



**DRAFT PUBLIC HEALTH BILL
2008
EXPLANATORY PAPER AND
SUBMISSION FORM**

**PUBLIC HEALTH DIVISION
DEPARTMENT OF HEALTH
WESTERN AUSTRALIA**

Western Australia

EXPLANATORY PAPER Public Health Bill 2008

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to protect and promote the health of the public of Western Australia and to reduce the incidence of preventable illness, and for related purposes.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

FOREWORD

I would like to invite all Western Australians to have their say on a Government Proposal to introduce a Bill into Parliament to protect and promote the health of the public of Western Australia and to reduce the incidence of preventable illness, and for related purposes.

The new Act will provide modern, flexible public health laws that better protect and promote public health as well as prevent injury and illness.

It will ensure that WA has a range of tools for tackling traditional and emerging public health concerns well into the future.

The proposed Act emphasizes prevention and promotion rather than reaction and would allow preventative action to be taken where there is a serious risk to public health.

The Bill also provides the powers that would enable potential health impacts and benefits of proposals to be taken into consideration.

It is underpinned by a belief that the health system of Western Australia should promote and protect the health of the people of Western Australia and reduce inequalities in health status.

On 7 September 2001 Cabinet agreed that the Health Act 1911 ("the Act") be replaced through a phased program of legislative

development, involving a Food Bill, an Infectious Diseases Bill and a Bill dealing with other core public health matters.

On 12 June 2005 Cabinet approved the release of A New Public Health Act for Western Australia: a Discussion Paper ("the Discussion Paper"). The Discussion Paper proposes to replace the core public health provisions of the Health Act with a risk based approach to protect and promote public health, to be administered by the State government and local government. Consultation on the Discussion Paper occurred throughout Western Australia between July and November 2005.

On 14 August 2006, Cabinet approved drafting of a Public Health Bill (exposure draft)

The implementation of Health Impact Assessment in Western Australia is a commitment made by the State Government in relation to a number of separate initiatives.

More recently there have been Government commitments in relation to the Public Health Bill. The Response of the Western Australian Government to the Legislative Assembly Education and Health Standing Committee Inquiry in relation to the cause and extent of lead pollution in the Esperance area accepted the Committee's recommendation (Recommendation 10)

"That there be a legislative requirement for the Department of Health to conduct a health impact assessment as part of the Environmental Assessment Process."

The need for change is recognized in the Department of Health's Strategic Intent 2005-2010 which gives a commitment to "implement a legislative overhaul to underpin WA's Health system".

Submissions are invited from the public, Government Agencies, non Government organizations and businesses and an extensive consultation program is being undertaken from 1st February to 30 April 2008.

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EXPLANATORY PAPER

Public Health Bill 2008

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Introduction

The development of a new Public Health Act is a major public health initiative and regulatory reform project for Western Australia. The draft Bill is the result of a consultation process which formally commenced on 12 June 2005 when Cabinet approved the release of a New Public Health Act for Western Australia: a Discussion Paper (“the Discussion Paper”). The Discussion Paper proposed the replacement of the core public health provisions of the Health Act with a risk-based approach to the protection and promotion of public health, to be administered by the State government and local government.

Once passed, a staged approach to implement the new Public Health Act is proposed, with a two year transitional period to allow State and Local Government to make required changes, including developing subsidiary legislation to support the risk management approach that will replace the numerous regulations that support the current framework. It is proposed that emergency powers and notifiable disease provisions will come into effect on proclamation.

Background

The core public health provisions in the existing *Health Act 1911* (“the Health Act”) –

- were developed to deal with public health issues in the early 20th century with reactive rather than preventive strategies for intervention,
- do not have the flexibility to deal with emerging public health issues such as bio-terrorism, changing climactic conditions, a mobile world population, new industries and epidemic chronic disease,
- deal with issues that have since been captured by other legislation including the *Occupational Safety and Health Act 1984* and the *Environmental Protection Act 1986*.
- do not provide for accountability in relation to the setting of public health standards,
- do not provide a definition of ‘public health’,
- do not provide a framework for dealing with public health emergencies,
- do not provide a balance between coercive powers and rights of individuals, and
- are ineffective in tackling Aboriginal environmental health issues.

Consultation on the Discussion Paper occurred throughout Western Australia between July and November 2005. The policy approaches proposed in the Discussion Paper received wide support and on 14 August 2006 Cabinet approved drafting of a Public Health Bill (Exposure Draft).

On 21 January 2008 Cabinet approved three months public consultation on the Draft Public Health Bill.

The purpose of the Public Health Bill (“the Bill”) is to provide the legislative tools that will advance the public health objective of protecting and promoting the health of communities in the State and reduce the incidence of preventable illness. The draft Bill constitutes the primary legislation that will provide the powers, functions and foundation for a risk management approach to public health risks.

Overview

New approach of preventing harm to public health

Central to the draft Bill is the philosophy of minimising risk to the public’s health. The centrepiece of this approach is a proposed statutory duty incumbent on all persons to conduct their activities in a way that does not cause risks to the health of others.

The Discussion Paper envisages that the following elements could be in place to support a ‘risk based approach’ to the regulation of public health:

- A general duty to protect public health
- Orders to enforce the general duty
- Policies and guidelines spelling out compliance with the duty
- An offence of ‘causing a risk to health’

Significant new penalties for persons who cause serious harm to the public’s health are proposed. This mirrors the approach taken in environmental protection legislation for those who cause environmental harm.

Disease and other public health emergencies

The Bill adopts the approach advocated by the National Public Health Partnership of a ‘staged approach’ which provides effective safeguards in cases where a person may be putting others at risk, but which imposes restrictions on the person’s activities and liberty in a way that uses the least restrictive options consistent with the protection of the community: more restrictive options only being used when they are considered to be necessary. However, isolation will be available as a last resort. The coercive powers are set within a framework of rights and obligations, explicitly set out in the legislation.

The Bill also provides the powers necessary to deal with public health emergencies e.g. a new influenza epidemic.

The Bill also provides the powers that will enable potential health impacts and benefits to be taken into consideration. The provisions have been carefully constructed with the aim of integrating the assessments into existing Government approvals processes. This part operates where the proposal is subject to a specified assessment, approval, review or other process under another written law.

The Bill will bind the Crown. This means that new Public Health legislation will apply to indigenous communities previously excluded from its operation and provide equal protection for all Western Australians.

Principles and objects

Unlike the existing *Health Act 1911*, the Bill outlines objects and principles to guide the administration of the Act.

Clause 3 sets out the proposed key objects of the Bill;

- to promote public health and wellbeing and to prevent disease, injury, disability and premature death,
- to 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,
- to inform individuals and communities about public health risks,
- to encourage individuals and their communities to plan for, create and maintain a healthy environment,
- to provide for the prevention or early detection of diseases and other public health risks,
- to support programmes and campaigns intended to improve public health,
- to collect information about the incidence and prevalence of diseases and other public health risks to the State for research or public health purposes,
- to reduce the health inequalities in public health of disadvantaged communities, and
- to provide for functions relating to public health to be performed by the State and local governments, and

The Bill sets out guiding principles to be observed in the administration of the legislation in the Table to clause 3.

In pursuit of the objects of the Act, regard should be paid to the principles set out in the Bill.

1. Are the draft principles and objects appropriate?

Public Health is defined as the physical, mental and social wellbeing of the community (in clause 4). This is based on the World Health Organisation definition.

Binding the Crown

An important departure from the *Health Act 1911* is the binding of the Crown at clause 6 of the Bill. This will mean that a large number of Aboriginal communities on Crown land or land managed by Crown entities will be subject to important public health standards not currently in force in these communities.

General public health duty

Part 3 of the Bill creates a duty not to cause a risk to public health. The general duty would be capable of capturing known and current threats as well as new and emerging threats to the public's health.

As outlined in the Discussion Paper, and widely supported in submissions during public consultation, is the requirement that people take 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.

The intent of this part is to ensure that people who undertake activities that affect public health are responsible for them. It is intended to assist in preventing public health incidents from occurring such as the Bellevue toxic waste fire and the lead in Esperance issue.

Note should be taken that a breach of the general duty does not of itself give rise to any right or remedy or constitute an offence but may provide grounds for a range of actions to be taken under the Act such as the issuing of an improvement notice or enforcement order.

Serious and material risks to public health

Part 4 of the Bill outlines a tiered approach to offences similar to that expressed in the *Environmental Protection Act 1986*.

They are defined as serious and material risks to public health.

Serious risk

A serious risk to public health is defined in clause 4 as a risk of harm to public health that is irreversible, of a high impact or on a wide scale.

The highest offence for a serious risk to public health arises when the person carries on an activity in a manner that the person knows will cause or is likely to cause a serious risk to public health (clause 25(1)).

A lower level offence occurs when the person carries out an activity in a manner that the person ought reasonably to know will cause, or is likely to cause, a serious risk to public health (clause 25(2)).

Material risk

Material risk to public health is defined at clause 4 as a risk of harm to public health that is neither trivial nor negligible.

The highest offence for a material risk to public health arises when the person carries on an activity in a manner that the person knows will

cause or is likely to cause a material risk to public health (clause 26(1)).

A lower level offence occurs when the person carries on an activity in a manner that the person ought reasonably to know will cause, or is likely to cause, a material risk to public health (clause 26(2)).

Defence of due diligence

Clause 27 provides for a defence of due diligence based on certain grounds. It is a defence to prove that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.

Without limiting the above, the person must prove that;

- they complied with the requirements of any notice or order under this Act that related to the risk of harm to public health,
- as soon as becoming aware of the circumstances that gave rise to the risk of harm to public health and reported those circumstances to the relevant enforcement agency, and
- took all reasonable steps necessary to prevent or reduce the risk of harm to public health.

Where the defendant is an employer in that due diligence may be met by proof that the person;

- had proper systems and safeguards in place to prevent the circumstances that gave rise to the risk of harm, and
- actively and effectively promoted and enforced compliance with the Act.

Nuisances

The Bill aims to provide remedies for real risks to public health but not for incidental or nuisance issues that are generally amenity related. There are no powers in the Public Health Bill for local health laws to be created by local governments to regulate such matters within their respective districts rather it is intended that Local Government use their general local law making powers under the Local Government Act 1995 if required to deal with local amenity and nuisance issues

Statutory Public Health Policies

A key component to giving effect to the Act will be the Part 5 power to develop statutory Public Health Policies.

The most useful models for such Policies come from environment protection controls. The WA *Environmental Protection Act* 1986 has the capacity for making both regulations and policies. Environmental Protection Policies are created by Part III of the Act which sets out a consultative process and also defines the matters that can be covered by these policies.

Whilst the Bill will still provide the power to make regulations this will be confined to administrative aspects such as the prescribing of fees, forms, notifiable diseases etc.

Both Policies and Regulations are subordinate to the Act and draw their validity from it. Both can provide the details and the substance that the Act does not.

Policies would cover fields of regulation, such as those envisaged in the Discussion Paper e.g. public buildings and drinking water.

A public health policy may -

- declare matters that may constitute a breach of the general duty not to cause a risk to public health
- declare matters that do NOT constitute a breach of the general duty
- declare activities to be public health risk activities
- declare public health risks to be serious or material risks to public health
- set requirements in relation to risk management
- regulate or prohibit the manufacture, transport, storage, supply, use or disposal of anything that is a risk to public to health
- set conditions on the public health risk activities. (Clause 33)

Policies will also be able to adopt codes of practice that will become mandatory standards for compliance (clause 34).

Policies have a prescribed process of development involving public consultation etc. Involved parties have a greater opportunity to 'own' the resulting document.

The Bill sets out the content of policy including;

- the public health objectives to be achieved by the policy,
- declaring a specified risk of harm to public health,
- requiring things to be done in relation to the prevention, assessment or management of risks of harm to public health, and
- providing guidelines for complying with the general public health duty amongst others.

The Bill sets out the consultation requirements and process required to make a policy, including publishing details of the policy in the Government Gazette and daily newspapers.

The community requires quick response to the protection of public health. In the interests of protecting public health, the Bill allows the Governor to make an interim public health policy that is exempted from the provisions relating to publishing, consulting and submissions.

However for this to occur it must be on the recommendation of the Minister and the Governor needs to be satisfied that it is in the interests of public health for the interim public health policy to come into operation without delay.

There is then a requirement for the CEO to prepare a draft policy following the normal process otherwise the interim public health policy will cease to apply 12 months after it came into effect.

It should be noted that an interim public health policy, in respect of which a draft policy is prepared, ceases to have effect as soon as the draft policy comes into operation as a public health policy.

If the preparation of the draft policy does not result in a public health policy coming into operation, it will cease to be effective at the end of the period of two years after the interim public health policy came into operation, unless it is repealed sooner.

2. Will public health polices provide an effective framework for detailing requirements and standards relating to the objects of the Act and effectively protecting and promoting the health of Western Australians?

Public Health Plans

In order to effectively achieve the objects and requirements of the Bill, it is essential that a strategic and forward-thinking approach is taken to public health in order to effectively promote and protect public health.

The aim of the State Public Health Plan is to ensure that the focus and efforts in relation to public health;

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

The aim of local public health plans is for local government to prepare a public health plan that applies to its local government district. The plan is to identify the public health needs of the local government district and;

- 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, and
- describe the development and delivery of public health services in the local government district.

Similar provisions exist in the State plan relating to the achievement of objectives and policy priorities, and the establishment of a strategic framework for the management of risks of harm to public health.

There is a requirement to include a report on the performance of the local government with regard to its functions under this Act.

The intent is to incorporate the public health planning process into existing local government 'future plans' prepared under the *Local Government Act 1995* to integrate public health into existing planning processes and minimise the number of separate planning processes required of local government.

There are requirements for State and Local government to review their plans.

Registration and licensing

A key risk management strategy is to be able to identify activities that may pose a risk to public health and be able where necessary to put in place effective measures to prevent and manage public health risks.

A common way to achieve this is through registration and licensing.

Part 8 of the Bill sets out a scheme for registration and licensing of public health risk activities.

A public health risk activity is defined as an activity, or an activity within a class of activities, declared by a public health policy to be a public health risk activity.

The regulations or public health policy may declare that a public health risk activity is registrable or licensable or both registrable and licensable and will set out who are the relevant enforcement agencies in relation to this part.

Registration is intended to relate to activities i.e. to be able to keep a register on activities in the community that pose a risk of harm to public health and to ensure adequate measures are in place to protect public health.

The provisions set out the requirements and process for registration, the setting of conditions of registration, the review of conditions and cancellation of registration. There are requirements to notify the relevant enforcement agency of certain changes to a registrable activity or premises.

A similar scheme is set out relating to licensing of persons carrying on licensable or registrable activities.

Licensing is intended to relate to individuals who undertake an activity that poses a risk of harm to public health.

Licensing will aim to ensure that individuals who undertake a registrable or licensable activity are competent to undertake the activity.

Applicants can apply to the State Administrative Tribunal for a review of decisions in relation to registration and licensing on a number of grounds.

Where licensable or registrable activities may also be licensed or registered under another law, the aim is to integrate the public health protection requirements into existing registration and licensing processes wherever possible.

3. Is the scheme for registration and licensing adequate for the effective identification and control of activities that pose a risk to public health?

Notifiable diseases

The Bill proposes similar wide ranging powers to those outlined in the existing Act – but also incorporates the principles of best practice from the National Public Health Partnership as well as important checks and balances that do not exist under the current *Health Act 1911*.

In addition to the principles set out in the front of the Bill, this part has additional principles that describe the rights and responsibilities of individuals in relation to notifiable diseases.

These are important as this part seeks to balance the protection of public health with the rights of the individual. Sometimes these rights need to be restricted to protect the public health of the community. However where these rights may be restricted there are requirements and limitations on those persons who may be restricting the rights of an individual.

This part enables regulations to declare a disease to be a notifiable disease, or a notifiable disease to be a serious notifiable disease or a notifiable disease to be a vaccine preventable notifiable disease.

The Minister may, if he or she considers it to be necessary in the interests of public health because of urgent circumstances, by order declare the same as above.

There are requirements to report notifiable diseases to the CEO with protection from civil liability or being in breach of any duty of confidentiality for those notifying the CEO in good faith and in compliance with the requirements set out in the Bill.

Best practice, as set out in this part, requires that a person with a notifiable disease is to be provided with information about preventing the transmission of the disease to any other person, information about the person's rights and any other information prescribed by the regulations.

In addition to a person's rights, a person to whom a public health order applies may apply to the State Administrative Tribunal (SAT) for a review of the decision to make the order. There is a requirement for SAT to hear and determine the application as soon as practicable.

The provisions set out matters that SAT is to consider; these focus on the method of transmission of the serious notifiable disease, the seriousness of risk of transmission, the past and likely behaviour of the person to whom the public health order applies and the extent of the restrictions imposed on the person to whom the order applies.

As people travel extensively throughout the world and within Australia, the scheme seeks to provide for the recognition of public health orders in other jurisdictions within Australia. It is proposed that regulations will set out the requirements in relation to how these orders will be recognised and operate within Western Australia.

There are also accountabilities on the CEO to include information about the number and the types of orders made by the CEO in a financial year, and the reasons for making those orders or authorisations, as part of the Department of Health's reporting requirements under the Financial Management Act 2006 part 5.

4. Does this part provide sufficient balance in protecting public health and ensuring individual rights?

Serious public health incident powers

For the purposes of preventing, controlling or abating a serious risk to public health the CEO can authorise an officer to exercise any of the serious public health incident powers outlined in this part.

There are provisions that set out the requirements for authorisation to contain certain information and requirements to ensure effective controls of any powers exercised.

These include describing the serious public health incident powers and the period during which the authorisation continues to be in force.

Examples of serious public health incident powers include the option to;

- close any premises,
- direct any person to enter or not to enter or remain at or to leave any premises,
- require information,
- enter and inspect any premises to which the serious risk to public health may extend, and
- take, or direct another person to take, any action that the authorised officer considers is reasonably necessary to prevent, control or abate the serious risk to public health.

Public health emergencies

With the outbreak of Severe Acute Respiratory Syndrome (SARS), the potential for human influenza epidemics, bioterrorism or some unforeseen public health emergency, the Bill seeks to provide the necessary legislative tools to effectively plan against and respond to such public health emergencies.

The provisions complement the *Emergency Management Act 2005*, and State emergency management policies and State emergency management plans made under clauses 17 and 18 respectively of the *Emergency Management Act 2005*.

There is a requirement on the CEO to prepare one or more public health emergency management plans, as the CEO considers necessary.

The plans and any amendments to a plan have effect when approved by the Minister. The CEO can review, amend or replace a public health emergency management plan whenever the CEO considers it appropriate. The CEO can also arrange for a public health emergency plan to be tested whenever the CEO considers it necessary.

Due to the potential significance of a public health emergency, the Bill makes provision for a public authority to be given roles and responsibilities under a public health emergency management plan.

Where this is the case the CEO may, in writing direct a public authority in regard to that role and those responsibilities, and seek assistance of a public authority in the preparation or review or amendment or replacement of the public health emergency management plan; or the testing of the plan.

A public authority is to comply with a direction within the time and in the manner specified in the direction and to comply with the public health emergency management plan.

Only the Minister may declare that a public health state of emergency exists in the whole (or in any area or areas) of the State.

There are requirements on the Minister in making a state of emergency declaration, including;

- considering the advice of the CEO,
- consulting with the person holding the office of State Emergency Coordinator under the Emergency Management Act 2005, and
- being satisfied that an emergency relating to public health has occurred, is occurring or is imminent and
- that the Minister is satisfied that extraordinary measures are required to prevent or minimise the loss of life or prejudice the safety or harm to health of persons or the destruction of or damage to property or any part of the environment.

The Bill sets out requirements for what is to be included in a state of emergency declaration. Generally the duration of a declaration will be seven days. Extensions may be made up to 28 days. The Bill sets out the ability of the Minister to revoke at any time a public health emergency declaration.

There is also the requirement to publish the notice of a declaration for general information.

The CEO may for the purposes of emergency management authorise a relevant person or persons within a class of persons prescribed by the regulations to exercise any of the emergency powers while a state of emergency declaration is in force.

There are requirements for an authorisation to state certain matters.

Once authorised, the powers that may be used relate to the movement and evacuation of people and/or animals within the emergency area, powers to use vehicles and to control or use property.

As a public health emergency may arise from the occurrence of a serious infectious disease, provision is made to provide powers in relation to quarantine and medical examination and authorisation to exchange information for the purposes of emergency management during a state of emergency. Police are also given powers to direct closure of places and the movement and evacuation of people and/or animals.

During a state of emergency the CEO is responsible for coordinating any activities of public authorities that the CEO considers necessary or desirable in order to respond to the public health emergency.

5. *Do the provisions provide the necessary legislative tools to effectively plan against and respond to public health emergencies?*

Compensation and insurance

The Bill seeks to provide for fair compensation and insurance for any loss or damage suffered by a person or persons because of the exercise, or purported exercise of;

- a serious public health incident power or
- an emergency power or
- a power under Part 11 Division 6.

There are grounds where compensation is not payable such as where the amount for the loss or damage is recovered or recoverable under a policy of insurance, where the conduct of the person contributed to the loss or where the loss or damage would have happened in any event.

A person may apply to the Minister for compensation in relation to the exercise of any of the above powers.

Applications need to be made in writing within 90 days after the person suffers the loss or damage.

The Bill sets out requirements for applications for compensation, information the Minister may request and timeframes for information to be provided.

Extensions to timeframes can be given by the Minister.

The Minister decides each application and the Bill requires the Minister to give the applicant a written notice stating the decision and the reasons for it, amounts and how they were assessed. The Minister is to advise that the applicant may apply for a review of the decision and how the applicant may apply for the review.

Review of decision as to payment of compensation is heard by the State Administrative Tribunal.

If damage is caused to a property because of the exercise by a person in good faith of a power mentioned above and provided that a power is exercised for the purpose of protecting the property from damage or a person or an animal from death or injury then, for the purposes of the policy of insurance, the damage is to be taken as to be damage caused by the happening of an event for which the policy provides insurance cover.

A term of a policy of insurance that purports to vary or exclude the operation of the above is void.

6. Do these provisions provide a fair process for compensation and insurance?

Public health assessments

The intention to implement Health Impact Assessments in Western Australia is a commitment made by the State arising from the State Sustainability Strategy, the response to the Parliamentary Inquiry into the Bellevue Hazardous Waste Fire and commitments to putting into effect the National Environmental Health Strategy (NEHS).

More recently there have been Government commitments in relation to the Public Health Bill. The *Response of the Western Australian Government to the Legislative Assembly Education and Health Standing Committee Inquiry in relation to the cause and extent of lead pollution in the Esperance area* accepted the Committee's recommendation (Recommendation 10)

“that there be a legislative requirement for the Department of Health to conduct a health impact assessment as part of the Environmental Assessment Process.”

Part 7 - Public Health Assessments provide for the consideration of impacts both negative and positive of proposals on public health. The term 'public health assessment' has been deliberately used instead of health impact assessment as an agreement was made with Government that Health Impact Assessments would apply only to new proposals. There may be circumstances where existing activities require assessment. The term Public Health Assessments provides for the use of a range of assessment tools and options and moderates the potentially negative implications associated with the term "Impact Assessment. A public health assessment aims to establish the net benefit to public health.

The provisions have been carefully constructed with the aim of integrating the assessment procedures into existing Government approvals processes. This part operates where the proposal is subject

to a specified assessment, approval, review or other process under another written law.

A statutory public health policy will be developed that sets out what proposals will require public health assessments under this section and the level of assessment required. The CEO may require the public health assessment to be carried out in conjunction with an assessment, approval, review or other process to which the proposal is subject under another written law.

The Minister may request the CEO to conduct an inquiry into other proposals (see Clause 48) and the CEO must comply with this request.

Where a public health assessment is required there is a provision that the CEO shall provide to the decision making authority a report on the public health assessment, which may include, but is not limited to

- the public health impacts, both positive and negative of the proposal,
- whether the proposal should proceed,
- any restrictions or conditions under which the proposal should proceed, and
- the management regime under which the proposal should proceed.

The decision making authority is not to give effect to a proposal until the CEO has provided the report required above.

The relevant public authority is to have regard to the report in giving effect to any proposal.

Public health assessments for activities other than those assessed through formal Government approvals processes can also be dealt with under Part 14 -Inquiries.

7. Do these provisions provide an effective framework for public health assessment on identified proposals?

Powers of entry, inspection and seizure

This part sets out the general powers of authorised officers for the purposes of the Act. These generally relate to powers of entry and inspection along with powers to take samples, examine any records or documents, take photographs, films or audio or visual recordings, require a person to provide information or answer questions.

Authorised officers may also be given assistance in exercising a power.

Other provisions address self incrimination and inadmissibility of evidence against a person in criminal proceedings.

Authorised officers may also apply for warrants and the requirements and process for obtaining and executing warrants are set out in the Bill.

Other provisions detail matters in relation to items seized by authorised officers and compensation to be paid in certain circumstances.

8. *Are the powers of authorised officers adequate for protecting public health bearing in mind the principles to be applied at the beginning of the Bill (such as the principle of proportionality)?*

Improvement notices and enforcement orders

The main legislative mechanism to prevent, manage or mitigate public health risks will be through the issuing of improvement notices and enforcement orders.

These will be issued in relation to public health policies that will set out the public health standards required for activities that pose a risk of harm to public health.

Improvement notices will be able to be issued on a number of grounds, including the carrying on of a public health risk activity that contravenes any provision of the Act, or the undertaking of an activity that poses a risk of harm to public health by an individual or organisation that has failed to take reasonable and practicable steps to prevent or minimise any harm to public health.

The Bill sets out the required contents of an improvement notice. Examples of the requirement include the authorised officer stating the beliefs for issuing the notice and specifying the action that the person given the notice is required to take in order to comply with the notice and the period within which the person is to take that action.

There are matters that the authorised officer is required to consider in determining the action the notice requires to be taken; these include;

- the degree or the potential degree of the risk of the damage to public health from the activities specified in the notice,
- any measures taken or that have failed to be taken to avoid or to minimise the consequences or potential consequences of that risk to public health, and
- the principle of proportionality or other matters prescribed in regulations.

Authorised officers are required to issue a notice of compliance when an improvement notice has been complied with. Or, if the officer is not satisfied that an improvement notice has been complied with, must issue a notice setting out the reasons why the officer is not satisfied.

Authorised officers can extend the timeframe for compliance of an improvement notice.

Failure to comply with an improvement notice is not an offence as subsequent prosecution would not remove the risk. The next appropriate action is to issue an enforcement order which is designed to prevent and mitigate the risk. It is an offence not to comply with an enforcement order.

Enforcement orders are the next level of enforcement available. These orders are more significant than improvement notices and will be issued by the appropriate enforcement agency.

The grounds for issuing an enforcement order include non compliance with an improvement notice or because the issuing of the order is necessary to prevent or mitigate a serious risk to public health.

The Bill sets out requirements for the content of an enforcement order. These are generally prohibitive actions.

Like improvement notices, enforcement orders are required to state the grounds on which the order is given and consider the same matters above for improvement notices.

An enforcement agency may implement an enforcement order where the person has not complied with the order and the amount of any costs incurred by or on behalf of the enforcement agency is taken to be a debt due to the enforcement agency.

A person given an enforcement order may apply to the State Administrative Tribunal for a review of the decision of the enforcement agency that gave the order not to give a certificate of clearance to the person.

There are provisions which provide for compensation if certain criteria are met, such as there being insufficient grounds for issuing the enforcement order.

If an applicant for compensation is dissatisfied with the determination for compensation by the enforcement agency, they may apply to the State Administrative Tribunal for a review of the determination.

9. Does the proposed scheme of improvement notices and enforcement orders provide effective mechanisms to prevent and mitigate risks to public health?

Administration

The Bill sets out the functions of the CEO and other enforcement agencies.

Statutory public health policies will further set out roles and functions in relation to specific areas under the Act. For example a policy regulating a particular public health risk activity might define which agency is responsible for registration and licensing functions.

To support the administration of the Bill, a draft agreement between the CEO and Local Government is being developed that provides further clarity in relation to the roles and functions of the CEO and Local Government.

Wherever possible it is the intent that consultation will occur in relation to any area of disagreement or in relation to significant public health risks.

Failing the above, the Bill provides that the CEO may give directions to local government if the CEO considers there is or is likely to be a risk of significant harm to public health in a local government district and the CEO is unable to reach agreement with the local government as to the measures to be taken by the local government to prevent, control or abate that risk.

The CEO may direct the local government in writing to take the measures that the CEO considers are necessary to prevent, control or abate the risk.

A local government that is given a direction may apply to the State Administrative Tribunal for a review of the decision to give the direction.

Subject to the above, the CEO can act in default of a local government and recover the costs from a local government that has failed to comply with the direction.

If the CEO considers the circumstances of the risk of significant harm to public health are sufficiently urgent the CEO may do anything that the CEO considers necessary to prevent, control or abate that risk without having first sought to reach agreement with the local government.

The Bill makes provision for the ability for the CEO to delegate certain functions only to an authorised officer or member of staff and other functions to a local government or the holder of an office prescribed by the regulations.

The CEO can, after consultation with another enforcement agency, impose conditions or limitations on the performance of functions under this Act by the enforcement agency.

This part also provides for the appointment or designation of authorised officers.

The CEO may make guidelines in relation to the appropriate qualifications and experience of a person to be appointed or designated to be an authorised officer.

Each enforcement agency is to issue certificates of authority to each authorised officer who is then required to produce the certificate of authority if asked to do so.

The Minister may establish advisory committees to assist the CEO in the performance of the CEO's functions under this Act.

10. Do these provisions provide an adequate framework for the administration of the Bill?

Inquiries

The Bill makes provision for the CEO to conduct an inquiry into any matter relating to public health on the CEO's own initiative or at the request of the Minister.

Prior to conducting any inquiry, the CEO must inform the Minister in writing of the CEO's intention to conduct an inquiry.

These provisions are intended to enable effective investigations into public health issues that warrant an inquiry.

In conducting an inquiry the CEO is to act with as little formality as possible and may inform himself or herself of any matter in any manner the CEO considers is appropriate. The CEO is not bound by the rules of evidence and may receive written or oral submissions and may consult any person the CEO considers appropriate.

The other provisions provide for the CEO to be able to determine the procedure of an inquiry, the conduct of hearings, and the CEO's powers in relation to an inquiry.

The CEO's powers include requiring a person to attend the inquiry, requiring a person to produce a document that is in the possession or under the control of that person, requiring the taking of oath or affirmation and requiring a person to answer any question put to that person.

There are offences for failure to comply with a notice and in relation to being sworn or making an affirmation, failing to answer a question, disrupting an inquiry and giving false information.

As soon as practicable after completing an inquiry, the CEO is to prepare a written report relating to the inquiry and give the report to the Minister.

The report is to include the CEO's findings and conclusions and any recommendations that the CEO wishes to make arising from the inquiry and the reasons for those recommendations and any matter prescribed by the regulations.

As soon as practicable after receiving the report the Minister is to cause a copy of it to be laid before each House of Parliament.

11. Do the inquiry powers provide effective investigation and reporting arrangements in relation to matters that might be the basis of a public health inquiry?

Procedural and evidentiary provisions

This part provides details in relation to infringement notices, institution of proceedings, offences by employees and the liability of employers, offences by bodies' corporate, the liability of directors and others, the liability of employees and agents, disclosure by witnesses, documentary evidence of certain matters and the ability of a court to order costs and expenses.

Miscellaneous provisions

This part provides for local governments to fix and recover fees and charges under the *Local Government Act 1995*.

There are also provisions enabling the Minister to delegate powers or duties with the exception of declaring a public health state of emergency.

Protection from liability and wrong doing is also afforded where a person has undertaken in good faith the performance or purported performance of a function under this Act.

Further provisions set out the requirements in relation to information sharing.

Part 18 Division 2 of the Bill provides that regulations may be made prescribing all matters that are required or permitted by the Bill or are necessary for giving effect to the purposes of the Bill.

Finally, Part 18 Division 3 of the Bill requires the Minister to review the Act after 5 years and prepare a report based on each review and is to cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared.

It is believed that the Bill provides the legislative tools to prevent risks to public health whereas the existing Health Act only allows limited and prescriptive responses once the risk to health has occurred.

12. Does the Bill provide the appropriate tools to prevent risks to public health?

Making a submission

A copy of the Bill and an explanatory document can be obtained from the following website.

<http://www.newpublichealthact.health.wa.gov.au/home/>

Hard copies of both documents are available **for pick up only** at
State Law Publisher
Ground Floor, 10 William St., Perth 6000
Office Hours: 8.30 a.m. to 4.30 p.m. Mon.-Fri.

Requests for hard copies **via post** can be directed to the contact person below.

Responses to questions raised in this Explanatory Paper are requested along with any other comments you wish to make in relation to the Bill.

Please use the attached submission sheets.

Submissions can be made by email, fax or by posting your response to the contact details below.

Submissions must be received by 5pm 30 April 2008

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The Minister for Health Hon Jim McGinty has driven the development of a new public health Act for Western Australia, The development of the draft bill has been achieved through the efforts of many dedicated people under the leadership of Jim Dodds Director Environmental Health Directorate.

The invaluable contribution of Dr Chris Reynolds School of Law Flinders University who provided the foundation and principles for the Bill. Mary Adam, Senior Legal advisor and instructing officer, Chris Drew who drafted the Bill, along with the team of people in Public Health-Trevor Davies, John Hardy, Simon Denniss, Irene Morgan, Dr Andy Robertson, Dr Richard Lugg, Dr Margaret Stevens, Dr Paul Van Buynder, Dr Shirley Bowen, Dr Mandy Seel.

Submission Form-Public Health Bill 2008-Q1-6

Please use extra pages if required.

1. Are the draft principles and objects appropriate?

Yes or No

Comments

2. Will public health polices provide an effective framework for detailing requirements and standards relating to the objects of the Act and effectively protecting and promoting the health of Western Australians?

Yes or No

Comments

3. Is the scheme for registration and licensing adequate for the effective identification and control of activities that pose a risk to public health?

Yes or No

Comments

4. Does this part relating to Notifiable diseases provide sufficient balance in protecting public health and ensuring individual rights?

Yes or No

Comments

5. Do the provisions provide the necessary legislative tools to effectively plan against and respond to public health emergencies?

Yes or No

Comments

6. Do these provisions provide a fair process for compensation and insurance?

Yes or No

Comments

Submission Form-Public Health Bill 2008 Q7-12

Please use extra pages if required

7. Do these provisions provide an effective framework for public health assessment on identified proposals?

Yes or No

Comments

8. Are the powers of authorised officers adequate for protecting public health bearing in mind the principles to be applied at the beginning of the Bill (such as the principle of proportionality)?

Yes or No

Comments

9. Does the proposed scheme of improvement notices and enforcement orders provide effective mechanisms to prevent and mitigate risks to public health?

Yes or No

Comments

10. Do these provisions provide an adequate framework for the administration of the Bill?

Yes or No

Comments

11. Do the inquiry powers provide effective investigation and reporting arrangements in relation to matters that might be the basis of a public health inquiry?

Yes or No

Comments

12. Does the Bill provide the appropriate tools to prevent risks to public health?

Yes or No

Comments