



Government of Western Australia
Department of Health

Public Health Act 2016

A new Public Health Act requires new public health thinking

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Emerging Opportunities for Health and Environment



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The *Public Health Act 2016* - distinctive public health sections

Public Health Act

- I – Preliminary
- II – Administration
- III – General Public Health Duty**
- IV – Serious Public Health Risks & Material Public Health Risks
- V – **Public Health Plans**
- VI – Public Health Policies**
- VII – Public Health Assessments**
- VIII – Registration and Licensing
- IX – Notifiable Infectious Diseases & Related Conditions
- X – Non-infectious Diseases & Physical Or Functional Abnormalities
- XI – Serious Public Health Powers
- XII – Public Health Emergencies
- XIII – Compensation and Insurance
- XIV – Improvement Notices & Enforcement Orders
- XV – Inquiries
- XVI – Powers of Entry, Inspection & Seizure
- XVII – Crown Exemptions
- XVIII – Liability, Evidentiary & Procedural Provisions
- IXX – Miscellaneous
- XX – Transitional & Savings Provisions

Definition of public health

Means 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 programs designed to promote and protect health, and prevent illness and disability

- Individuals have more rights, but also more responsibilities
- Government has different powers but is not more powerful, and is indeed more accountable
- New Public Health Act reflects the nature of the social contract in Australia in the twentieth first century

Some objects of the Act

- To promote health and wellbeing, and prevent disease, injury and disability
- To protect individuals and their communities from risks to health and to provide, as is reasonably practicable, a healthy environment for all Western Australians
- **To inform individuals and the community about risks to health**
- **To encourage individuals and their communities to plan for, create and maintain a healthy environment**
- To establish responsibility for the administration of the powers in the Act between the State and local governments
- To reduce the inequalities in public health of disadvantaged communities

Five Principles – must have ‘regard’ to these

Sustainability principle

- We all have a responsibility to consider 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.

Precautionary principle

- If in doubt about the public health risk due to lack of evidence or research, it is better to ‘err on the side of caution’ and to be ‘safe rather than sorry’.

Principle of proportionality

- Decisions need to be made proportionate to the public health risk – consider impact on individual, business or community

Principle of intergenerational equity

- It is important for any agency that has a responsibility for public health and wellbeing to continually strive to enhance public health in order that succeeding generations will benefit.

Principle relating to local government

- Acknowledges and respects the range of public health work done by local government, and seeks to work collaboratively with local government on health matters that may impact on communities within their jurisdiction.

Individual rights and responsibilities

- **DUTIES**
 - General duty
 - Intentionality key
 - Acts and omissions
- **RESPONSIBILITIES**
 - To yourself and others
 - Seriousness: fines more severe
- **RIGHTS**
 - That others will think about your health as you think about others
 - Defences of ‘reasonableness’ and due diligence
 - Right to receive information
 - Ability to appeal government decisions (via SAT)
 - Rights to compensation (emergency powers)

Government rights and responsibilities

- DUTIES
 - Binding the Crown, and need to apply for exemption
- RESPONSIBILITIES
 - multiple
 - to inform (and educate)
 - to provide a State public health plan
- ACCOUNTABILITIES
 - much greater transparency of decision-making
 - retention of statutory Chief Health Officer position (including own initiative to conduct an Inquiry)

Binding the Crown

- Clause 5 provides that the Crown is bound by the Act. This means that the Crown is obligated to comply with the provisions of the Act.
- The State Government will be subject to the same legislation that affects ordinary citizens.
- Binding the Crown means all West Australians are entitled to the same level of public health protection.
- The Crown cannot however, be prosecuted or issued with an enforcement order.
- Equivalent public health legislation in the Australian Capital Territory, New South Wales, Queensland and South Australia also excludes the Crown from prosecution.

Part 3 - General Public Health Duty

The key elements of the risk based approach

- Requires a person to 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 is the responsibility of all individuals, corporations and public entities, including state agencies and local government.
- The general duty is capable of capturing known and current threats, as well as new and emerging threats, to the public's health.
- A breach of the general public health duty does not constitute an offence or give rise to any right or remedy.
- Breach of the general public health duty may however constitute sufficient grounds for a range of actions to be taken under the Act, including the issue of an improvement notice .

Part 5 – Public Health Plans

- Public Health Plans are used to plan for the health and wellbeing of a local community and establish health priorities and strategies for a three year period.
- Ensures that the health of the community is included in the overall planning picture.
- Public Health Planning provisions complement existing planning processes.
- There is no requirement for local government to produce a separate public health plan, but rather ensure that public health is included in their strategic planning process.

Part 6 – Public Health Policies

- Public health issues can be complex and broad in scope, not all matters can be dealt with effectively within the constraints of a regulation.
- The Act provides a policy making power.
- Statutory Policies can be developed for any purpose that relates to the objects of the Act, which potentially gives them a very wide field of operation,
- Can respond to a range of specific issues that either adversely affect the public's health or can promote better health across the community.

Part 7 – Public Health Assessments

- “public health assessment”, in relation to a proposal, means an assessment of any potential public health risks and any potential benefits to public health that may result from implementing that proposal.
- The *Health Act 1911* does not include a requirement for developers to consider health impacts of a proposal in their planning stage.
- Developers are required to complete an environmental impact assessment, managed by the Environmental Protection Authority (EPA), but this process does not make specific considerations of health.
- The Act will compliment the EPA process with the aim of minimising future health issues that may occur as a result of industry.
- PHA to be integrated into existing Government approvals processes rather than duplicating the application process by two or more government agencies.

Stages of Implementation

- 5 Stages of implementation

Stage 1 – Act has been Proclaimed

Stage 2 – Crown is bound and Crown Exemptions

Stage 3 (12 months) – Administrative and Legal Requirements - Amendment of *Health Act 1911* and other Acts

Stage 4 (12 months) – Infectious disease and emergency provisions

Stage 5 (36 – 60 months) – Environmental health provisions

Any Questions?

Further Information

- Further information in regard to the *Public Health Act 2016* is available on DOH website:
<http://ww2.health.wa.gov.au/Improving-WA-Health/Public-health/Public-Health-Act>
- All queries regarding the Act should be emailed to
PublicHealthAct@health.wa.gov.au