures there is sufficient accountability and more operational efficiency. For example, a local government may wish to delegate authority to issue an enforcement order under Part 14 to an authorised officer.

Local governments need to ensure appropriate delegations are in place to achieve a balance between a level of governance based on risk to the organisation and the operational necessity of administrative processes.

The Department of Local Government, Sport and Cultural Industries has published a Delegation Guideline which provides assistance to local government regarding the nature of delegations, how to go about determining whether to use delegations and other related matters.

Powers or duties that may be delegated under the Public Health Act include:

Table 3: Powers or duties that may be delegated under the Public Health Act

Section	Relevant power or duty
Section 22	Reporting to the Chief Health Officer
Section 24	Designating authorised officers
Section 27	Maintaining a list of authorised officers
Section 30	Issuing certificates of authority
Section 45	Preparing local public health plans
Section 46	Publishing current local public health plans
Section 68	Registering a registrable activity
Section 71	Varying conditions of, suspending or cancelling registrations
Section 72	Extending or terminating suspensions of registration
Section 76	Maintaining a register of registrable activities and premises registered
Section 78	Granting activity licences
Section 82	Varying conditions of, suspending or cancelling activity licences
Section 83	Extending or terminating suspension of activity licence
Section 86	Maintaining a register of licence holders
Section 216	Issuing enforcement orders
Section 218	Extending periods of compliance with enforcement order
Section 219	Implementing enforcement orders
Section 221	Signing costs certificates
Section 223	Giving certificates of clearance
Section 224	Making assessments of compliance with an enforcement order
Section 260	Returning seized items
Section 262	Signing costs certificates
Section 263	Returning forfeited items
Section 264	Deciding an application for compensation

Reporting requirements [section 22]

Reporting requirements

Section 22 of the Public Health Act requires local government enforcement agencies to report to the Chief Health Officer on:

1. their performance of functions under the Public Health Act
2. details of any proceedings for an offence under the Public Health Act instituted or completed by the local government.

Section 22 of the Public Health Act requires local governments to provide to the Chief Health Officer:

- a report on their performance of functions under the Public Health Act to the Chief Health Officer
- details within one month of any proceedings for an offence they have instituted, and within one month after such proceeedings have been finally dealt with.

Performance of functions

As the main enforcement agency of the Public Health Act, local governments will be required to report to the Chief Health Officer on their performance of functions under the Public Health Act. Section 16 specifies local government functions in relation to the administration of the Public Health Act.

Such reports assist the Chief Health Officer to:

- anticipate issues associated with the administration of the Public Health Act
- gauge the level of consistency with which public health legislation is being administered across WA
- identify knowledge gaps and areas for future policy development.

The Chief Health Officer requires reporting to be undertaken on an annual basis to coincide with financial year reporting under the *Financial Management Act 2006*.

Reports must be submitted each financial year between 1 July and 31 August.

At the completion of each financial year the Department of Health will release a reporting template which includes details on what a local government will be required to report on. This information will be detailed on the Department of Health reporting webpage.

During the staged implementation of the Public Health Act, local government will only be required to report on the provisions of the Public Health Act that have come into effect.

Proceedings for an offence

Section 22(2) reads as follows: In addition to any report required under subsection (1), an enforcement agency must forward to the Chief Health Officer details of any proceedings for an offence under this Act taken by the agency, and those details must be forwarded -

(a) within one month after the proceedings have been instituted; and
(b) within one month after the proceedings have been finally dealt with.

Reporting requirements related to offences under the Public Health Act will only apply to offence provisions that are in effect. Environmental health matters will progressively shift from regulation under the *Health (Miscellaneous) Provisions Act 1911* to regulation under the Public Health Act during stage 5B.

How to report proceedings and details to be reported

'More information on the reporting framework will be provided on the Department of Health’s website.

Appointment of environmental health officers [section 17]

Traditionally, environmental health officers (EHOs) have been responsible for enforcing public health standards within local government. EHOs continue to be recognised in the Public Health Act as a profession that has the approved qualifications and experience to enforce public health law.

Appointment of environmental health officers (EHO) [section 17]

The Public Health Act provides that a local government may appoint one or more persons as an EHO.

The appointment of an EHO is the responsibility of local government and does not need to be in writing. The appointment can be done in accordance with the process used by a local government for employing staff or contractors.

A person appointed as an EHO under section 17 of the Public Health Act must also be designated as an authorised officer under section 24 of the Public Health Act in writing and be issued with a certificate of authority.

Gazette – qualification and experience of EHOs [section 18]

Any person appointed as an EHO must have at least one of the approved qualifications and experience gazetted by the Chief Health Officer under section 18.

The approved qualifications and experience were published in Gazette 113 of 2017, and are available on the Western Australian Legislation website.

Can two or more local governments appoint the same EHOs?

Yes. Section 17(4) allows two or more local governments to appoint the same person as an EHO to perform functions on behalf of each of those local governments.

Do EHOs need to be designated as authorised officers?

Yes. In order to carry out functions under the Public Health Act or another specified Act, an EHO must also be designated in writing as an authorised officer under section 24.

Designation of authorised officers [section 24]

Part 2 of the Public Health Act provides local governments with the autonomy to designate persons as authorised officers. This means local government can employ people with a range of qualifications and experience to exercise powers under the Act, not just persons with environmental health qualifications.

The Public Health Act also facilitates the designation of authorised officers for the purposes of other relevant Acts, enabling local governments to designate authorised officers for the purposes of multiple Acts by way of a single instrument. Local government can specify what functions an authorised officer can perform based on their qualifications and experience.

What is an authorised officer?

An authorised officer is a person designated to administer and enforce provisions of the Public Health Act or another specified Act on behalf of a local government enforcement agency. A

person may be an authorised officer by individual designation or by virtue of being within a designated class.

Section 24(3) of the Public Health Act enables a local government to designate as an authorised officer:

- EHOs as appointed under section 17 of the Public Health Act; or
- persons who are not EHOs, but who possess other appropriate qualifications and experience to perform particular functions under the Public Health Act or other Acts; or a mixture of both.

Who is responsible for designating a person as an authorised officer?

It is the responsibility of the local government to designate persons or a classes of persons as authorised officers. This must be done in writing.

Qualification and experience of an authorised officer

A local government may designate someone as an authorised officer even if they are not an appointed EHO under section 17. This can be done if the local government considers the person to have appropriate qualifications and experience to perform the particular functions they will be designated to perform.

The assessment of appropriate qualifications and experience is left to the discretion of the local government. Local governments are accountable for employing people with the appropriate qualifications and experience to perform functions under the Public Health Act or any other relevant Act.

A local government may specify conditions or restrictions to which the person's authority is subject, based on their qualifications and experience.

Chief Health Officer Guideline for the qualification and experience of authorised officers [section 29]

Though a local government has the discretion to assess what will constitute appropriate qualifications and experience, when making these designations a local government must have regard to any Chief Health Officer guidelines issued under section 29 of the Public Health Act.

When designating any person as an authorised officer, the local government should consider that person's competencies and the restrictions and limitations that should be placed on that designation, particularly where a person has not previously been eligible to be designated.

Maintain a list [section 27]

Local government must prepare and maintain a list of individually designated authorised officers and classes of designated authorised officers [section 27].

Although it is not specified in the Public Health Act, it is recommended the list include:

- the qualifications and experience that were considered in the designation
- the date of designation
- the Acts and provisions of the Acts the designation relates to
- a list of any conditions or restrictions of the designation.

In addition, it is recommended that a list of individually designated authorised officers include:

- the person's name
- the person's job title.

The list of authorised officers may form part of the local government annual reporting requirements to the Chief Health Officer [section 22].

Can two or more local governments designate the same authorised officer?

Yes. Section 24(4) of the Public Health Act recognises that some local governments may wish to jointly designate a person or class of persons as authorised officers.

A separate certificate of authority must be provided by each local government.

Certificate of authority (identity card)

An authorised officer must be issued with a certificate of authority which typically is in the form of an identity card.

Section 30(2) sets out the requirements for the content of the certificate.

An authorised officer must carry their certificate of authority with them when carrying out functions as an authorised officer. An authorised officer must show their certificate if asked to do so (section 30(3)). The authorised officer cannot exercise powers under the Public Health Act if they cannot produce their certificate when requested. It is important that an authorised officer familiarise themselves with these requirements. This includes being aware of the scope and limits of their designation.

Example certificate of authority

An example certificate of authority template is provided in Part B of this handbook. This is not an approved form under the Public Health Act, and can be modified as required as long as it includes the requirements in section 30.

Refer to Part B of this handbook for a ‘certificate of authority’ template.

Signing of the certificate of authority

Under section 30(2) the certificate of authority is signed by both the person who issues it and by the authorised officer to whom it is issued. Using section 21(1)(b)(i), local governments may delegate the power to issue certificates of authority to their Chief Executive Officer (CEO). The CEO, as the authorised delegate, would then need to sign the certificate along with the authorised officer being issued with the certificate.

The Department of Local Government, Sport and Cultural Industries has published a delegation guideline which provides assistance to local government regarding the nature of delegations, how to go about determining whether to use delegations and other related matters.

Specifying provisions or Acts on a certificate of authority

The certificate of authority must specify the Acts and provisions of those Acts for the purposes of which the authorised officer is designated (section 30(2)(d)).

The main parts of the Public Health Act that local government authorised officers may be designated for include:

- Part 9 – Notifiable infectious diseases and related conditions
- Part 14 – Improvement notices and enforcement orders
- Part 16 – Powers of entry, inspection and seizure

It is important to specify the individual parts of the Public Health Act that the designation relates to on the certificate of authority, rather than broadly stating the *Public Health Act 2016*. This is

because parts of the Public Health Act refer to duties to be performed by authorised officers which may not be relevant to local government authorised officers. Therefore this distinction is required on the certificate of authority.

Example wording: “The authorised officer is so designated for the purposes conferred by:

(i) Parts 9, 14 and 16 of the *Public Health Act 2016*; and
(ii) sections 145(1), 157(2), 173 (paragraph (a) of the definition of authorised person), 181, 183, 184(1), 349(1), 351(1), (2) and (5), 352(1) and (2), 358(2) and 375 of the *Health (Miscellaneous Provisions) Act 1911*; and
(iii) applicable sections of the *Food Act 2008*.

Note: The certificate of authority does not need to reference subsidiary legislation, as a reference to an Act includes its subsidiary legislation. However, if a local government believes an authorised officer should be restricted from enforcing specific regulations this may be listed as a condition or restriction in accordance with section 30(2)(e).

Provisions of an Act excluded from designation

Section 30(2)(d) states that the certificate of authority must specify any provisions of an Act that are excluded from the designation.

The inclusion of any provisions of an Act is at the discretion of the local government enforcement agency, and would relate to whether the person has the appropriate qualifications and experience to be able to perform particular functions under those provisions.

Conditions or restrictions on certificate of authority cards

Section 30(2)(e) states that a certificate of authority can list any conditions or restrictions to which the person’s authority is subject.

Any conditions or restrictions that are listed on a certificate of authority are at the discretion of the local government enforcement agency.

Temporary certificate of authority

A local government enforcement agency may issue a temporary certificate of authority without a photograph/digital image or signature, or both, if it is satisfied that there would be an unreasonable delay to obtain the photograph/digital image or signature. The temporary certificate must comply with all of the content criteria other than the requirement for a photograph/digital image and/or the person’s signature. A temporary certificate of authority may only be issued once and may be valid for a maximum period of one month. The temporary certificate has the same effect as an ordinary certificate of authority.

Multiple certificates of authority

Section 31(3) of the Public Health Act recognises that a person may be designated to enforce other written laws and provides the ability to consolidate documents evidencing a person’s identity or appointment.

Revoking a designation

An enforcement agency may revoke a designation in writing [section 26(1)(a)].

Ceasing to be an authorised officer

Any person designated to be an authorised officer by a local government ceases to be an authorised officer if the designation of the person is revoked or ceases to have effect [section

28]. They are required to return the certificate of authority to the issuer as soon as practicable [section 30].

A person who does not comply is liable for a penalty of $1000.

Part 3 – general public health duty

The purpose of the general public health duty is to prevent public health incidents from occurring and to ensure that people who undertake activities that affect public health are responsible for them.

What is the general public health duty?

The general public health duty is defined in the Public Health Act, and requires that:

> A person must take all reasonable and practicable steps to prevent or minimise any harm to public health that might foreseeably result from anything done or omitted to be done by the person.

This statutory duty is the key element of the risk based approach of the Public Health Act.

Harm is defined in the Public Health Act to include activities that may have adverse impacts and effects on a person's physical or psychological wellbeing, whether it is long term or immediate.

Why have a general public health duty?

The purpose of the general public health duty is to:

- prevent public health incidents from occurring
- ensure individuals are responsible for public health activities
- not cause harm to the health of other people including adverse impacts and effects on a person's physical or psychological wellbeing.

We all have a duty of care not to cause harm to the health of others.

The general public health duty is capable of capturing known public health risks as well as new and emerging threats.

The general public health duty is a forward-thinking approach designed for the needs of the 21st century. It imposes a duty on every person in Western Australia to ensure that their actions (including any omissions) do not cause harm to the health of others. The general public health duty is purposefully drafted in very broad terms to capture anything that adversely impacts upon public health, regardless of the cause.

The general duty overcomes the limitations of the *Health (Miscellaneous Provisions) Act 1911* because it is not prescriptively narrow or limited in its application. The general duty is able to be applied to emerging and unforeseen risks that may cause harm to public health.

This ensures the Public Health Act will continue to be relevant as societal needs, requirements and expectations evolve and change. In this way, the general public health duty is the mechanism that operates to "future proof" the legislation.

Who does the general public health duty apply to?

The general public health duty applies to any person whose activities might harm public health. The general duty is best applied in circumstances where:

- the risk is not prescribed under a regulation; or
- there is a new, emerging or unknown risk.

Examples of what is covered by the general public health duty

The general public health duty applies to all activities that may have adverse impacts and affect the public's physical or psychological wellbeing.

Examples include:

- Inactivity which causes public health problems through neglect or failure to take sufficient care
- Environments that expose the public to harm
- Prevention of adverse outcomes (infestations, injury etc)
- New and emerging threats to public health.

As a general guide some examples of possible breaches of the general duty are provided below:



Inappropriate disposal and removal of asbestos cement material



A clandestine drug laboratory



Not removing or decommissioning a septic tank



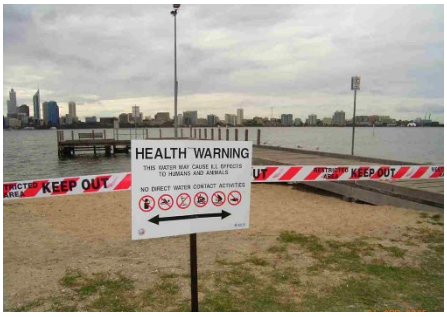
Inappropriate storage of waste attracting rodents



Creating man-made mosquito breeding habitats



Wastewater overflowing down a busy street



Contamination of a recreational beach



Not treating water in an aquatic facility to appropriate standards



Not installing crowd barriers at large concerts resulting in crowd crushing

Who determines if there has been a breach of the general public health duty?

Authorised officers will administer the general public health duty requirements. It is important for authorised officers to have the appropriate training and experience to make informed, professional judgements about what constitutes a public health risk and harm to public health.

It is important for authorised officers to have the appropriate training and experience to make informed, professional judgements about what constitutes a public health risk and harm to public health.

Is the Public Health Act the right tool?

It is acknowledged that the general duty is versatile and potentially wide ranging. Therefore, one of the first questions to consider is whether the Public Health Act is the right tool to address the particular circumstances. A possible risk to public health does not necessarily mean that the Public Health Act is the right legislation or that the local government is the appropriate authority to respond.

There may be another Act to address the circumstance, for example the

- *Food Act 2008*
- *Environmental Protection Act 1986*
- *Radiation Safety Act 1975* or
- *Local Government Act 1995*.

Depending on the nature of the circumstances, it may also be more appropriate for other agencies to take action, for example WorkSafe, Department of Water and Environmental Regulation etc.

Where the general public health duty is to be applied, there must be some clear risk of harm to public health. In cases where matters are a nuisance or amenity problem but no harm or health effect can be proven, such as unsightly yards or neighborhood disputes, the general duty will not apply.

Is the public health risk prescribed in a regulation?

Where the risk of harm or public health risk activity is prescribed in a regulation, the matter can be dealt with in accordance with that regulation and not under the general duty.

For example, it is anticipated that regulations under the Public Health Act will provide additional requirements to public health risk activities common to WA such as:

- asbestos
- pesticides
- body art and personal appearance services
- water quality.

Assessing if there has been a breach of the general public health duty

Assessing whether a breach of the general public health duty has occurred requires professional judgement by an authorised officer. An authorised officer will be confronted by numerous circumstances in the course of their duties that may be categorised as harm to public health.

In each circumstance, an authorised officer should undertake an assessment to gather the information (evidence) necessary to support a professional opinion.

As part of making an assessment, an authorised officer should consider:

1. Has harm to public health occurred?

Public health is the health of individuals in the context of the wider health of the community.

Therefore there must be a 'public' aspect to the harm. Risks to health that only affect the individual (such as not following medical advice) are not considered harm to public health.

There must be a 'public' aspect to the harm.

Harm, as defined in the Public Health Act, includes physical or psychological harm to individuals, whether long-term or of immediate impact or effect.

Where the general public health duty is to be applied, there must be some clear harm to public health.

As previously mentioned, in cases where matters are a nuisance or amenity problem but no harm or health effect can be proven, such as unsightly yards or neighbourhood disputes, the general public health duty will not apply. These matters should be dealt with in other ways such as under the *Local Government Act 1995*.

2. Are the person's actions likely to cause harm to public health?

It will need to be determined if the health of the community will be potentially impacted as a result of the risk from anything done or omitted to be done by the person.

A possible threat of harm, whether physical or psychological, should be an objective assessment by an authorised officer considering the facts of the case.

This assessment can look at whether the inactivity of a person may cause public health harm through neglect or failure to take sufficient care.

3. If yes, has the person taken reasonable and practicable steps to prevent or minimise the harm?

In assessing what is reasonable and practicable, regard must be had to the objects of the Public Health Act and to the following:

- the potential impact of a failure to comply with the duty
- any environmental, social, economic or practical implications
- any degrees of risk that may be involved
- the nature, extent and duration of any harm
- any matter prescribed by the regulations.

A person will not be taken to have breached the general public health duty if they have acted in accordance with a regulation or in a manner or circumstances that are consistent with generally accepted practices, taking into account prevailing environmental, social and economic practices.

For example, this may include:

- Compliance with risk management plans
- Compliance with Australian Standards or other industry guides
- Acting in accord with industry best practices
- Complying with another Act or Regulation.

The Department of Health has issued guidelines, available on the Department of Health website, which provide information and guidance on best practice for the purpose of managing the public health risks associated with the following:

- Cloth materials
- Commercial garden soils
- Hairdressing
- Offensive trades
- Temporary toilets.

Risk assessment to support the application of the general public health duty

Although the application of the general public health duty should not be burdensome to apply, there may be circumstances where an authorised officer may require the application of a more robust risk assessment framework to support decision-making and to help to determine the appropriate course of enforcement action to take.

Such models that may assist with undertaking a risk assessment include:

- Environmental health risk assessment: Guidelines for assessing human health risks from environmental hazards (enHealth, June 2012)
- Health risk assessment in Western Australia (Department of Health Western Australia, 2006)
- Health risk assessment (scoping) guidelines: A health risk assessment process for risk assessors for use within the scoping stages of environmental and health impact assessments (Department of Health of Western Australia, 2010).

Risk assessment guidance is provided in Part C of this handbook.

Consequences of failure to comply with the general public health duty

A breach of the general public health duty does not of itself give rise to any right or remedy, or constitute an offence, but may provide grounds for action to be taken under the Public Health Act. This could include issuing an improvement notice or enforcement order under Part 14 outlined in figure 3.

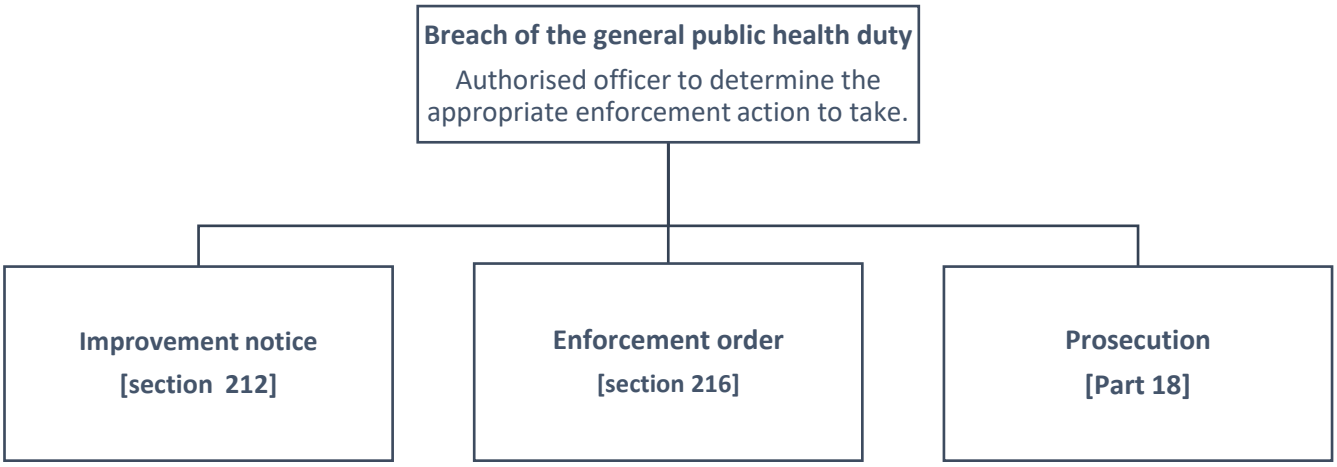


Figure 3: Enforcement action that can be taken following a breach of the general public health duty

Before any action is taken it may be appropriate to informally discuss the issues with the persons involved, exploring the nature of the possible harm and the ways in which the problem or potential problem can be avoided. Guidance and advice or, where necessary, mediation at this stage could resolve issues without the need to undertake formal enforcement action. Note that a breach of the duty itself is not the basis of either criminal or civil liability.

Part 4 – serious public health risks and material public health risks

Part 4 of the Act provides a broad and flexible offence framework that can capture both known and emerging public health risks.

What is the purpose of Part 4?

Part 4 provides a broad and flexible offence framework for conduct that creates either a serious or material public health risk under the Public Health Act.



Offences are distinguished based on the degree of risk that is or may be caused by the conduct of a person, namely whether the risk is a:

- material public health risk; or
- serious public health risk.

This acknowledges the difference in the seriousness of the risks involved. There is then a further distinction based on the person's degree of knowledge as to the outcome or likely outcome of their conduct.

A summary of the offence framework is outlined in table 4 below.

Table 4: Summary of the offence framework provided in Part 4 of the Public Health Act 2016 to be applied by a court of law

Degree of knowledge	Serious public health risk maximum penalty	Material public health risk maximum penalty
Knows will cause	Maximum penalty $250 000 3 years imprisonment Daily penalty $50 000	Maximum penalty $100 000 2 years imprisonment Daily penalty $20 000
Ought reasonably to know will cause	Maximum penalty $100 000 2 years imprisonment Daily penalty $20 000	Maximum penalty $75 000 Daily penalty $15 000
That causes, or will cause, or is likely to cause	Maximum penalty $50 000 Daily penalty $10 000	Maximum penalty $40 000 Daily penalty $8 000

Note: Penalties for a body corporate are in accordance with section 40(5) of the *Sentencing Act 1995,* that is body corporates are liable to fines of 5 times the maximum penalty.

Authorised officers and Part 4

An authorised officer will not need to distinguish between a material or serious public health risk to prosecute under the Public Health Act [defined in section 4]. This is the responsibility of the courts.

The authorised officer is responsible for collecting the supporting evidence in accordance with the Parts 6 and 13 of the *Criminal Investigation Act 2006* and Part 16 of the Public Health Act. The type of evidence to be collected will depend upon the individual circumstances. Authorised officers should have the appropriate training and skills to collect evidence necessary for prosecution. Part 16 of the Public Health Act provides the powers of entry, inspection and seizure to support the collection of evidence.

What is a serious public health risk?

The Public Health Act defines serious public health risk as a public health risk involving potential harm to public health that is irreversible, of a high impact or on a wide scale. In addition, the regulations may declare a public health risk to be a serious public health risk, or not to be a serious public health risk.

When a risk of harm to public health arises, local government enforcement agencies and authorised officers must first consider whether the risk is subject to a declaration under the regulations. If not, a professional judgement can be made as to whether the risk involves potential harm to public health that is irreversible, of a high impact or on a wide scale.

The offence provisions set out in sections 37 and 38 may be applied to emerging and unforeseen risks that may cause harm to public health (unless those risks are declared in the regulations not to be a serious public health risk).

If legal proceedings are commenced for prosecution of an offence under the Public Health Act in accordance with section 280 of the Act, it is ultimately for the courts to determine whether the offence has been committed.

Offences related to serious public health risks

Offences related to a serious public health risk are based on three degrees of knowledge [section 37]:

- Knows will cause
- Ought reasonably to know will cause
- That causes, or will cause, or is likely to cause.

An example of what may constitute a serious public health risk is deliberately burning down an asbestos house rather than disposing of the material in accordance with correct standards.

What is a material public health risk?

Material public health risk is defined in the Public Health Act as follows:

(a) a public health risk involving potential harm to public health that is neither trivial nor negligible; and

(b) includes a public health risk declared by the regulations to be a material public health risk; but

(c) does not include a public health risk declared by the regulations not to be a material public health risk.

Offences related to material public health risks

Offences related to a material public health risk are based on three degrees of knowledge:

- Knows will cause
- Ought reasonably to know will cause

- That causes, or will cause, or is likely to cause

An example of what may constitute a material public health risk is keeping a body of water in a backyard in such a poor condition that it becomes a mosquito breeding site.

What enforcement action may be taken for offences under Part 4?

Under section 280 of the Public Health Act, local government enforcement agencies may commence prosecutions for offences, including those under Part 4.

In accordance with section 21(2) of the *Criminal Procedure Act 2004*, prosecutions must be commenced within 12 months of the date on which the offence was committed.

Depending on the circumstances, it may also be appropriate to take other action under the Public Health Act, such as issuing an improvement notice or an enforcement order. Such action, which is focused on addressing the public health risk, can occur irrespective of whether a prosecution is commenced.

Defence of due diligence

Due diligence is important as a legal defence for a person charged under the Public Health Act (section 39). If charged, a person may be found not guilty if the person can prove that they took all reasonable precautions and exercised due diligence to prevent the commission of the offence.

The defence will apply if the person can establish a range of specified matters that relate to risk management procedures. This creates an incentive for persons to have ongoing systems of monitoring and management in place to prevent, reduce and manage public health risks.

Refer to the section on Part 18 for information on deciding when to prosecute.

Part 5 – public health plans

Part 5 of the Act requires the preparation of two types of public health plans:

1. a State public health plan prepared by the Chief Health Officer.
2. a local public health plan prepared by each local government.

A separate Public Health Planning Guide for Local Government has been developed as part of implementation of the Act to assist local governments with the development of its local public health plan. This guide is available on the Department's website. A general overview of Part 5 is provided below.

What is a public health plan?

A public health plan consists of:

1. **A health profile**: The background evidence which provides an analysis of the health status and health determinants of the population (either at a state-wide or a local district level) and provides an overview of the public health needs of the community.
2. **A strategic plan**: Outlines the objectives and policy priorities that focus on achieving positive public health outcomes through the promotion, improvement and protection of public health and the development and delivery of public health services.

The relationship between the State public health plan and local public health plans, as well as some key elements of public health planning required under the Public Health Act are summarised below:

Table 5. Relationship between State public health plans and local public health plans

<table>
<tr><th colspan="4">Public Health Planning</th></tr>
<tr><td rowspan="6">State public health plan</td><td colspan="2">Identifies public health needs</td><td rowspan="6">Local public health plans</td></tr>
<tr><td colspan="2">Examines health status and health determinants</td></tr>
<tr><td colspan="2">Establishes objectives and policy priorities for:</td></tr>
<tr><td>Promotion, improvement and protection of public health</td><td>Development and delivery of public health services</td></tr>
<tr><td colspan="2">Establishes a framework for identifying and responding to public health risks</td></tr>
<tr><td colspan="2">Ensures continuous review, replacement and reporting of the plan</td></tr>
</table>

What is the purpose of the State public health plan?

The Chief Health Officer must prepare and maintain a public health plan that applies to the whole of the State. The aim of the State plan is to ensure the State's public health focus and efforts:

- meet the public health needs of the State
- are evidence based
- establish objectives and policy priorities for the promotion and protection of public health and the development and delivery of relevant services
- define how the objectives and policy priorities are to be achieved
- include a strategic framework for the identification, evaluation and management of risks relating to public health in the State.

The Chief Health Officer has developed the **State Public Health Plan 2025-2030**.

What is the purpose of the local public health plan?

Each local government is required to produce a local public health plan that applies to its district. Local government provides numerous services, programs and policies that aim to improve the community's health and wellbeing. Local government therefore plays a vital role in public health, and has the capacity, capability and experience to deliver improvement in this area.

A local public health plan must be consistent with the State public health plan whilst responding to local public health challenges. The plan must:

- identify the public health needs of the local government district
- include an examination of data relating to health status and health determinants in the local government district
- establish objectives and policy priorities for the promotion and protection of public health in the local government district
- describe the development and delivery of public health services in the local government district

- include a report on the local government's performance of its functions under the Public Health Act.

What is meant by 'being consistent' with the State plan?

This means that local government must:

- consider the objectives and policy priorities outlined in the State public health plan to determine their relevance to the local district
- determine what services, programs and projects are, or could be, implemented at the local level to promote, improve and protect public health, in line with the relevant objectives and policy priorities identified in the State public health plan.

In some cases, objectives and policy priorities in the State public health plan may not be relevant to the local district. Local governments are entitled to come to a decision that does not necessarily reflect one or more of the objectives and policy priorities in the State public health plan, provided that local governments have considered them and are able to demonstrate how their conclusion was reached.

Will public health plans impose onerous obligations on local government?

To minimise the number of separate strategic planning processes required of local government, section 45(3) of the Public Health Act allows for a local public health plan to be integrated within the existing planning process required under the *Local Government Act 1995*.

All local governments are required to produce a plan for the future under section 5.56(1) of the *Local Government Act 1995*. The minimum requirement to meet the intent of the plan for the future is the development of a:

1. Strategic Community Plan
2. Corporate Business Plan.

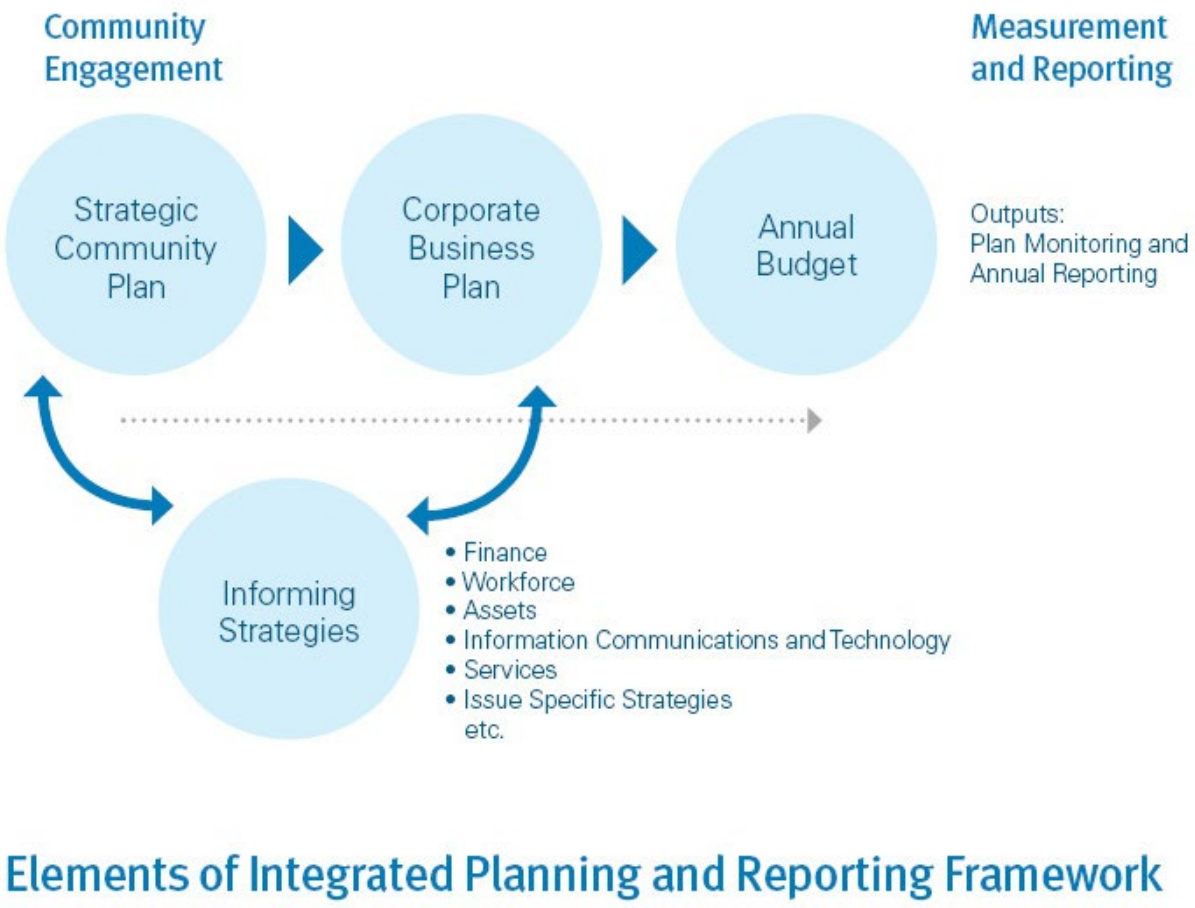


Figure 4: Summary of the Strategic Community Plan and Corporate Business Plan model under the Local Government Act 1995

To support the development of the future plans, the Department of Local Government, Sport and Cultural Industries has developed the Integrated Planning and Reporting Framework and Guidelines 2016 (the Framework) and a range of other tools and resources.

The Framework provides the basis for improving the practice of strategic planning in local government by supporting the development of local priorities and linking them to operational functions.

The Department of Health encourages local governments to incorporate public health planning into this established framework.

Who is responsible for developing the local public health plan?

A local government may delegate its function under section 45(1) to the Chief Executive Officer or an authorised officer in accordance with section 21 of the Public Health Act.

The task of who is responsible for developing the plan is at the discretion of each local government. The Public Health Act does not require any specific skills or qualifications to develop the plan.

There is no standard template or specific step-by-step process that must be adhered to, except meeting those requirements outlined in the Public Health Act. This ensures flexibility in design as well as flexibility in the processes used to identify and implement objectives and policy priorities.

What oversight will there be in respect of public health planning by local governments?

Section 47 of the Public Health Act provides the power for the Chief Health Officer to request a copy of a local government's public health plan. In the event that a local government fails to undertake public health planning, consideration will be given to exercising the power under section 47.

Is a local public health plan a public document?

Yes. A local government must make its local public health plan publicly available without charge.

What resources are available to assist local governments with developing a local public health plan?

A separate guide has been developed as part of implementation of the Public Health Act to assist local governments with the development of its local health plan. This is available to download from the Department of Health's website.

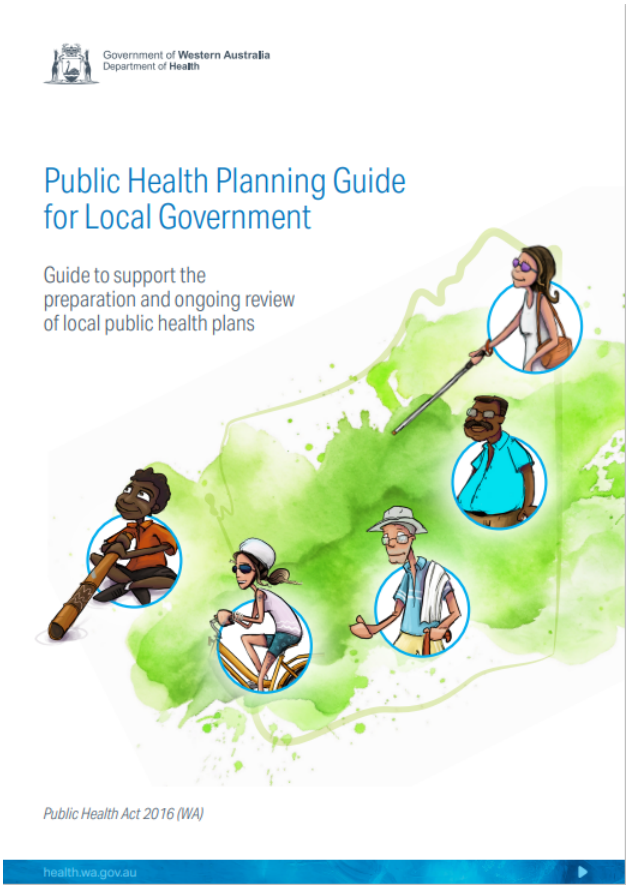


Figure 5: The public health planning guide for local government provides support to local government on meeting the requirements of Part 5 of the Public Health Act

Part 6 - public health policies

Part 6 of the Public Health Act provides a framework for the Chief Health Officer to develop and the Minister to issue public health policies.

What is a public health policy?

The Public Health Act empowers the Minister to issue public health policies for any purpose relating to the objects of the Act. Public health policies can be made in respect of broad public health issues that are of particular significance to the community.

Public health policies strengthen the proactive focus of the Public Health Act and ensure that the community is both educated about relevant public health issues and engaged in the development of solutions.

This potentially gives public health policies a very wide field of operation, responding to a range of issues that either adversely affect the public's health or promote better health across the community.

Public health policies strengthen the proactive focus of the Act and ensure that the community is both educated about relevant public health issues and engaged in the development of solutions.

Is a public health policy considered to be subsidiary legislation?

No. Public health policies are not legislative instruments which means they are not legally binding.

What is the difference between a public health policy and regulations?

Regulations impose legal obligations and can impose penalties for non-compliance.

Public health policies are not legal instruments and they cannot impose penalties.

Can a regulation adopt a public health policy?

No. A regulation cannot adopt a public health policy (s 305 (3)).

What enforcement action can a local government take under a public health policy?

None. It is not an offence to fail to comply with a public health policy nor will a public health policy impose any sanctionable obligations.

Can a public health policy apply to a specific area of the State?

Yes. A policy can be designed for application to a specific area of Western Australia or a specific local government district. Therefore, a policy can be developed for specific area such as the South West or the Kimberley where there may be isolated public health problems. This is a similar process used to environmental policies developed in WA.

Development of a public health policy

The Chief Health Officer must meet a number of requirements in the development of a public health policy including:

- Giving public notice of the proposed policy, including details on the purpose of the policy and where to access a copy
- Inviting submissions on the draft policy, specifying how and when submissions must be made

- Publishing the draft policy on the Department of Health's website or other suitable means
- Consulting with any person or body which may be affected by the policy
- Considering any submissions made
- Reporting to the Minister on the outcomes of consultation, and making a recommendation to the Minister on the need to issue the policy.

Chief Health Officer to report to Minister for Health on the outcome of consulation

The Chief Health Officer must consider any submissions received and views expressed during consultation and provide a summary report to the Minister. The report must include a recommendation either for or against issuing the policy.

Public health policies must be brought before each House of Parliament after the policy is issued.

Tabling public health policies before each House of Parliament

The Minister is required to present the Chief Health Officer report to each House of Parliament as soon as practicable after the Minister receives the report.

Once issued, the Minister must also cause a copy of the public health policy to be laid before each House of Parliament as soon as practicable.

Publication of final public health policies

The Chief Health Officer is required to make the Chief Health Officer report and a public health policy issued by the Minister publicly available without charge, such as on the Department of Health's website.

Part 7 – public health assessments

Part 7 of the Act provides for the implementation of public health assessments for proposals declared by the regulations to be assessable proposals.

What is a public health assessment?

A public health assessment considers any public health risks and benefits that may result from implementing an assessable proposal.



Section 57 of the Public Health Act defines a proposal as being a:

- project
- plan
- programme
- policy
- operation
- undertaking or
- development.

This is a very broad term and its application will be further clarified in stage 5B of implementation.

Why are public health assessments needed?

Public health assessments enable the Department of Health to provide advice and recommendations to decision-makers and proponents on public health related matters during the planning stages of an assessable proposal, to add value or improve the public health outcomes of proposals.

The advice can be used to:

- highlight the public health impacts, both positive and negative that may result from implementing the proposal
- assist the decision-maker with determining whether, and on what conditions or restrictions, the proposal should proceed.

What is the role of local government enforcement agencies in public health assessments?

It is anticipated that local government's role for public health assessments will be limited, unless the local government is a decision-making authority or a proponent as defined in section 57 of the Public Health Act. However, this cannot be confirmed until a public health assessment regulation is created under section 58.

The public health assessment regulations will provide all the detail on how the public health assessment process will operate in WA. This regulation must be developed with extensive state-wide consultation. Local government will be part of this consultation process.

It is anticipated that a public health assessment will be undertaken in conjunction with other existing approval processes such as the Environmental Impact Assessment process managed by the Environmental Protection Authority www.epa.wa.gov.au.

What proposals will be assessable?

The public health assessment regulations, which will be developed during stage 5B of implementation of the Public Health Act, will prescribe which proposals are assessable.

Section 63 outlines other matters that regulations may specify, including:

- Form, content, timing and procedure of a public health assessment
- Reporting requirements
- Fees or charges
- Requiring a proponent to advertise and make available to the public copies of the proponent's assessment report
- Requiring a proponent to provide to the Chief Health Officer a written response to any submissions recieved on its report
- Requiring specified information that is relevant to the proposal to be provided within a specified time to the Chief Health Officer
- Enabling the Chief Health Officer to investigate or enquire about a proposal
- Requiring the implementation of a proposal to be monitored in a specified manner.

An assessable proposal will generally be one where there is an overlap between issues of planning and development, environmental protection and public health. An example of an assessable proposal could be a mining development.

When will a public health assessment regulation be created?

Part 7 will not come into effect until after the stage 5B of implementation of the Public Health Act.

Can a proposal that is not prescribed assessable be subject to a public health assessment?

Yes. The Minister has the power (section 62) to request the Chief Health Officer to conduct an inquiry under Part 15 of the Public Health Act into any proposal that, if implemented, would likely have a significant effect on public health.

Part 8 – registration and licensing

Part 8 of the Act provides a framework for the registration and/or licensing of activities declared by the regulations to be public health risk activities.

Is Part 8 applicable to local government enforcement agencies?

Yes. Regulations will prescribe the appropriate enforcement agency for each registrable and/or licensable activity. This may be the local government, the Chief Health Officer or both.

The appropriate enforcement agency will be required to administer Part 8 of the Public Health Act in conjunction with any regulations related to a prescribed activity.

What activities will be registrable or licensable?

The regulations will declare what is a public health risk activity and if it is required to be registered, licensed or both.

For example, public events, pesticide operations, skin penetration businesses and aquatic facilities will likely have registration and/or licensing requirements once regulations are made.

Further information will be provided when the regulations are developed.

The regulations will declare what matters are a 'public health risk activity' that must be registered, licensed or both.

What is the process for registration or licensing?

Enforcement agencies are required to assess applications for registration and/or licensing of a declared public health risk activity.

In deciding whether to grant or refuse an application, the enforcement agency must have regard to any matters prescribed by the regulations in relation to that activity.

How is an application for registration or an activity licence made?

An application for registration or a licence must be in an approved form and include any plans, specifications, other documents or information that the enforcement agency requires for a proper consideration of the application.

If the enforcement agency grants an application, the agency must issue the applicant with a certificate of registration or an activity licence in the approved form.

A certificate of registration must specify (section 68(6)):

- the registered premises and registered activity
- any conditions to which the registration is subject.

An activity licence must specify (section 78(7)):

- the name of the licensed person
- the licensed activity or activities
- any conditions to which the licence is subject
- the period for which the licence remains in force.

A certificate of registration remains in force until it is suspended or cancelled.

An activity licence remains in force for the period specified in the licence. It may be renewed under section 80 of the Act.

Can a local government enforcement agency set its own conditions for a registrable or licensable activity?

Yes. An enforcement agency may set its own conditions to which a registration or licence is subject.

As each activity is unique, a local government may wish to develop specific conditions for different activities. This is a matter for local government to determine. As regulations are made under the Public Health Act, the Department of Health may provide some examples of conditions for specified activities.

Enforcement agencies can set their own conditions to which a registration or licence is subject.

These conditions must not be inconsistent with any regulations prescribed in respect of that activity.

Can a person be exempt from the registration or licensing requirements?

Yes. The regulations may prescribe that a person or class of persons undertaking a registrable or licensable activity are exempt from the requirements of Part 8.

Can a local government enforcement agency set an application fee for registration and licensing?

Yes. Section 294 of the Public Health Act allows a local government to impose and recover a fee under Part 6 Division 5 Subdivision 2 of the *Local Government Act 1995* for the performance of a function as an enforcement agency under the Public Health Act.

Part 8 of the Public Health Act requires a person when submitting an application for registration or licensing to include the fee (if any) imposed under section 294 by an enforcement agency.

Can a local government enforcement agency set an annual fee or other fee in relation to registration and licensing?

Yes. If the appropriate enforcement agency is a local government, they may (in accordance with section 294) impose an annual fee or other fee for the registration (section 70) or licensing (section 81) of a registrable or licensable activity.

The regulations may also prescribe an annual or other fee in relation to the registration or licensing of a registrable or licensable activity.

Non-payment of fees

Non-payment of a fee may provide grounds for the enforcement agency to vary the conditions of, suspend or cancel the registration of a registrable activity (section 71) or an activity licence (section 82).

Is a registration transferable?

Registration cannot be transferred to another premises.

However, the holder of a certificate of registration can transfer that certificate to another person, but only if the appropriate enforcement agency approves the transfer (section 74).

An application for the approval of a transfer of a certificate of registration must be made and dealt with as if it were an application made under section 68 for the registration of a registrable activity.

Is an activity licence transferable?

No. A licence is issued to a person and cannot be transferred to another person.

Can a local government enforcement agency vary the conditions on a registration or activity licence?

Yes. The appropriate enforcement agency may vary the conditions of, suspend or cancel a registration or activity licence.

How will conditions be enforced?

Authorised officers are required to enforce the regulations and any conditions to which a registration or licence is subject.

Regulations may prescribe offences in relation to an activity. Regulations may also provide modified penalties for such offences for which an infringement notice may be issued. A local government enforcement agency will be required to appoint persons or classes of persons to be authorised officers and approved officers to deal with infringement notices. These appointments are separate to the designation of authorised officers under the Public Health Act.

Can a person seek a review of a decision made by a local government enforcement agency?

Yes. A person can appeal to the State Admistrative Tribunal (SAT) for a review of various decisions in respect of a registration or activity licence (sections 75 and 85).

A person can appeal to SAT for a review of various decisions related to registration and licencing.

Requirement to keep registers

Local government enforcement agencies must keep a register of all registrable activities and premises registered and all persons who have been issued with an activity licence under the Public Health Act (sections 76 and 86).

Both registers must be prepared and maintained in the approved form and made publicly available.

Regulations may prescribe specific details that must be contained in the registers.

Part 9 – notifiable infectious diseases and related conditions

Part 9 provides a broad and flexible framework for the management of infectious diseases and related conditions that is capable of responding to both known and emerging risks to public health.

It also describes the rights and responsibilities of individuals for notifiable infectious diseases and seeks to balance the protection of public health with the rights of the individual.

What is the purpose of Part 9?

Part 9 provides a generic framework that uses four common public health tools to aid in preventing and controlling the spread of infectious diseases and related conditions. These are:

1. obligations on medical practitioners, nurse practitioners and pathologists to make notifications to the Chief Health Officer
2. orders for compulsory testing (test orders)
3. orders to require or prohibit specified matters (public health orders)
4. measures to identify and inform persons who have or may be affected by or exposed to a notifiable infectious disease.

The Public Health Act strikes a balance between the powers necessary to prevent the spread of infection and the rights of individuals. In addition to providing principles, it offers a range of tangible rights and safeguards, including the right to receive specified information, to obtain legal advice and to seek a review of a test or public health order.

Is Part 9 applicable to local government authorised officers?

There will be a limited role for local government authorised officers to help carry out some of the functions under this Part, particularly in terms of the follow-up and investigation of notifiable infectious diseases associated with an environmental risk.

This is expected to be largely a continuation of the current functions under the previous *Health (Miscellaneous Provisions) Act 1911*, whereby local government may be involved in the follow-up of environmental aspects of cases of:

- mosquito-borne diseases
- food and water-borne diseases
- outbreaks, zoonoses (e.g. Q fever) and legionellosis.

These functions will be determined by the Department of Health's Communicable Disease Control Directorate, in consultation with the Environmental Health Directorate, and/or by regional population health units in direct consultation with the relevant local government authority.

Refer to the Department of Health's website www.health.wa.gov.au for updated infectious disease notification forms and procedures.

It is also possible that in exceptional circumstances, local government authorised officers may be asked to assist with the response to a wider range of notifiable infectious diseases (e.g. during a large outbreak of measles or a serious disease such as ebola virus). This could include assistance with enforcement of provisions related to test orders and public health orders.

If a communicable disease incident constitutes a serious public health incident or is declared a public health state of emergency then a local government authorised officer might also be authorised by the Chief Health Officer to exercise serious incident or emergency powers under Parts 11 or 12 of the Public Health Act for that specified incident or emergency. In such events further support and guidance will be provided to local government.

Part 10 – non-infectious diseases and physical or functional abnormalities

Part 10 of the Act provides a framework for the notification of prescribed conditions of health to the Chief Health Officer to facilitate important public health programs and initiatives with respect to a range of non-infectious conditions such as cancer, developmental anomalies and lead poisoning.

It also enables regulations to be made for the establishment and maintenance of registers to record the information.

Is Part 10 applicable to local government authorised officers?

No. This Part is not applicable to local government.

Who will the notification provisions apply to?

The provisions for notification will apply to medical practitioners and nurse practitioners as well as any other person the Chief Health Officer believes can assist in achieving the objects of the Public Health Act with respect to a particular prescribed condition of health.

Part 11 – serious public health incident powers

Part 11 provides for the authorisation of and framework for the exercise of serious public health incident powers in certain circumstances.

Why are serious public health incident powers required?



The Public Health Act provides a range of powers that may be exercised in order to prevent, control or abate risks to public health. From time to time the nature or degree of that risk may require the exercise of wide-scale powers. Part 11 provides the first level of response in these situations. Part 12 provides a higher level of response.

What is an example of a serious public health incident?

Natural disasters such as flooding events or release of toxic fumes into the airshed.

How will a serious public health incident be declared?

A serious public health risk means a public health risk involving potential harm to public health that is irreversible, of a high impact or on a wide scale. The regulations will also designate certain public health risks to be a serious public health risk.

There is no formal declaration required, however, when the Chief Health Officer determines a serious public health risk exists, affected stakeholders will be informed.

When the Chief Health Officer determines a serious public health risk exists, who will manage the incident?

The Chief Health Officer and staff at the Department of Health will manage a serious public health incident. The Chief Health Officer may also authorise any authorised officer, including a local government authorised officer (section 152).

What is the difference between a serious public health incident and a public health emergency?

A serious public health incident requires a coordinated response, where the Chief Health Officer needs to exercise serious public health incident powers to prevent, control or abate a serious public health risk. A public health emergency refers to events or circumstances that cause or contribute to serious adverse effects on public health, and require the exercise of extraordinary powers, for example powers relating to drugs and vaccines. A public health emergency involves formal declaration of the event by the Minister.

Public health emergencies refer to particular types of emergency, such as in the context of bioterrorism or rapidly spreading epidemics of serious infectious diseases (for example, such as SARS, COVID-19, ebola virus or an influenza pandemic with high mortality), where there is an overwhelming and immediate requirement to take action and protect public health.

How is authorisation given?

Authorisation may be given orally or in writing but if given orally, it must be confirmed in writing as soon as possible (section 154).

Will the Chief Health Officer be issuing guidelines about the required qualifications and experience of authorised officers who will be given serious public health incident powers?

The Chief Health Officer will determine the relevant qualifications and experience and liaise with local government about the availability of suitable staff prior to the authorisation of authorised officers to exercise serious public health incident powers.

Authorised officers will not be given functions they do not have the qualifications and experience to perform.

How will I know that I am authorised to use serious public health incident powers?

The Chief Health Officer will issue an authorisation instrument and authorised officers will be provided with a copy. The instrument must:

- state it has been given under Part 11 Division 1 of the Public Health Act
- describe the serious public health risk to which it relates
- name or describe the place the incident has arisen
- specify the time the authorisation was given
- specify the serious public health incident powers that may be exercisedspecify the duration of the authorisation (section 153).

An authorisation instrument may be amended or revoked during the period of authorisation, and authorised officers will be provided with copies of such changes.

What powers does someone who is authorised have?

A list of serious public health incident powers is included in section 157 of the Public Health Act. This includes powers to:

- close any premises
- direct people to enter, not to enter, or to leave any premises
- direct people to remain (for a specified period) at any premises
- search and inspect any premises
- require a person to provide information
- require cleaning or disinfection of a premises
- require destruction or disposal of anything
- direct a person to remain quarantined (for a specified period), undergo medical observation, testing or treatment and vaccination or to direct a person to take any other action deemed necessary to prevent, control or abate the serious public health risk.

In carrying out these powers, an authorised officer may be given assistance by a police officer or other person.

Authorised officers should also note the requirements of sections 158 and 159 in respect of implementing specific powers and section 157(3) relating to limitations on specified periods.

Once authorised for a serious public health incident, can I use all the serious public health incident powers?

No. An authorised officer can only exercise the powers they are authorised to exercise in the signed authorisation instrument issued by the Chief Health Officer.

What are the conditions of an authorisation?

A serious public health incident power can only be exercised while the serious public health risk to which the authorisation relates exists.

If a local government or its officers have a concern or query during a serious public health incident, who will be the point of contact?

Contact points will depend on the location, type and severity of the incident as well as the nature of the enquiry. Local government will be informed of contact points.

Is it an offence to fail to comply with a requirement of, or direction by, an authorised officer given under Part 11?

Yes. Failure to comply with a requirement of, or a direction given by, an authorised officer exercising a serious public health incident power is an offence with a penalty of a fine of $20,000.

For the offence to apply, the authorised officer giving the requirement or direction must inform the person that a failure to comply with the requirement or direction may constitute an offence.

Can a person seek a review of a direction or decision given under this Part?

A person may apply to the State Administrative Tribunal for a review of:

- a direction by an authorised officer under section 157(1)(c) to remain at any premises
- a direction by an authorised officer under section 157(1)(i) to remain quarantined
- a decision by an authorised person to detain a person under section 158.

Only the person to whom the reviewable decision applies may apply for the review.

Part 12 – public health emergencies

Part 12 of the Act provides the Minister with the power to declare a public health state of emergency and to authorise the exercise of emergency powers.

What is the purpose of Part 12?

Similar to Part 11, Part 12 will be used in those rare situations where, due to the nature or degree of risk, there is an overwhelming need to take action to protect public health.

Part 12 provides a higher level of response than Part 11 to ensure action can be taken to prevent, control or abate a public health emergency.

Why are public health emergency powers needed?

During a state of emergency, the *Emergency Management Act 2005* is activated. This provides for a whole of government response to an emergency.

In circumstances which are uniquely health related and may not require a whole of government response, Part 12 complements the State emergency management powers by providing detailed provisions in relation to drugs, vaccines, quarantine and other medical matters. This Part allows for effective planning and response to public health emergencies such as ebolavirus, a massive flu outbreak or food or water contamination following a natural disaster.

When will public health emergency powers be used?

The Chief Health Officer may only authorise the exercising of emergency powers when a public health state of emergency declaration is in force. This declaration is made by the Minister for Health. Such powers will only be authorised in those rare emergencies, such as rapidly spreading epidemics of serious infectious diseases, where there is an overwhelming need to take action to protect public health.

Emergency powers in the *Public Health Act 2016* are in addition to and supplement the powers available in the *Emergency Management Act 2005*.

How often is it anticipated that the public health emergency powers will be used, or require local government support?

It is anticipated that a public health state of emergency will rarely be declared and therefore the powers will rarely used. In addition to this, not all emergencies will require the exercising of all powers and not all emergencies will involve local government support.

How will a public health emergency be declared?

A declaration is made in writing by the WA Minister for Health. Notice of a declaration will be published as soon as practicable after it is made.

When a public health emergency is declared, who will manage the emergency?

The Chief Health Officer will lead the response.

How does Part 12 apply to local governments?

Part 12 provides that the Chief Health Officer must prepare a public health emergency management plan. A local government may be given roles or responsibilities under that plan

and may be directed to assist the Chief Health Officer during the preparation or review, amendment or testing, of the plan.

As part of a declared public health state of emergency, the Chief Health Officer may also authorise any local government authorised officer to exercise any of the emergency powers while the declaration in is force. These officers are considered emergency officers as a result of being authorised by the Chief Health Officer under this Part. Within local government, people with environmental health qualifications are most likely to be authorised as emergency officers, along with police and health professionals.

Each local government is required to prepare and maintain a list of those local government authorised officers who are authorised by the Chief Health Officer to be emergency officers (section 174(5)).

Emergency officers may be requested to undertake a number of duties including, but not limited to:

- Entering property to control or eradicate a public health risk, such as disease vectors or harmful substances.
- In collaboration with police, direct the movement of persons, animals and vehicles around a designated emergency area.
- Enter a premises to search for, open and seize anything deemed to be a public health risk, such as foodstuffs, pesticides or dangerous chemicals.
- Assist in the implementation of quarantine measures.

It is unlikely that local government emergency officers would be required to undertake enforcement powers under Part 12, and would work with police if required.

More information will be made available to local government on their responsibilities where required.

Who will be authorised as emergency officers?

Emergency officers will be authorised according to the type of emergency, the skills and qualifications required, and the powers the Chief Health Officer determines are required. Emergency officers may include existing authorised officers and health professionals.

What skills or qualifications are required for emergency officers?

Depending on the emergency and the powers to be exercised, the Chief Health Officer will determine skills and qualifications required. Individuals who do not possess the appropriate skills, qualifications and experience will not be designated as emergency officers.

What are the conditions on an authorisation?

An emergency power can only be exercised while a public health state of emergency declaration that allows the exercise of that power is in effect. A public health state of emergency declaration may limit the powers that may be exercised.

How is authorisation given?

Authorisation may be given orally or in writing but if given orally, it must be confirmed in writing as soon as possible (section 176). The authorisation must:

- state it has been given under Part 12 Division 4 of the Public Health Act
- describe the public health state of emergency to which it relates
- name or describe the place the emergency has arisen

- specify the time the authorisation was given
- specify the emergency powers that may be exercised
- specify the duration of the authorisation (section 175).

What powers does an emergency officer have?

An emergency officer can only exercise the powers they are authorised to exercise in the signed authorisation instrument issued by the Chief Health Officer.

Sections 179 to 184 and 190 provide a list of emergency powers. These include powers in relation to:

- obtaining identifying particulars
- movement and evacuation
- use of vehicles
- taking control or use of premises or property
- taking control of drugs and vaccines or
- directing persons to remain quarantined, undergo medical observation, testing or treatment, vaccination, decontamination or other procedures.

Emergency officers should also note the requirements of sections 185, 186 and 191 when exercising certain powers.

Will training be provided to emergency officers?

While it is highly unlikely that individuals will be designated as emergency officers unless they possess the skills required, training may be provided in relation to exercising of the powers and the administration of the Public Health Act. Any such training will be provided as part of the emergency response.

Providing emergency officers are acting with authorisation from the Chief Health Officer, and their actions remain within the specific powers authorised, they will not be liable for these actions.

If a local government or its officers have a concern or query during a public health emergency, who will be the point of contact?

Contact points will depend on the location and type of emergency as well as the nature of the enquiry. Local government will be informed of contact points during the emergency.

What will happen if a local government doesn't have enough resources to deal with a serious public health incident or public health emergency?

The overall responsibility for the response to these events lies with the Chief Health Officer. In a public health emergency, the Chief Health Officer can direct public authorities to assist, if required. Local government will be supported should they have insufficient resources.

Can a person seek a review of a direction or decision of an emergency officer?

A person may apply to the State Administrative Tribunal for a review of:

- a direction by an emergency officer under section 184(1)(a) to remain at any premises
- a direction by an emergency officer under section 184(1)(b) to remain quarantined
- a decision by an emergency officer to detain a person under section 185(1) or 190(1)(o).

Only the person to whom the reviewable decision applies may apply for the review.

What happens if a person fails to comply with the direction of an emergency officer?

If a person does not comply with a direction given by an emergency officer, the emergency officer may do all things that are reasonably necessary to ensure compliance with the direction, using any force that is reasonable in the circumstances. A failure to comply with a direction given by an emergency officer exercising an emergency power is an offence with a penalty of a fine of $20,000. For the offence to apply, the emergency officer giving the direction must inform the person that a failure to comply with the direction may constitute an offence.

Part 13 – compensation and insurance

The purpose of Part 13 is to ensure a person is paid just and reasonable compensation by the State for losses or damages suffered as a result of powers exercised under Parts 11 and 12 of the Public Health Act.

What is the scope of entitlement to compensation?

This part relates to arrangements to address losses incurred as a result of the exercise of:

- A serious public health incident power
- An emergency power
- A power under Part 12 Division 6 or section 199.

A person will not receive compensation for any amount of loss or damage covered by a policy of insurance or for which an act or omission of the person contributed to the loss or damage.

Part 13 is modelled on similar provisions in the *Emergency Management Act 2005*.

How and when can an application be made?

A written application must be made to the Minister within 90 days after the person suffers the loss or damage.

The Minister may accept a late application if satisfied that it would be reasonable in the circumstances.

The application must state details of the loss or damage, the amount of compensation claimed and the grounds for the amount claimed. The regulations may prescribe further information to be provided.

Can local government seek compensation from the State under Part 13?

Yes. Any person may apply to the Minister for compensation for any loss or damage suffered by the person as described in section 203(1).

Can a person seek review of the Minister's decision to refuse to pay compensation?

Yes. A person may apply to the State Administrative Tribunal for a review of a decision to refuse to pay compensation or to pay the decided amount of compensation.

Part 14 – improvement notices and enforcement orders

Part 14 of the Public Health Act establishes improvement notices and enforcement orders as tools available to authorised officers and enforcement agencies to proactively manage public health risks.

Enforcement options

The Act provides a range of enforcement options for enforcement agencies. These includes



Infringement notice

An infringement notice is a notice that the person to whom it is directed has committed an alleged specified offence under a regulation, and requires payment of a specified monetary amount for the offence within a specified time.



Improvement notice

An improvement notice is a written notice that either requires or prohibits a person from taking specified action. The notice can be issued when there has been a failure to comply with the general duty, when a material public health risk is or has occurred, or in circumstances outlined in section 212 of the Act.



Enforcement order

An enforcement order is an order requiring specific action to be taken or prohibiting action to be taken. The order can be issued when there is a serious public health risk, or non-compliance with an improvement order.



Prosecution

A prosecution is separate from action under Part 14 relating to improvement notices and enforcement orders. So prosecution can be commenced irrespective of action being taken under Part 14.

Overview of enforcement action

It is recognised that most individuals generally comply with the law. Options such as education, verbal advice and written warnings all help encourage compliance with the law and protect public health.

A graduated process of enforcement provides people with the opportunity to discuss compliance problems and actions with an authorised officer and take the necessary steps to comply.

Where a person doesn't respond to a general warning or education, more significant enforcement options such as issuing an improvement notice or enforcement order are

A graduated process of enforcement provides people with the opportunity to discuss compliance problems and actions with an authorised officer and take the necessary steps to comply.

provided for in the Public Health Act. The enforcement action taken should be based on the seriousness of the breach.

The use of enforcement action seeks to achieve:

- public health protection
- long term compliance through a change in behaviour
- elimination, control or prevention of breaches
- accountability for persons who fail to comply
- a deterrent for non-compliance.

Being consistent in the type of enforcement action taken

Although not a requirement of the Public Health Act, it is recommended that enforcement agencies develop a Compliance and Enforcement Action Policy (or similar), which outlines the manner in which enforcement activities will be undertaken and the decision-making process for initiating prosecution proceedings by your local government.

The framework should be applied by authorised officers and:

The overriding consideration in taking enforcement action should always be in the interest of protecting public health and safety.

- promote consistent enforcement action in response to non-compliance
- uphold transparency, natural justice and the precautionary principle
- ensure that enforcement action is proportionate to the alleged offence in each case
- advocate a risk based approach to enforcement through adoption of a graduated and proportionate response to non-compliance.

Enforcement agencies should be consistent in the way they apply enforcement actions and there should not be any arbitrary or inexplicable differences in the way individual cases, or classes of cases are treated.

There must be no discrimination, i.e. ethnicity, religion, age, gender, race, colour, sex, social position, marital status, sexual preference, political opinions or cultural views of the alleged offender when undertaking enforcement action.

Decision-making regarding enforcement action should not be influenced by:

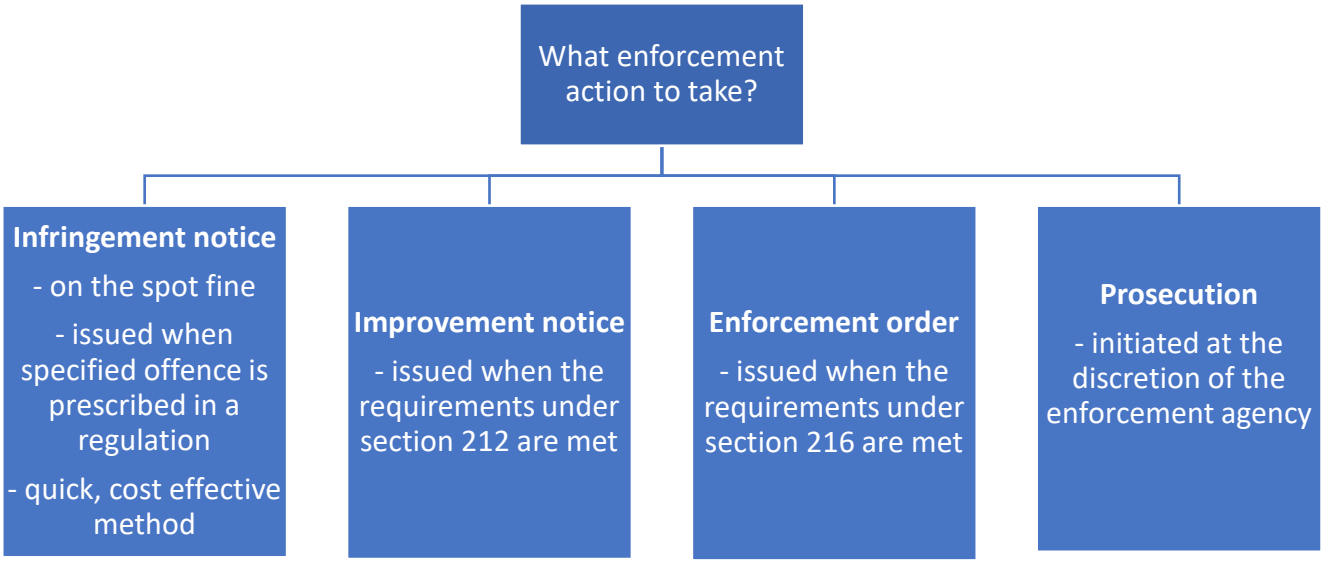
- political advantage or disadvantage to a government or any political party or group
- the consequences of a decision to undertake enforcement action on the personal or professional circumstances of those responsible for the decision-making
- the personal feelings of the decision-makers towards the offenders.

The public interest

In general, the overriding consideration in taking enforcement action should always be in the interest of protecting public health and safety.

Improvement notices, enforcement orders and infringement notices versus prosecution

There are four key enforcement action options that an authorised officer or local government can instigate when there has been a breach of the legislation.



Warning notices such as improvement notices and enforcement orders can provide an effective and efficient way to deal with breaches of the legislation. They are a simple and expeditious means to achieve this intent without requiring the agency to undertake the more lengthy and expensive path of prosecutions.

A local government can issue an improvement notice or enforcement order at its discretion so long as the requirements under section 212 or 216 have been met.

Issuing on the spot infringement notices are also effective for specified offences that are prescribed in the regulations. Infringement notices will become available as an enforcement action during Stage 5B of implementation as regulations are made.

Prosecution has an important role in deterring non-compliance with legislation, which cannot be achieved through the issue of warning notices alone.

A local government may commence prosecution at its discretion, rather than issue an improvement notice or enforcement order. Examples may include:

- Where the breach relates to a serious compromise of health standards and may amount to a serious threat to public health and safety.
- Where the offender has already been subject to a prior warning issued by the enforcement agency for the same type of offence.
- Where the offender has already been subject to a number of notices for different offences over the previous five years.
- Where it is apparent that the offender was aware of the relevant legislation, but knowingly and recklessly disregarded it, or has been indifferent or negligent in its application.
- Where the offender has a conviction for a breach of the same or similar nature within the last five years.

- Where the offence is for assaulting, obstructing or hindering an authorised officer or offering a bribe.

In determining which enforcement action to take, what should an authorised officer consider?

When determining what enforcement action to take, an authorised officer should consider:

- the degree or potential degree of the risk to public health arising from the activity (e.g. is it a serious or material public health risk?)
- any measures taken, or not taken, to avoid or minimise the consequences or potential consequences of that risk to public health
- the objects and principles of the Act
- any matter prescribed in the regulations.

Can an improvement notice or enforcement order be issued at the same time as initiating prosecution?

Yes. Prosecution is separate from action under Part 14 and can be commenced irrespective of whether an improvement notice or enforcement order has been issued.

Infringement notice

What is an infringement notice?

An infringement notice is a notice that the person to whom it is directed has allegedly committed a specified offence under a regulation, and requires payment of a specified monetary amount for the offence within a specified time.

Infringement notices provide a cost effective and quick method of dealing with some offences.

Infringement notices provide a cost effective and quick method of dealing with some offences.

Infringement notices aren't mentioned in the Public Health Act, can they be issued?

Yes. It is intended that infringement notices will be able to be issued, but only for specified offences. These specified offences will be prescribed in the regulations. The infringement notice form will be prescribed in the regulation and enforcement agencies must use this form.

The Act is silent on the ability to issue infringement notices. However, the Public Health Act is a prescribed Act under the *Criminal Procedures Act 2004*. This means that any regulation made under the Public Health Act may prescribe an offence for which an infringement notice may be issued. Therefore, infringement notices can only be served where prescribed by a regulation.

Who can issue an infringement notice?

An authorised officer who has reason to believe a person has committed a specified offence may issue an infringement notice in the prescribed form. The regulation will prescribe the form.

Can an infringement notice be issued to the Crown?

No. An infringement notice cannot be issued to a responsible agency of a Crown Authority.

Penalties related to infringement notices

Penalties associated with infringement notices may vary depending upon the offence, and will be prescribed in the regulations.

Can a person contest an infringement?
Yes. A person can elect to have the matter heard before a court.

Once a person pays an infringement can any further action be taken, such as issuing an improvement notice or enforcement order or prosecution?
No. The *Criminal Procedure Act 2004* provides that the effect of payment of an infringement notice is that:

- no further prosecution of that matter can take place
- payment is not to be taken as admission of any kind for that alleged offence.

The effect of this is that once payment of the fine has occurred any ability to prosecute on that matter is lost. It does not matter if the fine is later refunded, because the original payment extinguished any ability to prosecute.

What will happen if a person doesn't pay an infringement?
Non-payment of an infringement notice may result in referral to a court for hearing or enforcement action may be taken under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

Infringement notices enforcement scheme
The infringement notices enforcement scheme is the legislative scheme where prosecuting authorities may attempt to enforce unpaid infringement notices.

Once the preliminary requirements of the legislation under which the infringement notice was issued have been fulfilled, a prosecuting authority can attempt to enforce the unpaid infringement using the infringement scheme. To enable the scheme to work effectively, prosecuting authorities must provide the correct details for the alleged offence and the alleged offender.

Each enforcement agency must register separately should they wish to use it. Among other things the scheme includes access by the prosecuting authority to the eCourts portal which allows easy lodgement, withdrawal and access to updated information for each case.

To register for the scheme, the fines enforcement registry has advised that a local government will need to send a formal letter advising them they would like to join the enforcement scheme. This letter will include a copy of the agency's final demand notice and an authorised officers' schedule.

The registration process can occur any time after the regulations have come into effect. Until an agency is registered the scheme cannot be used. However it does not prevent infringement notices from being issued and the offence enforced by the local government in the usual way.

Any queries regarding the infringement notices enforcement scheme should be directed to Prosecuting.authority@justice.wa.gov.au

Improvement notice [section 212]

What is an improvement notice?
An improvement notice is a notice that either requires or prohibits a person from taking specified action.

The advantages of an improvement notice are that:

An improvement notice is a notice that either requires or prohibits a person from taking specified action.

- it is relatively fast and simple
- it can outline steps that must be taken to reduce risks
- it can escalate to an enforcement order if not complied with.

Who can issue an improvement notice?

An authorised officer can issue an improvement notice if the officer reasonably believes that one of the specified criteria (outlined in section 212 of the Public Health Act) for the issuing of an improvement notice has been met.

“Reasonably believes” means the particular belief, if taken from an objective viewpoint, would be considered appropriate in the circumstances. It cannot be a belief that no reasonable person in the same situation would hold.

When can an improvement notice be issued?

Improvement notices may be issued on a number of grounds, including:

- the carrying on of a public health risk activity that contravenes, or in a manner that contravenes, any provision of the Public Health Act
- the undertaking of an activity that poses a risk of harm to public health by a person who has failed to take reasonable and practicable steps to prevent or minimise such harm
- the person is failing, or has failed, to comply with the general public health duty.

Refer to section 212 of the Public Health Act for the list of criteria that may be met for the issuing of an improvement notice.

What is a public health risk activity?

An improvement notice can be issued when a person is carrying on a public health risk activity.

Section 4 of the Public Health Act states that a public health risk activity means an activity

- declared by the regulations to be a public health risk activity
  or
- within a class of activities declared by the regulations to be public health risk activities.

Can an improvement notice be issued to the Crown?

Yes, an improvement notice can be issued to the Crown (specified under Part 18), unless the Crown has received an exemption under Part 17 for the activity to which the improvement notice relates. The improvement notice must be issued to the ‘responsible agency’.

The responsible agency is the agency of the Crown the acts or omissions of which are alleged to form the basis for the giving of the notice (section 291).

If you are unsure if the Crown has received an exemption, email publichealthact@health.wa.gov.au for further advice.

If an authorised officer issues a responsible agency with an improvement notice, and the agency does not comply, what action can be taken?

If the Crown does not, or cannot, comply with an improvement notice an authorised officer may:

- advise the Crown to seek an exemption under Part 17 of the Public Health Act
- consider referring the matter to the Chief Health Officer.

Can an enforcement agency undertake the required action on behalf of a Crown agency and recover costs later?

No. A local government cannot carry out works on behalf of the Crown and then recover the costs. An enforcement agency may only take action when a person has failed to comply with an enforcement order and an enforcement order cannot be issued to a Crown agency.

What is the procedure for giving an improvement notice?

In accordance with section 76 of the *Interpretation Act 1984*, service of an improvement notice may be effected as follows:

- by delivering the document personally; or
- by registered post; or
- by leaving it for the person at their usual or last known place of abode, or if he/she is a principal of a business, at their usual or last known place of business; or
- in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State.

If using the post, service is deemed to have been effected by properly addressing and posting (by pre-paid mail) the document as a letter to the last known address of the person to be served. Unless the contrary is proved, the date of service will be when the letter would have been delivered in the ordinary course of the post. In practical terms, the use of registered mail would be preferable where notices or orders are to be mailed.

What content must be provided in an improvement notice?

Section 213 of the Public Health Act outlines what must be included in an improvement notice. Additionally, the improvement notice must be in the approved form.

Refer to the Department of Health website for a current version of an improvement notice form approved by the Chief Health Officer (https://www.health.wa.gov.au/About-us/Public-Health-Act/Role-of-Local-government/Approved-forms)

What is a risk management plan?

An improvement notice can require a ‘risk management plan’ to be developed and implemented.

A risk management plan is a document that identifies the public health risks associated with the activities in the notice and sets out the steps to be taken to manage those risks, and to ensure compliance with any requirements of the Public Health Act which relate to those activities.

Refer to Part B of Handbook for an example risk management plan template.

In what circumstances would an authorised officer request a risk management plan?

An authorised officer may request the development of a risk management plan when more than one risk has been identified. In such circumstances the person issued an infringement notice may, for example:

- require an extended period of time to address multiple risks; or
- need to budget to address each risk; or
- coordinate multiple tradespeople to address the risk.

Developing a risk management plan requires consideration of all aspects of the schedule of works involved, costs and timeframes to achieve compliance.

What is meant by ancillary or incidental directions?

An improvement notice may include details of any ancillary or incidental directions. This means the notice can include other instructions or advice that may not be expressly captured under section 213 but is related to the matters set out in the improvement notice.

Can an extension to the time to comply with an improvement notice be granted?

Yes. An extension of time can be granted for compliance with an improvement notice (section 214). A decision to extend the time is at the discretion of the authorised officer, and should be decided on a case by case basis.

An extension may be required for a number of reasons such as:

- delay from contractors required to undertake repairs
- a setback in budget required to address the risk
- illness or personal circumstances.

If an extension is to be granted, it must be done in writing.

Can a person issued with an improvement notice seek review of that decision?

A person who has been issued an improvement notice may apply to the State Administrative Tribunal for review of the decision. A person may also apply to the State Administrative Tribunal SAT if a notice of compliance is not issued.

What procedure must be followed when a person complies with an improvement notice?

A notice of compliance must be issued once the improvement notice has been complied with (section 215). An authorised officer is required to complete an assessment and be satisfied that an improvement notice has been complied with, prior to issuing a notice of compliance.

Once the notice of compliance has been issued the improvement notice is considered to be revoked.

Refer to the Department of Health website for a current version of a 'Notice of compliance with an improvement notice' form approved by the Chief Health Officer (https://www.health.wa.gov.au/About-us/Public-Health-Act/Role-of-Local-government/Approved-forms)

What is the procedure when a person does not comply with an improvement notice?

If, after carrying out an appropriate assessment, an authorised officer is not satisfied that the improvement notice has been complied with, the officer must give the person a notice (in the approved form) setting out the reasons why the authorised officer is not satisfied (section 215(2)).

The authorised officer then has two options:

- take no further action

- report the non-compliance to the enforcement agency with a recommendation to issue an enforcement order.

Refer to the Department of Health website for a current version of a 'Notice of non-compliance with an improvement notice' form approved by the Chief Health Officer (https://www.health.wa.gov.au/About-us/Public-Health-Act/Role-of-Local-government/Approved-forms)

Flowchart for issuing an improvement notice

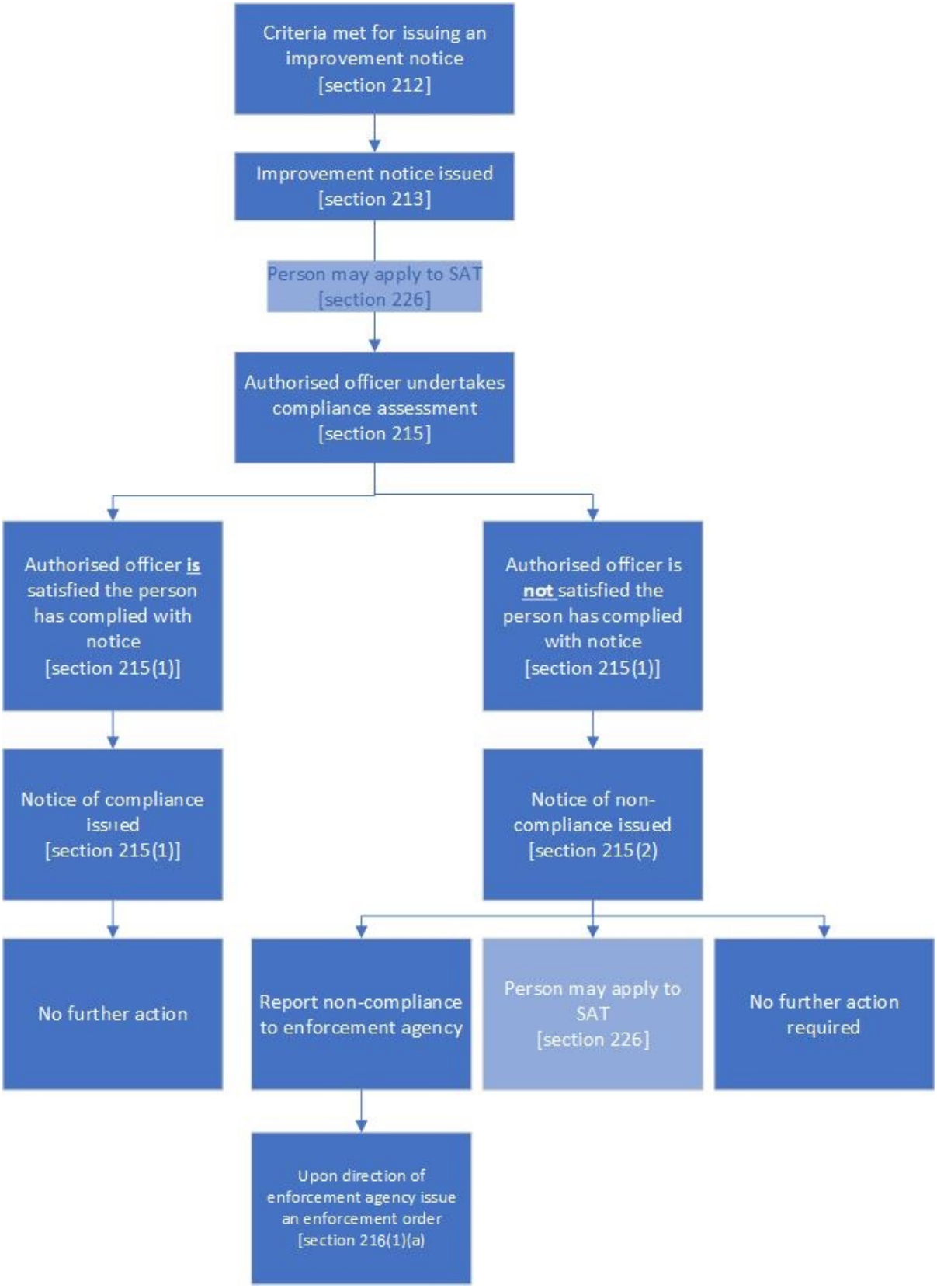


Figure 6. Process for issuing an Improvement notice

Enforcement order [section 216]

What is an enforcement order?
An enforcement order is an order requiring specific action to be taken or prohibiting action to be taken by a person.

An enforcement order is an order requiring specific action to be taken or prohibiting action to be taken by a person.

Who can issue an enforcement order?
Enforcement orders may only be issued by an enforcement agency.

This power may be delegated to the Chief Executive Officer of a local government or an authorised officer in accordance with section 21 of the Public Health Act.

Can an enforcement order be issued to the Crown?
No. An enforcement order cannot be issued to the Crown in accordance with section 293.

When can an enforcement order be issued?
An enforcement order may be issued to a person if the enforcement agency reasonably believes:

- the person has not complied with an improvement notice; or
- the order is necessary to prevent or mitigate a serious public health risk (see Part 4 of the handbook).

To support enforcement agencies determine if a serious public health risk exists, enforcement agencies may seek to adopt a risk assessment framework.

Such models include:

- Environmental health risk assessment: Guidelines for assessing human health risks from environmental hazards. enHealth, June 2012
- Health risk assessment 2004 Department of Health Western Australia
- Health risk assessment (scoping) guidelines: A health risk assessment process for risk assessors for use within the scoping stages of environmental and health impact assessments. Department of Health of Western Australia

Alternatively, risk assessment guidance is provided in Part C of this Handbook.

What content must be included in an enforcement order?
Section 217 sets out the specific requirements that must be included within an enforcement order. This is an approved form.

Refer to the Department of Health website for a current version of 'Enforcement Order' form approved by the Chief Health Officer (https://www.health.wa.gov.au/About-us/Public-Health-Act/Role-of-Local-government/Approved-forms)

What is the procedure for giving an enforcement order?

In accordance with section 76 of the *Interpretation Act 1984*, service of an enforcement order may be effected as follows:

- by delivering the document personally; or
- by registered post; or

- by leaving it for the person at their usual or last known place of abode, or if he/she is a principal of a business, at their usual or last known place of business; or
- in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State.

If using the post, service is deemed to have been effected by properly addressing and posting (by pre-paid mail) the document as a letter to the last known address of the person to be served. Unless the contrary is proved, the date of service will be when the letter would have been delivered in the ordinary course of the post. In practical terms, the use of registered mail would be preferable where notices or orders are to be mailed.

Can an extension be provided for compliance with an enforcement order?

Yes, an extension of time may be granted for compliance with an enforcement order.

A decision to extend the time to comply is at the discretion of the enforcement agency and should be decided on a case by case basis. An extension may be required for a number of reasons such as:

- delay from contractors required to undertake repairs
- a setback in budget required to address the risk
- illness or personal circumstances.

If an extension is to be granted, it must be done in writing.

When should an assessment be undertaken to ensure compliance with the enforcement order?

An assessment should be conducted:

1. On the enforcement agency / authorised officer's own accord (e.g. based on the timeframe for compliance in the enforcement order), or
2. On written request by the person (section 224).

If a written request for an assessment is received, the authorised officer must conduct the assessment within 5 working days after receiving the request.

Failure to do the assessment within 5 working days results in a certificate of clearance being taken as having been given.

This means that the enforcement order is considered revoked.

What is a certificate of clearance?

A certificate of clearance must be issued by the enforcement agency once an enforcement order has been complied with and if applicable, there is no longer a serious public health risk to be prevented or mitigated (section 223). The certificate of clearance must be issued in the approved form.

An enforcement agency must be satisfied, either by its own assessment or on the report of an authorised officer's assessment, that an enforcement order has been complied with, prior to issuing a certificate of clearance.

Once the certificate of clearance has been issued, the enforcement order is considered to be revoked.

Refer to the Department of Health website for a current version of a 'Certificate of clearance' form approved by the Chief Health Officer (https://www.health.wa.gov.au/About-us/Public-Health-Act/Role-of-Local-government/Approved-forms)

What process must be followed if a person given an enforcement order has not complied with that order?

If an assessment is undertaken and reveals that the enforcement order has not been complied with, the enforcement agency must provide a written notice to the person detailing the reasons for that decision (section 224(3)).This written notice must be in the approved form.

Refer to the Department of Health website for a current version of a 'Notice of -non-compliance with an enforcement order' form approved by the Chief Health Officer (https://www.health.wa.gov.au/About-us/Public-Health-Act/Role-of-Local-government/Approved-forms)

What happens if a person does not comply with an enforcement order but the public health risk still needs to be addressed?

An enforcement agency may implement an enforcement order where a person has not complied. The enforcement agency may take any action the agency reasonably believes to be necessary to ensure that the order is complied with.

In doing so, an enforcement agency may seek assistance from a police officer or any other person necessary and may use such force as is reasonably necessary.

Can costs be recovered if the enforcement agency bears costs implementing an enforcement order?

Yes. Section 221 of the Public Health Act enables an enforcement agency to recover costs incurred as a result of implementing the order.

It is important for an enforcement agency to record the details of any costs associated with implementing an enforcement order.

If an enforcement agency implements an enforcement order, can the person subject to the order still be prosecuted?

Yes. Section 222 provides that criminal liability is not affected in circumstances where section 219 is utilised.

This means that a person can still be prosecuted for an offence under the Public Health Act regardless of whether the enforcement agency has implemented the enforcement order.

Can a person seek a review of a decision to issue an enforcement order?

Yes. A person who has been issued an enforcement order may apply to the State Administrative Tribunal (SAT) for a review of that decision.

A person may also apply to the SAT if a certificate of clearance is not issued.

If the person appeals to State Administrative Tribunal can action be taken to prevent a serious public health risk?

If the enforcement agency believes action is necessary to avoid a serious public health risk from occurring, the enforcement agency can take action to mitigate the risk, in accordance with the requirements of section 219.

However, where the risk is not sufficiently urgent to warrant immediate action, an enforcement agency should consider granting an extension of time to comply with the order to enable SAT to consider the matter.

Flowchart: Issuing an enforcement order

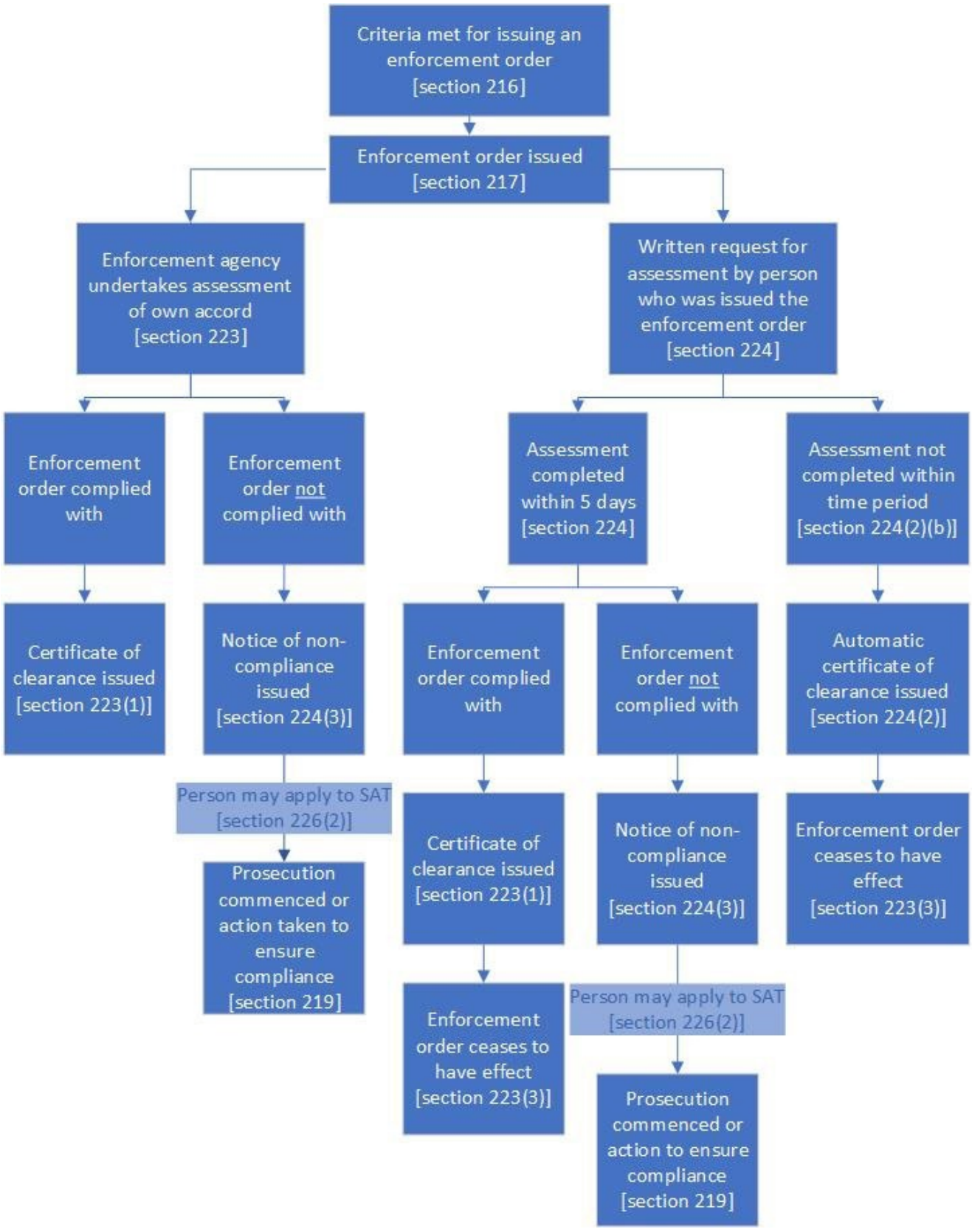


Figure 7. Process for issuing an enforcement notice.

Legal action through the courts

Who is responsible for initiating legal action through the court?

In accordance with Part 18, section 280 of the Public Health Act, proceedings for an offence may be commenced by:

- an enforcement agency
- the Chief Health Officer or
- an officer authorised by the Chief Health Officer.

What is the procedure for prosecution?

The procedure for prosecuting a person or body corporate for an offence under the Public Health Act should be undertaken in accordance with the *Criminal Procedure Act 2004.*

Relationship to Part 14

A prosecution is separate from action under Part 14 relating to improvement notices and enforcement orders. Prosecution can be commenced irrespective of any action being undertaken under that Part.

Prosecutions relate to addressing unlawful conduct, whereas Part 14 offers tools for addressing public health risks.

Part 15 – inquiries

The Chief Health Officer on their own initiative, or at the Minister's request, may conduct an inquiry into any matter relating to public health and may appoint someone to conduct the inquiry on their behalf.

What is the purpose of an inquiry?

There may be circumstances where the Chief Health Officer needs to undertake further investigations about matters related to public health. Such an inquiry aims to collect and report evidence to the Minister to support decision-making. The findings of inquiries will be laid before each House of Parliament.



What role will local government have during an inquiry?

An authorised officer and other representatives from local government may be required to take part in a public health inquiry.

The role of an authorised officer will depend on the individual circumstances, but may involve attending hearings, or producing any documentation required as evidence for the inquiry.

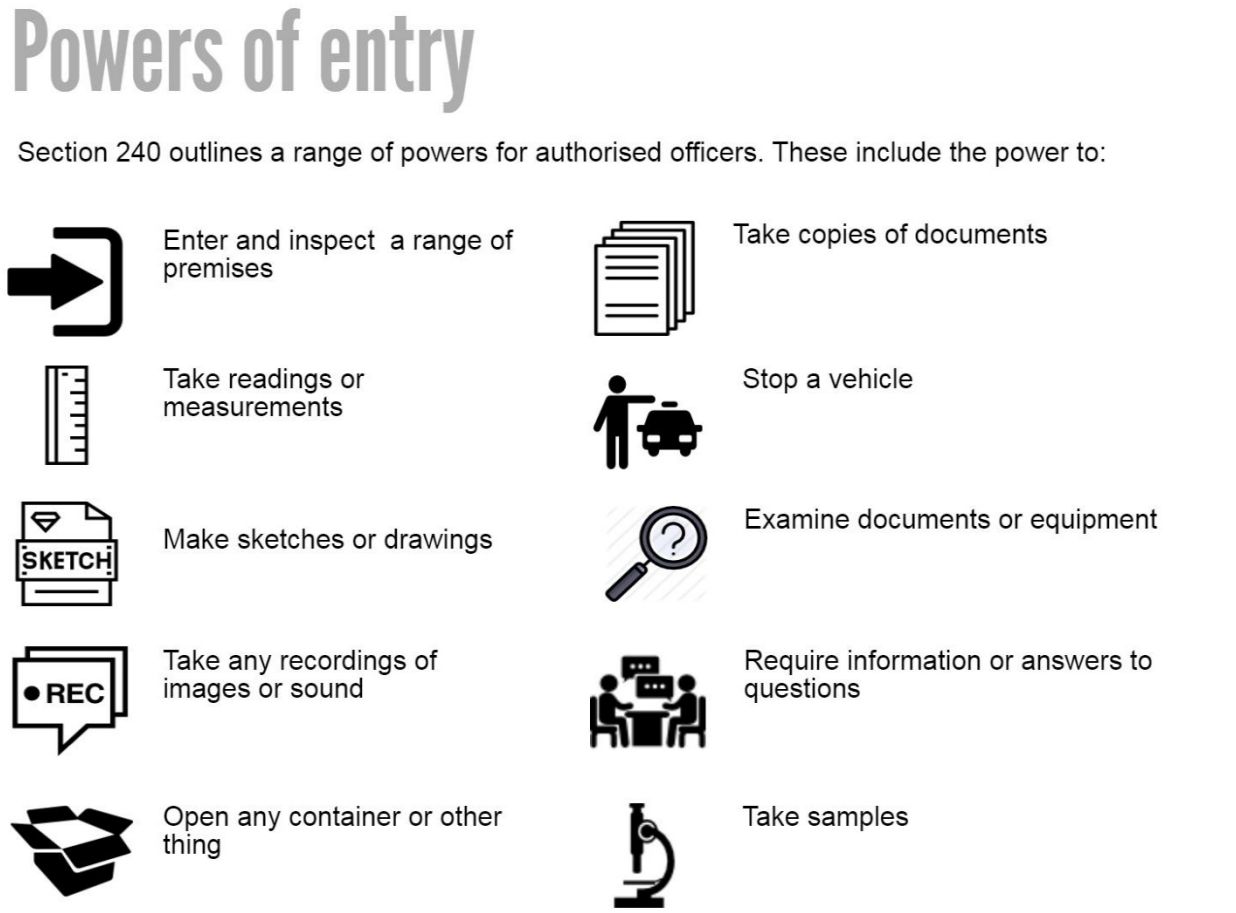
What if someone fails to comply with an inquiry?

A fine of $10,000 may be issued where a person does not comply with the requirements of an inquiry, provides false or misleading information or disrupts an inquiry.

A person is not liable for any loss or damage suffered by another person when they have provided information or documents for the purpose of an inquiry.

Part 16 - Powers of entry, inspection and seizure

Part 16 of the Public Health Act, which is modelled on Part 5 of the *Food Act 2008*, provides authorised officers with robust powers including powers of entry, inspection, search and seizure.



Powers of entry and inspection

What powers of entry does an authorised officer have?

The task of an authorised officer is to look at the range of powers of entry available under section 240 and determine what power of entry is most suitable for the situation.

Table 6 summarises these powers.

Table 6: Summary of powers of entry under section 240 and examples of possible application

Powers of authorised officer	Example of use
enter and inspect any premises	
(1)(a)(i) in respect of which a registrable activity is registered under Part 8 Division 2	Inspect a registered tattoo parlour.
(1)(a)(ii) at which a licensable activity is carried on that is authorised by an activity licence granted under Part 8 Division 3	Inspect the skills of a licensed pesticide operator.
(1)(a)(iii) to which an improvement notice or an enforcement order relates	Follow up on compliance with an improvement notice issued.
(1)(b) at which the authorised officer reasonably suspects an offence under the Public Health Act has been or is being committed	Investigate a suspected breach of the general public health duty.
(1)(c) that the authorised officer reasonably suspects are used in connection with a public health risk	Investigate the illegal dumping of asbestos material.
(1)(d) in which the authorised officer reasonably suspects there are any documents that relate to a public health risk or to an offence under the Public Health Act	Inspect records relating to sampling of air-conditioning systems associated with a legionella outbreak, or records related to the certification of an autoclave used to sterilise equipment.
(2) if the authorised officer reasonably suspects **there is an immediate public health risk connected with those premises and** the entry is necessary to investigate, prevent, control or abate the risk	Manage overflowing wastewater flowing from premises onto a busy street

What does “reasonably suspects” mean?

The term “reasonably suspects” is used throughout Part 16 Division 1 in regards to the exercise of authorised officer powers.

Reasonably suspects has the meaning given in section 4 of the *Criminal Investigation Act 2006*, which requires objectively reasonable grounds for suspicion at the relevant time, even if those grounds are subsequently found to be false or non-existent.

Powers of entry during an immediate public health risk

In addition to the general powers of entry, section 240(2) states an authorised officer may at any time enter and inspect any premises (including a residential premises) if the authorised officer reasonably suspects:

- there is an immediate public health risk connected with the premises; and
- the entry is necessary to investigate, prevent, control or abate the risk.

An immediate public health risk is generally one where there is an imminent or existing risk of harm to public health that is associated with a contravention of the Public Health Act.

How would you determine if an immediate public health risk is occurring?

Deciding whether an immediate public health risk is occurring is based on the individual judgement of an authorised officer.

Some examples may include:

- Use of a high pressure hose on an asbestos roof
- Wastewater flowing down a public road

- Clandestine drug laboratory contaminating a house
- Contamination of a drinking water supply with a pathogenic microorganism or chemical
- Contamination of water with high levels of amoeba in a public aquatic facility.

What if there is no immediate risk to public health?

In regards to the general powers of entry provided under section 240(1), where there is:

- no immediate public health risk, and
- the premises is primarily used for residential purposes

an authorised officer may only enter after the officer has obtained the informed consent of the occupier of the premises or under the authority of a warrant (section 240(3)).

How to obtain informed consent from the occupier?

To obtain consent, the authorised officer may enter the part of the premises that the authorised officer reasonably considers members of the public would ordinarily enter. For example, entry may be to a front door or open area.

Typically, an authorised officer should not enter a dwelling, or enter through a structure (such as a building, wall, fence, water reservoir or drain) without the occupier's consent or a warrant.

When requesting consent, the authorised officer must inform the occupier (section 240(4)):

- the powers the authorised officer wants to exercise in respect of the premises
- the reasons for wanting to exercise those powers
- that the occupier may refuse entry.

The authorised officer should also show their certificate of authority.

Who is considered to be the occupier?

An occupier is defined under section 210 to include:

(a) the owner of the premises; and
(b) the person in charge of the premises; and
(c) a person authorised to be present at the premises as an agent of the owner, or of the person in charge, of the premises.

Being in charge of a premises includes the ability to make decisions about the premises (e.g. a tenant). Whether a person is an occupier within the meaning of the Public Health Act is a judgement call authorised officers will need to make.

What if the occupier is not home?

If the occupier of the property is not home it is suggested a note be left or other means should be used to contact the occupier (e.g. telephone). If the occupier cannot be found then entry is not allowed unless there is an immediate public health risk. It is advisable that the authorised officer obtains a warrant.

Does consent need to be in writing?

No. Consent can be made verbally or in writing.

An example template for the acknowledgement of the occupier's consent to enter premises is provided in Part B of this Handbook.

This is not a prescribed or approved form under the Public Health Act. It can be modified and does not need to be used.

Can an occupier withdraw their consent?

Yes. Where an authorised officer has entered a premises after receiving the consent of the occupier, the occupier may withdraw their consent at any time. If this occurs, it is recommended the authorised officer leaves the premises upon the consent being withdrawn.

What if consent isn't provided?

Unless there is an immediate public health risk, where consent is not given an authorised officer cannot enter the premises except under the authority of a warrant.

Can an authorised officer receive assistance?

An authorised officer may be assisted by a police officer or other person when exercising a power under section 240.

What happens if a person obstructs or threatens an authorised officer?

It is an offence for a person to obstruct, impersonate or threaten an authorised officer in the exercise of a power under the Public Health Act with a penalty of a fine of $10,000 (section 255).

In any situation where an authorised officer feels threatened, they should not enter the property. It is recommended a warrant be obtained and/or assistance sought from a police officer.

What if a person knowingly provides false or misleading information or documents?

It is an offence for a person to knowingly provide false or misleading information or documents in connection with a requirement or direction given by an authorised officer with a penalty of a fine of $10,000 (section 254).

What if a person does not comply with a requirement of an authorised officer?

It is an offence for a person to, without reasonable excuse, fail to comply with a requirement of an authorised officer under Part 16 Division 1 with a penalty of a fine of $10,000 (section 253). The authorised officer must inform the person that failure to comply with the requirement may constitute an offence.

Powers to assist with investigations

After determining that there is a power to enter the premises, an authorised officer then has a number of powers to assist them in their investigation. It is important for authorised officers to familiarise themselves with these powers [section 240(1)] (Table 7).

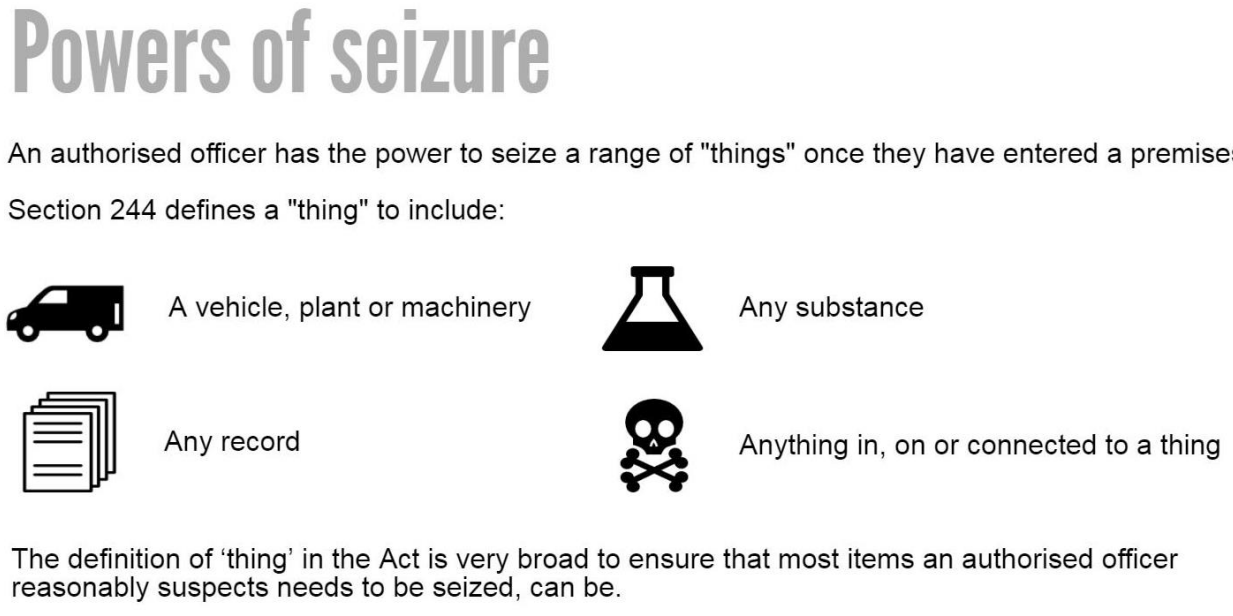
Table 7 Summary of the powers to assist authorised officers with investigations.

Powers of authorised officer – section 240 (1) An authorised officer may, at any reasonable time, do any one or more of these:
(e) open and examine any equipment
(f) take samples of anything that the authorised officer reasonably suspects may be connected with a public health risk or may be used as evidence that an offence under this Act has been or is being committed, and for that purpose operate any machinery, equipment or other thing or facilities situated on the premises or brought into the premises by the authorised officer;
(g) examine any documents referred to in paragraph (d), make copies of those documents or any part of them and, for that purpose, take away and retain any of those documents or any part of them for any time that may be reasonably necessary
(h) analyse, examine or test any samples taken under paragraph (f);
(i) stop any vehicle that the authorised officer is authorised by this subsection to enter, or require that a person in charge of the vehicle (i) stop the vehicle; or (ii) not move the vehicle; or (iii) move the vehicle a reasonable distance to a place specified by the authorised officer
(j) open, or require to be opened, any container or other thing that the authorised officer reasonably suspects to contain anything connected with a public health risk
(k) make any recordings (by whatever means) of images or sounds or both, that the authorised officer considers necessary
(l) take any readings or other measurements, and make sketches or drawings or any other type of record
(m) require a person to provide information or answer questions in connection with the authorised officer's functions under this Act or to produce any document or thing that an authorised officer is authorised to examine under this Act
(n) require a person to give the authorised officer any or all of the person's personal details, and, if the authorised officer reasonably suspects that a personal detail given by the person is false, require the person to produce evidence of the correctness of the detail
(o) generally, make any investigations or inquiries that may be necessary to ascertain whether a public health risk exists or an offence under this Act has been or is being committed

Powers of seizure

Things may need to be seized under the Public Health Act to:

- Preserve it as evidence in relation to an offence against the Act
- Prevent it from being concealed, disturbed or lost or
- Prevent it from causing a risk to public health risk or prevent the risk from recurring.



Why would an authorised officer seize an item or thing?

An authorised officer may wish to seize a thing relevant to an offence under the Public Health Act if the officer reasonably suspects it may be forfeited under Division 2 of Part 16, or it is necessary to seize the thing to prevent it from being concealed, disturbed or lost; to preserve its evidentiary value; or to prevent it from being used in the commission of another offence under the Public Health Act (section 244(3)).

How to seize an item?

To seize an item, the authorised officer can either leave the item at the premises where it is found or remove the item off site (section 257).

If the item is left at the premises, the authorised officer:

- may place the seized thing in a room, compartment or cabinet at the premises; and
- may mark, fasten and seal the door or opening to that room, compartment or cabinet; and
- must ensure the thing is marked in a way that indicates that it has been seized under the Public Health Act.

If the item is to be taken off site, it is at the discretion of the authorised officer as to how the seized item is to be managed. However it is recommended the item be stored in a secure place, where the item cannot be tampered with or create a risk to others and be marked to indicate the item has been seized under the Public Health Act.

Notification of seizure form

Once an authorised officer has seized an item, they must provide written notification to the person from whom the item was seized as soon as practicable.

The contents of the written notification must include specific details in accordance with section 258 of the Public Health Act.

An example template for the notification of seizure is provided in Part B of this Handbook.

This is not a prescribed or approved form under the Public Health Act and can be modified as required subject to the requirements of section 258 of the Public Health Act.

Destruction or disposal of seized items

An authorised officer may cause any thing seized to be destroyed or otherwise disposed of, despite any provision to the contrary in Part 16, if an authorised officer believes the item:

- poses an immediate risk to public health or property
- is perishable and starting to rot (e.g. illegal slaughtering of animals) or deteriorate; or
- is perishable and is likely to become rotten or perish before it can be dealt with under another provision (section 259).

How the item is destroyed is at the discretion of the enforcement agency. Costs associated with destruction or disposal can be recovered by the enforcement agency including any transport or storage costs (section 262).

Returning seized or forfeited items

An item must be returned at any time the enforcement agency becomes satisfied that there has been no breach of the Public Health Act for which the item was potential evidence (sections 260 and 263).

The enforcement agency is required to deliver the item as soon as practicable to:

- the person from whom it was seized; or
- any other person who appears to the enforcement agency to be entitled to it.

Forfeiture of item (surrender of item to enforcement agency)

If after 10 days the item seized has not been returned under section 260, and no application has been made under section 11 of the *Criminal and Found Property Disposal Act 2006* for the release of the item, then the item is forfeited to the enforcement agency.

If an application has been made under section 11 of the *Criminal and Found Property Disposal Act 2006* and the application has been refused or withdrawn, then the item is taken to have been forfeited to the enforcement agency on the date of refusal or withdrawal of the application.

How can a person make an application for release of a seized item?

A person who has had an item seized can make an application under section 11 of the *Criminal and Found Property Disposal Act 2006* to have the item released. Fees are associated with the application process.

The value of the item seized will determine which court is considered the appropriate court.

Section 11 of the *Criminal and Found Property Disposal Act 2006* states:

> Application for release of or permission to deal with seized property
>
> (1) A person may apply to the appropriate court for—
>
> (a) an order that the chief officer of a prescribed agency release seized property that is in the officer's possession to the applicant; or
> (b) an order permitting the applicant to deal with seized property that is in the possession of the chief officer of a prescribed agency.
>
> (2) The application must be made in accordance with rules of court and must be served on the chief officer.

Cost recovery by enforcement agency (disposal and destruction)

Any costs associated with the destruction or disposal of a forfeited item, including transport and storage costs can be recovered by the enforcement agency in accordance with section 262 of the Public Health Act.

It is the responsibility of the enforcement agency to keep a record of the debt, and provide a certificate signed by the enforcement agency stating the amount of any costs and the manner in which they were incurred.

Can a person seek compensation for an item seized?

Yes, a person can apply to the enforcement agency for compensation for an item that has been seized (section 264).

An application can only be made if 10 days has passed since the item was seized and no application has been made under section 11 of the *Criminal and Found Property Disposal Act 2006*, or where an application has been made under section 11 of the *Criminal and Found Property Disposal Act 2006* and the application has been refused or withdrawn.

Payment of compensation by enforcement agency

Following receipt of an application for compensation, if the enforcement agency finds that there has been no contravention of the Public Health Act committed in relation to the item and the item cannot be returned or as a consequence of the seizure has depreciated in value, the enforcement agency must pay compensation that is just and reasonable.

The enforcement agency must provide written notification to the person seeking compensation of its decision to pay or refuse to pay compensation and the amount of any compensation to be paid.

Compensation is to be paid to the person from whom the item was seized or to any other person who appears to the enforcement agency to be entitled to it.

Should an enforcement agency not make a decision on the application within 30 days from receiving it, the application is taken to have been refused.

Can a person seek a review of a decision in relation to the payment of compensation?

Yes, a person can apply to the SAT for a review of a decision by an enforcement agency to refuse to pay compensation or as to the amount of compensation (section 265).

Obtaining a warrant

What is a warrant?

A warrant is a document that allows an authorised officer to carry out certain acts that, without the warrant, may be unlawful.

When is a warrant required to enter a premises?

Under section 246, an authorised officer may apply for a warrant to enter premises:

- where the officer reasonably suspects that within the next 72 hours there is or will be a particular thing (including a document) that may provide evidence that an offence has been committed or is being committed under the Public Health Act (section 246), or
- in order to exercise powers under section 240.

What is the process for obtaining the warrant?

Section 247 outlines the process for obtaining a warrant.

An authorised officer must make an application to a judicial officer in person, unless:

- the warrant is needed urgently; and
- the applicant reasonably believes that a judicial officer is not available within a reasonable distance of the applicant.

The application must be made in writing and under oath.

A judicial officer is a Justice of the Peace or a magistrate. Any queries related to obtaining a warrant should be directed to the Magistrates Court at www.magistratescourt.wa.gov.au

Obtaining the warrant by remote communication (for urgent or special circumstances only)

Where the warrant is needed urgently and a judicial officer is not available within a reasonable distance, an application may be made by remote communication.

Remote communication includes by telephone, fax, email or radio.

If it is not practicable to provide a written application, the application may be made orally i.e. via phone.

If it is not practicable for an oath to be administered by the judicial officer, an authorised officer may make the application and give information supporting the application in an unsworn form.

If an authorised officer makes an unsworn application and the judicial officer issues a warrant, then the authorised officer must send the judicial officer an affidavit verifying the application and any information given in support as soon as is practicable after the warrant is issued (section 247).

Accessing a judicial officer

To contact a judicial officer, you should contact your local courthouse. Contact details for the Magistrates Court are available at www.magistratescourt.wa.gov.au

Please refer to the Justice of the Peace Handbook for further information about warrants. (https://www.wa.gov.au/system/files/2024-02/cts-jp-handbook.pdf)

How long is the warrant valid?

The warrant remains in force for the period of time (not exceeding 30 days) specified in the warrant. If no period is specified, the warrant will expire 30 days from the date of issue (section 250).

Who can execute the warrant and how should it be executed?

A warrant may be executed by an authorised officer of the enforcement agency (section 251(1)). When executing the warrant, the authorised officer may be accompanied by a police officer.

When executing a warrant, an authorised officer must produce the warrant for inspection by a person occupying the premises if asked.

It is recommended that an authorised officer should make a reasonable attempt to:

a. identify themself at the premises by producing their certificate of authority
b. give the person a copy of the warrant and tell the person they are permitted by the warrant to enter the premises
c. give the person an opportunity to allow them immediate entry without using force.

Use of force during entry

If required, force may be used to gain entry into the premises in order to execute the warrant. The force may result in damage to the property. For example, breaking a door lock or window to gain access to the property.

Any use of force applied against a person is subject to *The Criminal Code* Chapter XXVI.

Part 17 – Crown exemptions

Part 17 of the Public Health Act provides a mechanism for the Minister for Health to grant exemptions to the Crown and Crown authorities from compliance with the Act or the regulations.

Does this Part apply to local governments?

Yes, exemptions will impact on whether an improvement notice can be issued to a Crown authority.

What are Crown exemptions?

The Minister may exempt the Crown or a Crown authority from compliance with provisions of the Act or regulations.

Whilst Crown authorities are required to comply with the Public Health Act, there will be some instances where it may not be practically feasible to effect immediate compliance. The Public Health Act recognises that incremental measures may be required, and provides for exemptions.

An example of where an exemption may be required is where improvements to infrastructure and service delivery to meet public health requirements may be costly and take years to complete.

What Parts of the Public Health Act cannot be exempt?

An exemption cannot be provided for some Parts of the Public Health Act. These are:

- Part 9 – Notifiable infectious diseases and related conditions
- Part 11 – Serious public health incident powers
- Part 12 – Public health emergencies
- Part 15 – Inquiries
- Part 16 – Powers of entry, inspection and seizure
- Part 18 – Liability, evidentiary and procedural matters and
- Part 19 – Miscellaneous matters.

How will an authorised officer know what Crown agencies have been issued with an exemption?

The exemption holder is required to make details of all exemptions publicly available in accordance with section 277.

The Minister is also required to publish all exemptions in the Gazette (section 267(1)).

If a Crown agency has an exemption, can an authorised officer issue an improvement notice?

No. If the Crown has been exempted in relation to certain provisions of the Act or regulations, an improvement notice cannot be issued for these matters.

Part 18 – liability, evidentiary and procedural provisions

Part 18 makes provision for various liability, evidentiary and procedural matters.

What is the purpose of Part 18?

Part 18 provides for various technical matters relating to prosecution for an offence under the Public Health Act, such as:

- who may commence proceedings for an offence under the Public Health Act
- certain protections for witnesses in the context of proceedings for an offence
- specified documents to be evidence of certain matters in the proceedings for an offence.

Who can decide to commence prosecution?

Section 280 states that criminal proceedings for an offence can be initiated by:

- the Chief Health Officer
- an authorised officer authorised in writing by the Chief Health Officer
- an enforcement agency (local government).

Note that civil proceedings cannot be commenced for breaches of the Public Health Act (section 279).

Skills required for legal proceedings / prosecution

Authorised officers who may be involved in prosecutions on behalf of an enforcement agency should have sound knowledge of court proceedings. This includes knowledge of:

- court conduct
- enabling legislation and offences
- types of evidence
- rules of evidence
- possible defences
- burden of proof
- role of expert witnesses.

Factors relevant in establishing liability

Where an offence is committed by employees of a corporation in the course of their employment, proceedings will usually be commenced against the corporation/employer [section 281].

Where, however, the offence has occurred because the employee has embarked on a venture of their own making and volition, outside the scope of their employment, proceedings may be instituted against the individual employee and not against the corporation/employer.

In general, the guiding principle in deciding whether to charge an employee is the degree of culpability involved. Factors relevant to assessing the degree of culpability include:

- Whether the employee knew or should have known that the activity in question was illegal.
- The seniority of the employee and the scope of the employee's employment duties.

- Whether, having regard to the employee's seniority and employment duties, the employee had taken reasonable steps to draw to the attention of the employer or any other relevant person the impropriety of the practice.

An employee who, acting in good faith, followed a specific management procedure would not normally be prosecuted for an offence occasioned by following that procedure. The crucial issue is the employee's actual control or ability to influence the conduct of the corporation in relation to its criminal conduct.

It will be a question of fact in each case as to who is concerned in the management of that corporation, and the prosecution will be required to prove that fact beyond reasonable doubt.

Improvement notices may be given to Crown

Section 292 of the Public Health Act provides that an improvement notice can be issued to the Crown and its agencies (unless an exemption has been provided).

Enforcement orders and Crown agencies

Section 293 of the Public Health Act provides that an enforcement order cannot be issued to the Crown.

Deciding whether to prosecute

What is the procedure for prosecution?

The procedure for prosecuting a person or body corporate for an offence under the Public Health Act should be undertaken in accordance with the *Criminal Procedure Act 2004*.

Discretion

While local government has a responsibility to enforce public health laws, the decision to prosecute is discretionary, and the dominant factor in the exercise of this discretion should be the public interest.

For example, based on the particular circumstances of a matter, it may be more appropriate to use an alternate enforcement option such as an enforcement order or a fine. In making a judgement on whether a prosecution is in the public interest, local government need to take into account a range of factors, which vary with the circumstances of each case.

Local government's task is to assess individual cases and recommend the appropriate enforcement action to be taken.

While local government has a responsibility to enforce public health laws, the decision to prosecute is discretionary, and the dominant factor in the exercise of this discretion should be the public interest.

Deciding when to prosecute

Examples of the general principles to be considered are set out below:

- Where the breach relates to a serious compromise of health standards and is of such a nature that amounts to a serious threat to public health and safety.
- Where the offender has already been subject to a prior warning issued by the enforcement agency for the same type of offence.

- Where the offender has already been subject to a number of notices for different offences over the previous five years.
- Where it is apparent that the offender was aware of the relevant legislation, but knowingly and recklessly disregarded the legislation or is indifferent or negligent in applying the legislation.
- Where the offender has a conviction for a breach of the same or similar nature within the last five years.
- Where the offence is for assaulting, obstructing, hindering an officer or offering a bribe.

Other factors which are relevant in deciding whether it is in the public interest to prosecute for an offence include the following:

- The age, physical or mental health or special infirmity of the alleged offenders or witnesses.
- The likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court.
- Any precedent which may be set by not instituting proceedings.
- Whether the consequences of any conviction would be unduly harsh or oppressive.
- Whether proceedings are to be instituted against others arising out of the same incident.
- Whether or not the alleged offender is willing to cooperate or has cooperated in the investigation or prosecution of others.

Matters not relevant to a decision to prosecute

A decision whether or not to prosecute should not be influenced by:

- Any elements of discrimination against the alleged offender or any other person involved, for example, race, religion, sex, nationality, social affiliations, political affiliations or political associations, activities or beliefs of the alleged offender or any other person involved.
- Personal empathy or antipathy towards the offender.
- The political or other affiliations of those responsible for the prosecution decision.
- Possible political advantage or disadvantage to the government or any political party, group or individual.
- Possible effects of the decision on the personal or professional circumstances of those responsible for the investigation or otherwise involved in its conduct.

Part 19 – miscellaneous

Part 19 provides for miscellaneous matters.

What is the purpose of Part 19?

Part 19 provides for various miscellaneous issues that do not fit under the other Parts of the Public Health Act, including local government matters, the use of information, issuing guidelines, making regulations and protection from liability for wrongdoing.

Can fees and charges be fixed and recovered by local government enforcement agencies?

Yes. Section 294 authorises enforcement agencies that are local governments to impose and recover fees or charges in respect of their performance of functions as enforcement agencies under the Public Health Act and regulations.

Such fees or charges are to be imposed and recovered in accordance with the framework provided by Part 6 Division 5 Subdivision 2 of the *Local Government Act 1995*.

Can a local government exercise functions outside its district?

Yes. Section 295 provides a mechanism for managing a material public health risk in one local government district that is caused by some act or default in another local government district.

The Chief Health Officer may authorise the affected local government to take, within the district of the other local government, the measures considered necessary and specified in the authorisation to control or abate the material public health risk. The affected local government may recoup any costs incurred in doing so in a court of competent jurisdiction.

Can the Chief Health Officer act where there is no local government?

Yes. Section 296 authorises the Chief Health Officer to perform the functions of a local government under the Public Health Act in any place not in the boundaries of a local government district.

Protection from liability for wrongdoing

Section 297 provides for the protection of a person from liability for wrongdoing when that person has acted in good faith in the performance or purported performance of a function under the Public Health Act.

Disclosure and use of specified information

Section 298 provides requirements for the use and disclosure of specified information.

Specified information is information relating to a notifiable infectious disease or notifiable infectious disease-related condition that is notified or given under Part 9, or information relating to a prescribed condition of health that is notified under Part 10.

Local government authorised officers cannot use or disclose specified information. Regulation 15 of the Public Health Regulations 2017 only authorises public health officials to use or disclose specified information.

Information sharing

Section 299(4) provides that an officer of an enforcement agency may, in accordance with the guidelines, disclose relevant information to a public health official or to an officer of another

enforcement agency (other than the Chief Health Officer) or to an officer of an information sharing agency.

The Chief Health Officer is required to issue guidelines about the disclosure of information (section 300) and the requesting of information by a public health official under section 299(5).

The collection, use, and disclosure may be for the following purposes:

- Medical and epidemiological research including research conducted by persons or entities external to the Department of Health
- Monitoring, preventing, controlling or abating a public health risk
- Monitoring and evaluating the effectiveness of measures intended to prevent, control or abate a public health risk
- Funding, management, planning, monitoring and evaluating health services
- Performance measurement
- Commonwealth and State reporting
- Any other purpose relevant to public health as prescribed by the regulations.

Regulations may also be made in respect of information sharing

Regulations may outline:

- The circumstances in which information may be disclosed
- The conditions subject to which information may be disclosed
- The procedures for storage of the information including the length of time information may be retained
- Restrictions on access to the information.

Confidentiality

Section 302 provides it is an offence for a person to, without lawful authority, use or disclose confidential information they have obtained through the administration of a function under the Public Health Act. The penalty is a fine of $20,000.

Power to develop regulations

Section 304 provides broad powers for making regulations under the Public Health Act, and allows regulations to authorise, prescribe, require, prohibit, restrict or otherwise regulate a number of matters.

Regulations may adopt codes or legislation

Section 305 provides the ability for regulations to adopt codes and any other subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or Territory.

Review of the Public Health Act

In accordance with section 306, a review of the operation and effectiveness of the Public Health Act is to be undertaken at least once every five years.

Part 20 – transitional savings provisions

Part 20 provides transitional and savings provisions in respect of various provisions of the *Health (Miscellaneous Provisions) Act 1911* including regulations and by-laws made under that Act.

What is the purpose of Part 20?

When legislation is amended or replaced, provisions are often needed to deal with the transition from the old law to the new law. These are called transitional provisions. They may deal with things such as ensuring people who are licensed under the old law continue to be licensed under the new law.

Part 20 allows for a smoother transition from the *Health (Miscellaneous Provisions) Act 1911* to the *Public Health Act 2016*, and allows for things such as:

- deeming persons who are appointed as environmental health officers under the Health (Miscellaneous Provision) Act to be automatically designated as authorised officers under the Public Health Act (commenced in Stage 3)
- unpaid rates levied under Part III of the Health (Miscellaneous Provisions) Act to continue to be due and payable and may be recovered under the *Local Government Act 1995* (to be commenced in Stage 5A).

Glossary

Acronmym	Definition
enHealth	The Environmental Health Standing Committee
JO	Judicial Officer
Department	State Department of Health
Minister	Minister for Health
SAT	State Administrative Tribunal

PART B

Templates



Approved forms

Throughout the Public Health Act it states that a notice, order or form, must be in the *approved form*. This means that the form must be approved by the Chief Health Officer prior to use by enforcement agencies. The following forms have been approved and are available on the Department of Health's website:

Approved forms can be found on the Department of Health website at https://www.health.wa.gov.au/About-us/Public-Health-Act/Role-of-Local-government/Approved-forms

Table 8 List of forms approved by the Chief Health Officer for use by enforcement agencies

Approved forms	Provision	Purpose of form
Improvement Notice	Part 14, Division 2, section 212	To be issued in circumstances where an authorised officer reasonably believes that a person has been: ▪ carrying on (or manner of carrying on) of a public health risk activity that contravenes any provision of the Act, or ▪ undertaking of an activity that poses a risk of harm to public health by a person who has failed to take reasonable and practicable steps to prevent or minimise such harm, or ▪ the person is failing, or has failed, to comply with the general public health duty.
Notice of Compliance with an Improvement Notice	Part 14, Division 2, section 215(4)	▪ To be issued once the improvement notice has been complied with (section 215). ▪ An authorised officer is required to complete an assessment and be satisfied that an improvement notice has been complied with, prior to issuing a Notice of Compliance.
Notice of Non-compliance with an Improvement Notice	Part 14, Division 2, section 215(2)	If, after carrying out an appropriate assessment, an authorised officer is not satisfied that the improvement notice has been complied with, the officer must give the person a Notice of Non-compliance setting out the reasons why the authorised officer is not satisfied (section 215(2)).
Enforcement Order	Part 14, Division 3, section 216(1)	An enforcement order may be issued to a person if the enforcement agency (or delegate) reasonably believes: ▪ The person has not complied with an improvement notice or ▪ The order is necessary to prevent or mitigate a serious public health risk.

Approved forms	Provision	Purpose of form
Certificate of Clearance	Part 14, Division 3, section 223	▪ A Certificate of Clearance must be issued by the enforcement agency once an enforcement order has been complied with and if applicable, there is no longer a serious public health risk to be prevented or mitigated (section 223). ▪ An enforcement agency must be satisfied, either by its own assessment or on the report of an authorised officer's assessment, that an enforcement order has been complied with, prior to issuing a Certificate of Clearance. ▪ Once the Certificate of Clearance has been issued, the enforcement order is considered to be revoked.
Notice of Non-compliance with an Enforcement Order	Part 14, Division 3, section 224(3)	If an assessment is undertaken and reveals that the enforcement order has not been complied with, the enforcement agency must provide a written notice to the person detailing the reasons for that decision (section 224 (3)).

A number of forms from the Table above are provided in the following appendices.

1. Improvement Notice

Issued under section 212 of the *Public Health Act 2016* (WA)

Served on (*insert name of person*) at (*insert address*).

TAKE NOTICE that I, an authorised officer, reasonably believe in accordance with section 212 of the *Public Health Act 2016,* that you:

	a. are a person who – i. is carrying on the public health risk activity below that contravenes, or is likely to contravene, the provision below; or ii. is carrying on the public health risk activity below in a manner that contravenes, or is likely to contravene, the provision below; or iii. has carried on the public health risk activity below that contravened, or in a manner that contravened, the provision below in circumstances that make it likely that the contravention will continue or be repeated. Public health risk activity: Provision of the *Public Health Act 2016*:
	b. are a person who is carrying on an activity that poses a public health risk or that is carried on in a manner that poses a public health risk; and has failed to take reasonable and practicable steps to prevent or minimise any harm to public health.
	c. are a person who is failing, or has failed, to comply with the general public health duty under the *Public Health Act 2016* section 34.
	d. are the occupier of premises where – i. the public health risk activity below is being carried on that contravenes, or is likely to contravene, the provision below; or ii. the public health risk activity below is being carried on in a manner that contravenes, or is likely to contravene, the provision below; or iii. the public health risk activity below has been carried on, or carried on in a manner, that contravened the provision below in circumstances that make it likely that the contravention will continue or be repeated. Public health risk activity: Provision of the *Public Health Act 2016*:
	e. are the occupier of premises where an activity is being carried on that poses a public health risk or that is carried on in a manner that poses a public health risk; and reasonable and practicable steps to prevent or minimise any harm to public health have not been taken.
	f. are the occupier of premises where there is or has been a failure to comply with the general public health duty under the *Public Health Act 2016* section 34.

EXAMPLE

Grounds on which this belief is based, including any provision of the Act in respect of which this belief is held:

TAKE NOTICE that, in accordance with section 213 of the *Public Health Act 2016,* you are required to take the following actions within the period specified:

Actions required	**Period for compliance**

Ancillary or incidental directions

The following (if any) ancillary or incidental directions apply to you.

Applications for review

In accordance with section 226(1) of the *Public Health Act 2016* you may apply to the State Administrative Tribunal (SAT) for a review of the decision to issue this Improvement Notice. If you appeal against the issue of this Improvement Notice, you are still required to comply with this Notice until the SAT makes a determination.

Applications for extension

In accordance with section 214 of the *Public Health Act 2016* you may apply to the (*insert name of enforcement agency*) for an extension of the period within which an action specified in this Improvement Notice must be taken. Applications received less than 5 business days before the end of the period specified in this Notice may not be considered.

Applications for assessment of compliance

In accordance with section 215(3) of the *Public Health Act 2016* you may apply to the (*insert name of enforcement agency*) for an assessment of compliance with this Improvement Notice.

Name of authorised officer…..……...

Date of issue……..

Authorised officer's contact details…….

EXAMPLE

2. Notice of Compliance

Issued under section 215(1) of the *Public Health Act 2016* (WA)

Served on (*insert name of person to whom Improvement Notice was issued*) at (*insert address*).

Following an assessment of…….. (*insert details*)……. I, an authorised officer, **am satisfied** that the Improvement Notice issued to you on (*insert date*) has been complied with.

In accordance with section 215(4) of the *Public Health Act 2016*, the Improvement Notice in respect of which this Notice is given is taken to have been revoked.

Name of authorised officer…..……

Date of issue……

Authorised officer's contact details……

EXAMPLE

3. Notice of Non-Compliance – Improvement Notice

Issued under section 215(2) of the *Public Health Act 2016* (WA)

Served on (*insert name of person to whom Improvement Notice was issued*) at (*insert address*).

Following an assessment of …….(*insert details*)…… I, an authorised officer, **am not satisfied** that the Improvement Notice issued to you on (*insert date*) has been complied with.

The reasons for this decision are outlined below.

Non-compliance with an Improvement Notice gives grounds for the issue of an Enforcement Order.

Name of authorised officer…..……..……..

Date of issue……

Authorised officer's contact details…..……

EXAMPLE

4. Enforcement order

Issued under section 216(1) of the *Public Health Act 2016* (WA)

Served on (*insert name of person*) at (*insert address*).

TAKE NOTICE that in accordance with section 216(1) of the *Public Health Act 2016*, the (*insert name of enforcement agency*) reasonably believes that:

You have not complied with the Improvement Notice issued to you on (*insert date*) within the period specified in the Notice under section 213(2)(e) of the *Public Health Act 2016* or any extension of that period under section 214 of the *Public Health Act 2016*.

OR

The issue of this Order is necessary to prevent or mitigate a serious public health risk.

Grounds on which the issue of the Enforcement Order is based:

TAKE NOTICE that, in accordance with section 217 of the *Public Health Act 2016,* the following requirements or prohibitions apply to you for the period specified (if applicable).

Requirement/prohibition	Period for compliance

Ancillary or incidental directions

The following (if any) ancillary or incidental directions apply to you.

A copy of this Enforcement Order must be displayed in the following manner at (*insert address*):
Other:

This Order ceases to have effect on:

(*insert date*).

OR

The issue of a Certificate of Clearance.

EXAMPLE

Applications for review

In accordance with section 226(2) of the *Public Health Act 2016* you may apply to the State Administrative Tribunal (SAT) for a review of the decision to issue this Enforcement Order. If you appeal against the issue of this Enforcement Order you are still required to comply with this Order until the SAT makes a determination.

Applications for extension

In accordance with section 218 of the *Public Health Act 2016* you may apply to the (*insert name of enforcement agency*) for an extension of the period within which you must comply with this Enforcement Order. Applications received less than 5 business days before the end of the period specified in this Order may not be considered.

Request for assessment to obtain Certificate of Clearance

In accordance with section 224(1) of the *Public Health Act 2016* you may make a written request to the (*insert name of enforcement agency*) for an assessment for the purposes of obtaining a Certificate of Clearance. A Certificate of Clearance will be given if:

- the (*insert name of enforcement agency*) finds that you have complied with the Enforcement Order and (if applicable) there is no longer a serious public health risk to be prevented or mitigated;

OR

- you make a written request for an assessment and the assessment is not made within 5 working days after the (*insert name of enforcement agency*) receives your request.

Failure to comply

A failure to comply with this Order without reasonable excuse constitutes an offence with a penalty of $50 000 and a daily penalty of $10 000. In the event of a failure to comply, the (*insert name of enforcement agency*) may also take any action the (*insert name of enforcement agency*) considers necessary to ensure the Order is complied with and may recover any costs incurred in a court of competent jurisdiction.

Enforcement agency…..……..……

Date of issue……..……

Enforcement agency's contact details…….....

EXAMPLE

5. Certificate of Clearance

Issued under section 223 of the *Public Health Act 2016* (WA)

Served on (*insert name of person to whom Enforcement Order was issued*) at (*insert address*).

Following an assessment of…….. (*insert details*)……. on (*insert date*), the (*insert name of enforcement agency*) provides this Certificate of Clearance having found:

- you have complied with the Enforcement Order issued to you on (*insert date*); and
- there is no longer a serious public health risk to be prevented or mitigated (if applicable).

In accordance with section 223(3) of the *Public Health Act 2016*, the Enforcement Order in respect of which this Certificate of Clearance is given is taken to have been revoked.

Enforcement agency…..……..……..……

Date of issue……..……

Enforcement agency's contact details…….....

EXAMPLE

6. Notice of Non-Compliance – Enforcement Order

Issued under section 224(3) of the *Public Health Act 2016* (WA)

Served on (*insert name of person to whom Enforcement Order was issued*) at (*insert address*).

Following an assessment of (*insert details)* on (*insert date*), the (*insert name of enforcement agency*) has found that you have not complied with the Enforcement Order issued to you on (*insert date*).

The reasons for this decision are outlined below.

Non-compliance with an Enforcement Order without reasonable excuse constitutes an offence with a penalty of $50 000 and a daily penalty of $10 000. The (*insert name of enforcement agency*) may also take any action the (*insert name of enforcement agency*) considers necessary to ensure the Order is complied with and may recover any costs incurred in a court of competent jurisdiction.

Enforcement agency…..…….……

Date of issue……..……

Enforcement agency's contact details…….....

EXAMPLE

Non-mandatory forms

The following forms have not been approved by the Chief Health Officer under the Public Health Act. These forms are provided as an example, and may or may not be used by enforcement agencies as required. They can be modified to suit an enforcement agency's needs or do not have to be used at all.

Table 9 Non- mandatory forms

Forms	Provision	Purpose of form
Certificate of Authority	Section 30(1)	▪ An authorised officer must be issued with, and show evidence on request, of their authorisation under the Public Health Act. This is achieved by issuing any person who is authorised under the Public Health Act with a Certificate of Authority card. ▪ Section 30(2) sets out the requirements for the contents of the certificate. ▪ An authorised officer must carry their ID cards with them. An authorised officer must produce their ID card is asked to do so by the person in charge of any premises entered under the Act or if asked to do so by a person who is required to produce anything or answer any question. If asked to show their ID card and he or she cannot, the authorised officer cannot exercise the relevant powers of the Public Health Act.
Notice of Seizure	Section 258	▪ Once an authorised officer has seized an item, they must provide written notification to the person from whom the item was seized as soon as practicable. ▪ The contents of the written notification must include specific details in accordance with section 258.
Acknowledgement of Occupiers Consent to Enter Premises	Section 240(4)	▪ For enforcement agencies who prefer to have a written record of an occupiers consent to enter a premises. ▪ Consent can be made verbally or in writing as long as it is in accordance with section 240(4).

Forms	Provision	Purpose of form
Risk Management Plan	Section 213(3)	▪ An improvement notice may require the preparation and implementation of a risk management plan. The risk management plan must: ○ identify the public health risks associated with the activities specified in the improvement notice ○ set out the steps to be taken to: ▪ manage those risks ▪ ensure compliance with any requirements of this Act that relate to those activities.

1. Certificate of authority template

Front of card

<Agency Logo> Certificate of Authority *Public Health Act 2016* This is to certify that <insert enforcement agency> has designated <insert person's name> as an authorised officer under section 24 of the *Public Health Act 2016*. This certificate of authority expires <date if any>. Signed by: …… <name of authorised delegate> <capacity of delegate (e.g. CEO)>	[Include digital photo of the person to be designated an authorised officer] _____ Signature of person

Back of card

The authorised officer is so designated for the purposes conferred by:

- *insert relevant Act or provisions of Act for which purposes the person is designated [e.g. section 312(1)(b) of the Public Health Act 2016]*

This designation is subject to the following conditions or restrictions:

- *insert details of conditions or limitations [e.g. restricted from Part 16 of the Public Health Act 2016]*

EXAMPLE

2. Notice of seizure template

NOTIFICATION OF SEIZURE

Section 258 of the *Public Health Act 2016*

Please be advised that [*insert authorised officer name*] has seized an item from [*address of premises*] in accordance with Part 16 of the *Public Health Act 2016*.

Description of item seized

Reason for seizure

Address of where the item is being held (where applicable)

Right to apply for the release of seized item

You have the right to make an application to the appropriate court under the *Criminal and Found Property Disposal Act 2006* section 11 in respect of the seized item.

Authorised officer name:	
Enforcement agency name:	
Contact details:	
Authorised officer signature:	
Date of issue:	

EXAMPLE

3. Acknowledgement of occupier's consent to enter premises template

ACKNOWLEDGMENT OF OCCUPIER'S CONSENT TO ENTER PREMISES

As an occupier of premises, any part of which is used for residential purposes, you have a right to refuse entry to an authorised officer to those parts of your premises.

If you, as the occupier, are willing to consent to the entry of the authorised officer, in accordance with section 240(4) of the *Public Health Act 2016* you are requested to acknowledge this consent by signing below for our records. Please note that consent can also be given verbally in accordance with section 240(4).

By signing this consent for the authorised officer to enter your premises, you are acknowledging that:

- You have been informed of the powers the authorised officer wants to exercise
- You have been informed of the reason for the entry
- You have been informed that you have the right to refuse to consent to the entry; and
- You have consented to the entry.

Occupier's details

Occupier's name:	
Date of consent:	
Time:	
Signature:	

Office use only

Authorised officer name:	
Enforcement agency:	
Contact details:	
Time:	
Date of issue:	
Signature:	

EXAMPLE

4. Risk management plan template

Risk Management Plan

Part 14, Division 2 of the *Public Health Act 2016*

Section 213(3) of the *Public Health Act 2016* states that an improvement notice may require the preparation and implementation of a risk management plan that:

(a) identifies public health risks associated with the activities specified in the notice; and
(b) sets out the steps to be taken —
  (i) to manage those risks; and
  (ii) to ensure compliance with any requirements of this Act that relate to those activities.

Requirements of a risk management plan

If you have been requested to develop a risk management plan as part of an improvement notice, the following table may assist with:

- identifying the public health risks associated with the activities specified in the improvement notice
- setting out the steps to be taken to manage those risks and
- ensuring compliance with any requirements of the Act that relate to those activities.

Table 10 Example public health risk management table

Description of risk	Action to manage risks	By who	Cost	Timeline for completion of action

Identifying risks

The activities identified in the improvement notice require improvement to reduce the risk associated with them. These risks should be addressed in the risk management plan.

Additional risks may arise until the improvement notice is complied with. These must also be covered in the risk management plan.

Getting help

The following standards provide detailed information and guidance on the development and implementation of risk management principles in Australia:

- AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines
- SA/SNZ HB 436:2013 Risk management guidelines – Companion to AS/NZS ISO 31000:2009

These Standards can be accessed free-of-charge through the State Library of Western Australia.

Reporting progress

Progress updates and/or evidence should be provided to the enforcement agency once each risk has been addressed to support compliance with the improvement notice.

EXAMPLE

PART C

Risk assessment for authorised officers



Principles of risk assessment

The purpose of the *Public Health Act 2016* is to provide a modern, flexible and proactive risk-based framework for the regulation of public health in WA. With a priority of minimising risk to public health, the centrepiece of this approach is the statutory duty incumbent on all persons to conduct their activities in a way that does not cause risks to the health of others.

The following elements of the Public Health Act are in place to support a 'risk-based approach' to the regulation of public health which include:

- The general duty to protect public health
- Orders to enforce the general duty
- Regulations and guidelines spelling out compliance with the duty
- An offence of 'causing a risk to health'

The application of health risk assessment in assessing public health risks is not a new concept for local government. Under the previous *Health (Miscellaneous Provisions) Act 1911*, most assessments were intuitive or based on experience.

Rather than identifying each individual risk to public health and then providing an applicable scheme of regulation, the Public Health Act provides a flexible and generic framework that can be adapted to regulate any given risk to public health.

The Public Health Act also introduces the term 'public health risk' which means 'a risk of harm to public health'. *Harm* is defined in the Act to mean 'physical or psychological harm to individuals, whether of long-term or immediate impact or effect'.

These definitions cover a range of potential public health risks including:

- physical e.g. noise, mechanical hazards, radiation and vibration
- chemical, either naturally occurring or synthetic substances
- biological e.g. viruses, bacteria and vermin.

Risk assessment and authorised officers

Authorised officers must be able to determine if a public health risk exists or is likely to exist before taking enforcement action under the Public Health Act. Authorised officers must be competent in undertaking risk assessments and determining the most appropriate action to reduce or mitigate the risk.

The application of health risk assessment in assessing public health risks is not a new concept for local government enforcement agencies. Under the previous *Health (Miscellaneous Provisions) Act 1911*, most assessments were intuitive or based on experience.

Under the Public Health Act, the same intuitive or experience-based approach to assessing public health risks still remains valid.

Notwithstanding, on some occasions authorised officers may wish to utilise a more structured approach to assessing potential public health risks.

A risk assessment matrix may provide greater surety that risks are assessed in a systematic, consistent and transparent manner across different hazards and by officers across WA. In such circumstances where an authorised officer wants to apply a risk matrix, the enHealth Council developed guidelines on environmental health risk assessment which provides a framework for

the assessment of public health risks. The guidelines define health risk assessment as: 'the process of estimating the potential impact of a chemical, physical, microbiological or psychosocial hazard on a specified human population or ecological system under a specific set of conditions and for a certain time frame' (enHealth Council, 2012).

Determining whether a public health risk exists may require different levels of professional skills and knowledge. In some situations, an authorised person will be able to assess and determine a public health risk exists based on their personal skills and knowledge and quick, relatively simple investigation. Risk assessment may be done as a relatively rapid 'desktop' study or 'screening' study for simple issues.

In other situations, advice/evidence may need to be sought from an appropriately qualified and skilled expert (eg. a toxicologist, a medical professional) and more detailed risk assessment and investigation required.

The following information is provided as general guidance on applying a risk assessment process for assessing public health risks in a local government district.

What is risk asssessment?

Risk assessment is the process of considering the sources and causes of risk, their positive and negative consequences and the likelihood that those consequences can occur. The risk assessment can be broken down into three stages:

- Hazard assessment
- Exposure assessment
- Determination of the level of risk

Identifying the issue

Firstly, an authorised officer needs to obtain a clear understanding of the issues the risk assessment needs to address.

In identifying the issues it will be necessary to consider:

- how the problem was initially identified
- what types of hazardous agents are causing the identified problem
- how quickly and for what duration the problem might be experienced (eg. short, medium or long term)
- how does the public/complainant perceive the problem.

Hazards addressed by a health risk assessment can be:

- physical (e.g. noise, mechanical hazards, radiation and vibration)
- chemical (either naturally occurring or synthetic substances)
- biological (e.g. viruses, bacteria and vermin).

Hazard assessment

A hazard assessment is the identification of:

1. the health effects that may occur
2. the extent to which they may occur
3. all the potential causes and who might be harmed
4. the dose-response or exposure-response relationship.

Health Risk Assessments Guidelines can be found here (link to the WA health website https://ww2.health.wa.gov.au/Articles/F_I/Health-risk-assessment

Information about the hazards can be collected from a range of sources including human or animal studies and chemical information. The range of information available will vary with the situation and the type of hazard and requires a literature review.

The type of exposure can also influence the dose-response relationship – a continuous low dose of a substance over a long period will have a different dose-response than a series of high intermittent doses.

The route of exposure is another variable. The health effects of a substance will often differ depending on whether they are inhaled ingested or following skin contact. Data used should attempt to reflect the situation under assessment. The possibility of multiple routes of exposure should be addressed. The type of data used should attempt to take all of these variables into account with the usual considerations of relevance, quality and uncertainty.

Areas that may need to be considered may be, but are not limited to:

- possible environmental emissions
- possibility of induced disease or infection
- toxicity
- community reaction
- implications for the health service and any possible impact on its capacity
- impact on existing infrastructure
- the potential to render recreational or water resources unsafe
- potential exposure of the public to contaminants
- changes to the environment that may impact on disease vectors or parasites
- potential impact on land productivity for horticultural and/or pastoral activities
- impact on health or amenity through changes to odour, noise, dust, insects, shade, vibration, light spill, etc (including what are historically referred to as environmental health nuisances)
- damage to vulnerable ecosystems that are of importance to human health.

Special populations that may need to be considered include:

- the elderly
- people with a disability
- persons experiencing socio-economic disadvantage
- children – born and unborn
- persons from culturally and linquistically diverse backgrounds
- Aboriginal Australians.

Exposure assessment

This step gathers information about how much of a particular substance different groups will be exposed to, exactly how that exposure takes place – by breathing, eating or drinking - and for how long the exposure will occur. This information is then combined with known information such as:

- breathing rates
- food or water consumption and
- life expectancy

to estimate total exposure.

Risk characteristics

When the two steps of hazard assessment and exposure assessment have been completed, a health risk assessment matrix (Tables 11, 12 and 13) can be used to help determine the category of the public health risk.

Health risk assessment matrix / framework

The following outlines the use of a health risk assessment framework demonstrating the relationship between consequences and likelihood to ascertain a level of risk for each identified hazard. In summary the process after determining the issues that require consideration requires:

1. Consideration of the health consequences
2. Consideration of the likelihood level
3. Determination of the overall risk levels

Health consequence

A health consequence indicates the magnitude of an impact on health or well-being of the community at risk. Health consequences can result from any aspect of a particular activity. Health consequences may be expressed in qualitative or quantitative terms. Consequences to health can also arise from and include community values (social values, environmental assets – e.g. national parks, nature reserves and cultural areas) and policies.

Consequences can be categorised, on a scale of 1-6, as follows:

1. Catastrophic
2. Massive
3. Major
4. Moderate/significant
5. Minor
6. Negligible/slight

Table 11 Health consequence table adapted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA

Category	Acute Health Consequences (per hazard or outbreak)	Chronic Health Consequences (per project lifecycle)
1 Catastrophic	▪ >1 fatality ▪ OR >5 permanent disabilities ▪ OR Non-permanent injuries requiring hospitalisation for 5 – 10 % of populations at risk ▪ OR Acute health effect requiring hospitalisation for 5 – 10 % of populations at risk	Chronic health effect requiring medical treatment for 10 – 15 % of population at risk
2 Massive	▪ 1 fatality ▪ OR 2 – 5 permanent disabilities ▪ OR Non-permanent injuries requiring hospitalisation for 2 - 5 % of populations at risk ▪ OR Acute health effect requiring hospitalisation for 2 – 5 % of populations at risk	Chronic health effect requiring medical treatment for 5 - 10 % of population at risk
3 Major	▪ No fatality ▪ AND 1 permanent disability ▪ OR Non-permanent injuries requiring hospitalisation for 1 – 2 % of populations at risk ▪ OR Acute health effect requiring hospitalisation for 1 - 2 % of populations at risk ▪ OR Evacuation is necessary	Chronic health effect requiring medical treatment for 2 - 5 % of population at risk
4 Moderate/ Significant	▪ No fatality ▪ AND No permanent disability ▪ AND Non-permanent injuries requiring hospitalisation for 1 – 2 % of populations at risk ▪ OR Acute health effect requiring hospitalisation for 1 – 2 % of populations at risk ▪ AND No evacuation	Chronic health effect requiring medical treatment for 1 - 2 % of population at risk
5 Minor	▪ No fatality ▪ AND No permanent disability ▪ AND Non-permanent injuries requiring hospitalisation for 1 – 5 persons ▪ OR No Acute health effect requiring hospitalisation ▪ AND No evacuation	Chronic health effect requiring medical treatment for 0 - 1 % of population at risk
6 Negligible/ Slight	▪ No fatality ▪ AND No permanent disability ▪ AND No Non-permanent injuries requiring hospitalisation ▪ AND No Acute health effect requiring hospitalisation ▪ AND No evacuation	No chronic health effect requiring medical treatment

Consideration of the likelihood level of risk

To determine the overall level of risk, the risk likelihood must be known. The likelihood is the probability of a consequence occurring and considers the probability and frequency of:

- The health hazard occurring
- The population being exposed to the health hazard
- The population groups being affected.

The likelihood of a consequence may be expressed in qualitative or quantitative terms in a table format.

A likelihood table shows a range of probabilities on a scale of 1–5 as seen below.

1. Almost certain
2. Likely
3. Possible/occasionally
4. Unlikely
5. Rarely/remote

Using the data already collected, the risk likelihood table (Table 12) should be used to determine the overall likelihood.

Table 12 Risk likelihood table adopted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA

Likelihood	Expected or Actual Frequency	% Chance of chronic health effect during life of project
Almost Certain	More than once a year	Over 90%
Likely	Once in 1 to 3 years	61 – 90%
Possible/ Occasionally	Once in 3 – 5 years	31 – 60%
Unlikely	Once in 5 – 10 years	6 – 30%
Rare/Remote	Once in more than 10 years	Up to 5%

Determination of the level of risk

Having determined the health consequences and the risk likelihood using Table 11 and Table 12, the risk matrix table (Table 13) should then be used to determine the overall risk level.

A health risk is the chance of something happening that may affect a health or well-being outcome. Health or well-being risk is expressed in terms of a consequence for a particular activity and the likelihood of that consequence occurring. Health risk level should be expressed on a scale as follows:

- Extreme
- High
- Medium

- Low
- Very low

Find the risk likelihood in the right-hand column and then move across to the column that matches your health consequence category to determine the risk level.

Table 13 Risk matrix (qualitative)

Likelihood	Consequences					
	Slight/ Negligible	Minor	Moderate	Major	Massive	Catastrophic
Almost certain	Low	Medium	High	Extreme	Extreme	Extreme
Likely	Low	Low	Medium	High	Extreme	Extreme
Possible	Very Low	Low	Low	Medium	High	Extreme
Unlikely	Very Low	Very Low	Low	Low	Medium	High
Rare/ Remote	Very Low	Very Low	Very Low	Low	Low	Medium

Risk management

Risk management may be required for each risk level to indicate:

- The acceptability of the risk
- The extent of risk management or mitigation required
- Those health hazards requiring more detailed assessment

Risk management identifies the range of options for treating these risks, evaluating the options, preparing management plans and implementing them. The design of risk management measures should be based on a comprehensive understanding of the risks concerned. It is particularly important to be aware of the causes of the risks so that these are treated and not just the symptoms.

It is necessary to choose, prioritise and implement the most appropriate combination of risk management options by considering factors such as costs and benefits, effectiveness and the objects and principles of the Public Health Act.

The starting point for identifying options is often a review of existing guides for treating that risk such as statutory policies, codes of practice and regulations. For some risks however, such guides do not exist, and management options will need to be developed from first principles. The perfect solution is often to remove the risk altogether by deciding not to proceed with or discontinuing an activity.

More often however, risk management involves changing the likelihood or the consequences of the risk or both. In general, a combination of treatment options will be required from a range of options identified. The options selected need to be compatible with the overall objectives of the Public Health Act and with the risk evaluation criteria.

Possible methods of treating risk are outlined below.

Avoidance – methods to eliminate the risk must be explored. Where possible, the hazard must be removed, or the activity must be stopped. If this is not possible, a less risky option must be taken (e.g. switch to using a less hazardous chemical), access to the hazard must be restricted (e.g. by guarding), activities must be organised to reduce exposure to the hazard (e.g. put barriers between pedestrians and traffic), personal protective equipment must be issued where appropriate (e.g. clothing, footwear, goggles etc.) and welfare facilities may be provided (e.g. first aid and washing facilities for removal of contamination).

Prevention – measures to stop a problem from occurring or having impact on a given area must be put in place.

Contingency planning - one way of treating consequences is to undertake planning and preparedness for contingencies so that the agency can act quickly to prevent or minimise risk. In most circumstances, risk impacts may be managed as part of normal management processes. However, when the scale of an event overwhelms management's normal capacity to cope, a critical incident management plan can provide guidance for a quick and effective response by providing clear roles and responsibilities.

Sharing risk – this involves another agency bearing or sharing some or all the risk, usually via a contract. This can allow agencies to share some of the cost of risk management but, more importantly, allows each agency to provide expert knowledge and resources.

Reduction – taking action to minimise either the likelihood of the risk developing, or its effects.

This can include altering processes or the design or choice of structures, equipment or other details, provide staff or other persons with appropriate training, enhancing operational safety and accountability by requiring that staff be licensed.

Acceptance – where the likelihood and impact of a given risk are or where a cost-benefit analysis of the risk versus the treatment options has shown that mitigation cannot be justified, a risk may be tolerated. In these circumstances, it is recommended that surveillance systems are put in place to monitor the ongoing management and effects of the risk.

Risk communication

Communication should take place during all stages of the risk management process. This consultation should address issues relating to the risk itself, its causes, its consequences and the measures being taken to manage it.

Effective communication must take place to ensure that those accountable for implementing the risk management process understand the basis on which decisions are made and the reasons why particular actions are required. Communication is important as they make judgements about risk based in their perceptions of risk. These perceptions can vary due to differences in values, needs, assumptions, understanding and concerns of stakeholders.



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