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

Environmental Health Management in Western Australia

Results of Local Government Optional Reporting Survey 2016/2017

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Contents

Introduction

This document provides a summary of the results received as part of Local Government Optional Reporting for the 2016/2017 financial year.

Local Governments Authorities (LGAs) were asked a number of optional questions about the 2016/2017 financial year as a way to assist the Department of Health in the regulatory review process that is occurring as part of the *Public Health Act 2016* roll out and implementation.

The implementation of the new Act requires all existing subsidiary legislation under the *Health (Miscellaneous Provisions) Act 1911* to be reviewed and streamlined into a manageable number of regulations, with some features moved to more appropriate enforcement agencies, such as FESA and the Building Commission, and redundant features omitted. The data collected from the optional reporting will be used to make an informed decision about the public health risks present in WA, determine how they are managed or need to be managed and to understand how the current legislation is being used.

The Department of Health asked questions relating to the regulation review of the following public health risks areas:

- Skin Penetration
- Asbestos
- Legionella
- Morgues
- Offensive Trades and Piggeries
- Lodging houses
- Public Buildings
- Events
- Laundries and Bathrooms
- Houses unfit for habitation
- Temporary Toilets

The Optional Reporting had a 41% response rate with 56 of 138 of Western Australia Local Governments responding; the least represented region was the great southern (8% of LGAs in the area responded) and the greatest representation was from Peel and the Gascoyne (75% of LGAs in each area responded). Further detail of the location of the respondents and the regional representation are shown in Figure 1 and Figure 2.

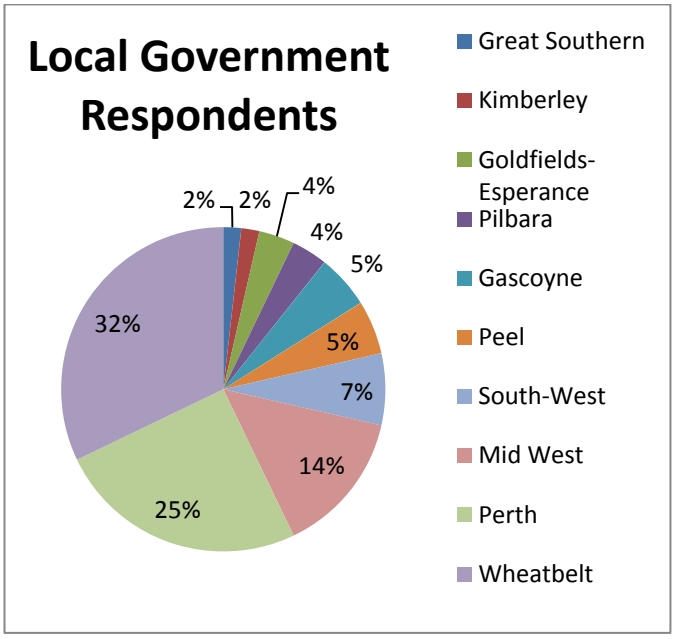

Figure 1 Local Government respondents (represented as a % of the total respondents)

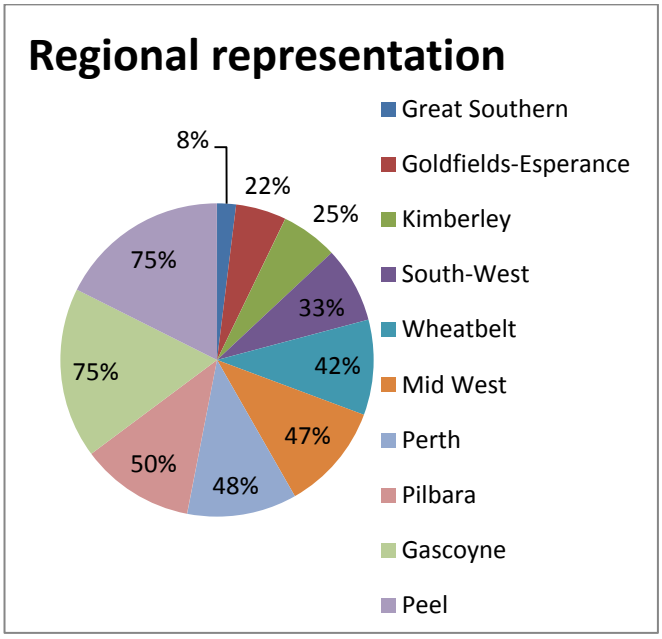

Figure 2 Regional representation (% of all LGAs located in that area that responded)

Skin Penetration

To support the review of the *Health (Skin Penetration Procedures) Regulations 1998* it is necessary to determine how many skin penetration businesses are operating across WA and may be impacted by any future legislative changes. It is the responsibility of local government to keep a record of skin penetration premises operating in their local area.

The survey indicated that there were approximately 815 skin penetration premises reported to be operating across the 56 local governments that responded. These premises included:

- 76 body piercing establishments
- 120 nail salons
- 64 tattoo parlours
- 204 beauty salons
- 171 other (which included acupuncture and hairdressers)

74% of reported Skin Penetration premises are located in the Perth Metropolitan Area

The skin penetration industry represents a large proportion of small businesses that may be impacted by any legislative changes. 74% of these premises were located in the Perth metropolitan area. 23 regional local governments who responded to the survey had no known skin penetration businesses operating within their jurisdiction. This indicates that any new regulations will be more applicable to metropolitan based local governments.

As part of the survey, local government were also asked to indicate how many complaints were received during the 2016/2017 financial year related to skin penetration businesses. A total of 21 complaints were recorded by local governments who had skin penetration premises operating within their jurisdiction during the 2016/2017 financial year. This information assists in highlighting that the public are actively concerned about the environmental health activities of skin penetration operators. From the complaints that were received:

- 1 related to body piercing
- 7 related to nail salons
- 1 related to tattoo parlours
- 10 related to beauty salons
- 1 related to other

Nail and Beauty Salons Accounted for 81% of complaints received

Nail salons and beauty salons accounted for 81% of complaints received, which indicates that further education and regulatory controls may be required for these types of skin penetration activities.

Asbestos

In January 2017 amendments to the *Health (Asbestos) Regulations 1992* (HAR) were introduced to increase the fines for asbestos-related offences and to allow authorised officers to issue on the spot infringement notices. These were introduced as previous fines had been grossly inadequate for local governments to pursue prosecutions of offences under the HAR. The HAR are currently under review and fines will increase further, consistent with the new *Public Health Act 2016*, when the new regulations are in place. Eight months after the introduction of the amendments, local governments (LGs) were asked if these amendments were useful and how often they had used them. They were also asked about asbestos complaints they are receiving. The reasons for this were two-fold. Firstly, to determine if, as expected, asbestos remained an important issue for LGs and, secondly, if the amendments were going to be a useful tool to help manage problems associated with asbestos.

All the Metro LGs reported at least 5 asbestos complaints had been received in 2016. The average number of complaints was 16 (range 5 – 61). Far fewer complaints were received by Regional LGs with only 7 out of the 42 respondents receiving more than 5 complaints. Regional LGs with the most complaints (>10) were those with large urban centres. Most complaints involved illegal dumping, asbestos fences and professional demolitions

Since the introduction of the HAR amendments only 5 LGs have issued infringement notices (5 Regional, 0 Metro). When asked if they would be an effective tool 36 (~70%) replied yes and 10 (19%) replied maybe or didn't know. Only 2 (<4%) replied no (4 LGs did not answer this question)

70% of respondents believe infringement notices will be an effective tool for them

Asbestos remains a concern, particularly in large urban areas. The average number of asbestos complaints received by LGs in this survey is less than a similar survey conducted in 2011 (16 v 64 for metropolitan LGs, respectively), although the survey results cannot be directly compared because of the low response rates and the current survey was not a follow-up of the LGs that had replied in 2011.

Very few infringement notices had been issued in the first 8 months since they were introduced but they are considered, overwhelmingly, by LGs to be a potential effective tool for asbestos management.

As a result Infringement notices will be included in the amended asbestos regulations

Legionella

To support the review of the *Health (Air-handling and Water Systems) Regulations 1994* it is necessary to determine how many cooling towers and warm water systems are registered across WA, in order to determine how many businesses may be impacted by any legislative changes. It is the responsibility of local government to keep a record of cooling towers and warm water systems located within their local area.

Key findings included:

- Six local governments indicated they register, or are prepared to register, systems in their jurisdictions. 38 local governments stated that they did not register systems. However, it was implied that of those local governments that did not register systems they may not have any systems within their jurisdiction that required registration.
- Of the 6 local governments that stated that they register systems, only 2 metropolitan local governments could state how many were registered – which included 19 and 5 systems respectively
- Only 2 local governments charged a fee ($180 and $284). However, only 1 local government actively had to apply this fee
- No local governments indicated that they had received any complaints related to air-handling and warm water systems during the 2016/2017 financial year. However, this is not considered to be a reliable indicator that air-handling and warm water systems are being effectively maintained. Members of the public are generally not allowed to access areas where cooling towers are located and cannot see the conditions of the system.

Unfortunately the survey implies that local governments are not actively keeping a record of how many air-handling and water systems are located within their jurisdictions. This is not a failing of local government but of the Air-handling Regulations, which do not require an active list to be kept and maintained. It has also been noted that unless a local government is notified of a new air-handling and warm water system through the development and approvals processes, then it is difficult to know when new systems are installed within their areas. Additionally, if a system is removed or decommissioned, or an additional system installed on site, there are no notification or registration requirements.

Morgues

In WA, local governments may currently licence morgues, with an exemption for any hospital and police or local government morgue. The licence may require compliance with structural and storage temperature requirements. Licenced morgues are mostly those operated by funeral directors and are located within their premises.

The annual licence fee is set by each local government for its district. The power to prescribe a fee and set conditions relating to the licence are provided by sections133 and 134(45) of the *Health (Miscellaneous Provisions) Act 1911*. Further, section 344C of that Act enables a local government to fix the fee by resolution of the local government. Any new morgue would also require planning (development application) and building (building permit) approval from the local government.

A temporary morgue can also be a facility not designed and constructed as a morgue but used as such in an emergency because there is no alternative available. It could also be a family home, when a deceased person is to be kept at home, prior to the funeral, for cultural reasons.

Local Governments can make local laws under the *Health (Miscellaneous Provisions) Act 1911* that may require such things as;

- An annual licence
- A prescribed fee to be paid for the licensing of morgues
- The conditions on which such licences may be granted, for example -
    - Impervious finish of walls, floors and fixtures
    - Adequate ventilation
    - Temperature requirements for storage of human remains

Many local governments have made use of such local laws. The exceptions are mostly characterised as small rural local governments with no funeral directors established in their district. The City of Swan, a large local government, has no morgue provisions in its health local laws.

Questions relating to morgues were placed within the optional reporting survey for the purpose of obtaining information relevant to the legislation review.

7 Morgues are located in the Perth Metro Area

2 Morgues are located in Regional WA

1 request to hold a wake at home was received

Of the 56 local governments that responded; three metropolitan local governments reported having morgues in their district (7 in total) and two regional local governments reported having morgues in their district (2 in total). No public health issues were linked to morgues and no legal proceedings were taken in regard to the morgues. One local government received a request from a family that wanted to hold a wake with the body at home for a day.

There was nothing unexpected in the information received, so it will be considered along with the future submissions in response to the discussion paper, to enable a recommendation regarding a preferred option for controlling the public health impact of morgues.

Offensive Trades and Piggeries

Information on offensive trades in WA was requested through the optional reporting questions to gain an up-to-date representation of the number and type of offensive trades in WA in 2016/17, whether local governments charge registration fees to these businesses and whether they had received any complaints regarding specific trades. These data on offensive trades will be used to inform the discussion paper on the review of the *Health (Offensive Trades Fees) Regulations 1976* and present options that are relevant to the industry and manage the public health risks associated with offensive trades.

The results showed that there were 129 offensive trade businesses located in these 56 local governments, of which 18 were piggeries. This is an average of 2.3 offensive trades per local government who responded.

Out of the 56 responding local governments, 34 indicated that they require annual registration of offensive trades in their districts; of which 29 charge a registration fee. The fees range from $133-$311, with 18 local governments specifying that the fees are charged as per the Health (Offensive Trades Fees) Regulations. Part 8 of the *Public Health Act 2016* allows for the registration of public health risk activities which are specified in regulations. The options presented in the discussion paper will consider regulation of offensive trade businesses or activities and also the option to deregulate these trades, with the public health risks managed by alternative means. If deregulation of offensive trades is the preferred option, local governments will not be able to register these businesses under the *Public Health Act 2016*. Local governments do however have the ability to charge fees under the *Local Government Act 1995*.

Ten local governments reported that they had received 150 complaints regarding offensive trades in their districts; 97 (65%) for manure works, 2 for abattoirs/slaughterhouses, 2 for fish processing, 28 (19%) for poultry farming, 1 for shellfish/crustacean processing and 20 (13%) for piggeries. Many of the complaints for these businesses concerned nuisance odour or dust emissions. The discussion paper will investigate the options for local government to address these types of amenity complaints if offensive trades are regulated under the *Public Health Act 2016* and possible options under alternative means if offensive trade are deregulated.

Lodging houses

Lodging houses are not regulated with a specific regulation. Rather the *Health (Miscellaneous Provisions) Act 1911* specifies certain requirements and also enables local governments to make local laws that provide further requirements and controls. Through the use of model local laws, all local governments have made similar lodging house local law provisions.

The provisions of the Act and the health local laws are enforced by each local government, within its district. Local governments may amend their local laws to keep them updated. The protections provided to the health of the occupants of houses of multiple occupancy (lodging-houses) are still important and relevant.

The optional reporting survey was used to obtain information regarding the public health impact of lodging houses. This was sought to assist in the preparation of a discussion paper seeking to obtain submissions on future alternative ways of protecting public health related to houses in multiple occupancy [lodging houses].

Twelve of the 56 local governments that responded (3 metropolitan and 9 regional) received a total of 23 complaints about lodging houses in their districts. None of these complaints resulted in legal proceedings being initiated and there were no reports of illnesses linked to any lodging houses.

The comments supported rather than added to the information used to draft the discussion paper and will be further considered when submissions are received following the release of the discussion paper.

Public Buildings

The data obtained from the optional reporting in relation to public buildings will be used to inform the discussion paper related to the review of the *Health (Public Buildings) Regulations 1992* and guide the content of the future legislation.

Of the 56 local government authorities who responded, LGAs indicated that there are over 2,576 public buildings throughout metropolitan and regional areas in WA. 38 local councils register public buildings and a small number of these charge a registration fee which may vary with varying risk level of a building ($50 - $900). Only 8 councils indicated they charged an inspection fee ranging from $60 - $687. 13 complaints were received across 3 local governments – 2 were related to noise and the remainder were not detailed however it is suggested that complaints may be associated with food handling or effluent disposal systems associated with public buildings. It is noted that 2 local governments identified the importance of conducting inspections as it is not uncommon to identify a range of compliance issues when undertaking a routine inspection of a public building.

There are over 2,576 public buildings throughout metropolitan and regional areas in WA

Local governments were asked to list types of buildings they would like to see removed from or added to the definition of a public building. A large number of respondents suggested that

smaller, lower risk buildings should be excluded from the definition. These included buildings accommodating less than 50 people, churches, small meeting rooms, small community halls and educational establishments. It was also suggested that only buildings classified as Class 9b under the Building Code of Australia should be included in the definition. A number of local governments provided comments regarding the current legislative framework. In general, the definition of a public building was considered to be too broad, and it was suggested that it be amended to exclude lower risk buildings as detailed above. It was also noted that events should have a separate approval process from public buildings in standalone legislation.

The information received from local governments aligns with the preferred options for the future management of public buildings in WA. The discussion paper on the review of the *Health (Public Buildings) Regulations 1992* will propose a new definition of a public building which is to be centred on risk and will exclude outdoor events which are to be addressed under a standalone discussion paper.

Events

The data obtained from the optional reporting in relation to events will be used to inform the review of the *Health (Public Buildings) Regulations 1992* and guide the content of the future events legislation.

Local governments noted that 1,453 events were registered across metropolitan and regional areas of WA in 2015. Approximately 1047 events had less than 1000 attendees, ~245 events had between 1000 – 5000 attendees and ~52 events involved over 5000 attendees.

A number of local governments provided comments regarding the current legislative framework. It was noted that events should have a separate approval process from public buildings in standalone legislation. Currently, public buildings and events are covered under the same regulations and definition under the *Health (Miscellaneous Provisions) Act 1911* which has been a source of much confusion. Local governments also identified that events are becoming more frequent and the assessment of events applications have become an increasingly time consuming process. The Shire of Narrogin is currently trialling an event application package to improve the processes involved with assessing and approving event applications.

In line with the comments above, the DOH is seeking to legislate events in standalone regulations. Mobile events such as high risk sporting events are not currently considered a public building and therefore do not require an event approval. The proposed future regulations will look to provide for a risk based approach to event regulation and as indicated by the comments received from local government, it is important that the future regulations provide flexibility to allow for adaptation to emerging trends.

Laundries and Bathrooms

The data related to laundries and bathrooms was requested to inform the discussion paper related to the review of the *Health Act (Laundries and Bathrooms) Regulations* and guide the content of the future legislation. The Department was interested to know how many local governments are using the current legislation to manage public health risks related to laundries and bathrooms and to identify areas of concern and emerging risks.

Of the 56 local governments who responded, 12 advised that they had received complaints related to residential laundries bathrooms and toilets. The number of complaints totalled 67 and was comprised of 8 in regard to laundries, 22 in regard to bathrooms and 37 in regard to toilets. Of the complaints received related to laundries and bathrooms, the mostly commonly cited reason was mould due to inadequate ventilation. The complaints received in regard to toilets were largely due to blocked toilets and blocked septic tanks. As a result the DOH will ensure that the issue of mould is included in the discussion paper related to bathrooms and laundries.

A large number of respondents indicated that they felt that the *Health Act (Laundries and Bathrooms) Regulations* were out of date and had now largely or entirely been replaced by the requirements of the Building Code of Australia. The Department of Health will include the option to repeal the Regulations and rely on the BCA in the discussion paper related to bathrooms and laundries.

It is noted that 39 of the 67 (55%) complaints were received by just 2 local governments with a high aboriginal population. Both of these local governments noted the lack of ability to deal with these complaints effectively under the current legislation. While the *Public Health Act 2016* binds the Crown and therefore will allow local governments to take action in such cases in future, the Act also recognises that in some circumstances the Crown may not be capable of achieving immediate compliance and that incremental measures may be appropriate. For example, because required improvements to infrastructure and service delivery can only be achieved in the medium to long term. In appropriate circumstances the Minister for Health may exempt the Crown or a Crown authority from compliance with specific provisions of the Act or regulations for a period of up to 10 years. The exemption will include a condition requiring the exemption-holder to develop a compliance plan within a period specified in the exemption. A compliance plan sets out the steps that the exemption-holder will take, by the time the exemption expires, to achieve full compliance with the provisions of the Act or the regulations to which the exemption applies. The exemption holder will then be required to report annually on their progress towards meeting the requirements of the compliance plan. The Department of Health must play an active role in guiding local governments and Crown agencies on their roles and responsibilities following stage 5 of implementation of the Act and the new regulations.

55% of complains were received by just two local governments

Houses Unfit for Habitation

The introduction of the *Public Health Act 2016* provides an opportunity to review the provisions currently in place in regard to houses unfit for human habitation. The optional reporting questions related to hoarding and squalor were asked to try and gauge the extent of each problem in WA and the number of cases where hoarding and squalor co-exist.

Across 56 councils, 102 cases of hoarding were reported, though some respondents commented on the inherent difficulty of accurately quantifying the number of hoarding cases. The widely accepted international definition of compulsive hoarding is made up of three primary characteristics:

- The acquisition of and failure to discard a large number of possessions that appear to be useless or of limited value.
- Living spaces are cluttered to the point that they can't be used for the activities for which they were designed.
- Significant distress or impairment in functioning, caused by the hoarding.

Hoarding may or may not occur with the incidence of squalor. Squalor describes an unsanitary living environment that has arisen from extreme and/or prolonged neglect. This in turn may pose immediate or longer term substantial health and safety risks to people or animals residing in the affected premises, as well as in the community. Of those hoarding cases reported, 23 were reported as known cases of hoarding with the resident living in squalor.

The reported figures suggest an average of 1.8 cases of hoarding per Council area; however one local government reported having 55 cases in their area, accounting for 54% of all reported cases. Comments regarding hording and squalor commonly cited the resource intensive nature of these cases and the need for involvement of mental health services.

69 houses were reported as having been declared unfit for human habitation, with 24 (34%) of those being due to the occupant living with hoarding and/or squalor. A number of respondents indicated that they worked with a resident to prevent the need to declare a house unfit for habitation and potentially leave the person homeless. A number of respondents commented that the provision allowing a house to be declared unfit for human habitation should be retained in the new legislation and requested increased penalties. It is the intention of the Department of Health to replace the provisions related to declaring a house unfit in the new legislation under the *Public Health Act 2016*. That Act also provides substantial penalties and for infringement notices to be issued.

Temporary Toilets

As part of the review of the *Health (Temporary Sanitary Conveniences) Regulations 1997* the DOH completed a survey regarding the design and construction of accessible temporary toilets provided at events. The results of the survey indicated that:

- Nearly 50% of respondents indicated that the type of toilet that will be provided at an event is extremely important in influencing their decision to attend the event or not.
- 69% of respondents have been to an event where they couldn't go to the toilet because it was not suitably designed for them.
- that the majority of accessible temporary toilets have a number of issues including:
  - Insufficient door widths for some styles of wheelchair to access the toilet
  - Insufficient circulation space for wheelchairs, particularly when the door is closed
  - not enough transfer options/non-peninsular toilet (side transfer/front transfer

Accessible temporary toilets were only provided at approximately 65% of events

As part of the optional reporting local governments were asked questions related to accessible temporary toilets to see if the findings were replicated or if there was a disconnect between the lived experience of a person with a disability and local government officers who approve events.

All 56 local governments completed this section of reporting. The responses indicated that approximately 450 events were held in the 2016/2017 financial year that required accessible temporary toilets. However it was reported that accessible temporary toilets were only provided at approximately 294 events (65%).

Reasons why accessible temporary toilets were not provided included:

- None available to hire in the area (mainly regional areas)
- Events in the area are usually held at a location which already has a permanent accessible toilet facility.

If any complaints were received it was about the number of toilets provided, the location of them and the security of the toilets.

It is noted that whether accessible temporary toilets were provided or not is often not known because an event may not need approval (depending on the local government). In addition the current event guidelines are not mandatory and as such the provision of accessible temporary toilets isn't a mandatory requirement.

The results of the optional reporting highlights that current legislation surrounding the provision of accessible toilets at events and the design and construction of accessible temporary toilets needs review. This information will be used in the temporary toilets discussion paper.

This document can be made available in alternative formats on request for a person with a disability.