



**City of Busselton**  
*Geographe Bay*

**LATE ITEMS**

**Council Agenda**

***22 March 2017***

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[city@busselton.wa.gov.au](mailto:city@busselton.wa.gov.au)

CITY OF BUSSELTON

LATE ITEMS FOR THE COUNCIL MEETING TO BE HELD ON 22 MARCH 2017

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## **11. PLANNING AND DEVELOPMENT SERVICES REPORT**

### **11.1 PUBLIC HEALTH ACT 2016 AUTHORISATIONS**

<b>SUBJECT INDEX:</b>	Authorised Delegation of Power/Authority
<b>STRATEGIC OBJECTIVE:</b>	A community where people feel safe, empowered, included and enjoy a sense of good health and wellbeing.
<b>BUSINESS UNIT:</b>	Environmental Services
<b>ACTIVITY UNIT:</b>	Environmental Health
<b>REPORTING OFFICER:</b>	Environmental Health Coordinator - Dimity Hargrave
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Nil

#### **PRÉCIS**

The introduction of the *Public Health Act 2016* facilitates a comprehensive reform of public health regulation in Western Australia, replacing the *Health Act 1911* through a staged implementation process over a 3 – 5 year timeframe. The *Public Health Act 2016* (the Act) received Royal Assent on 25 July 2016 with stages 1 and 2 of the implementation commencing following Royal Assent.

Stage 3 of implementation commenced on 24 January 2017 with activation of key administrative functions of the Act. These administrative functions replace the equivalent framework provided by Part II of the *Health Act 1911* and allow for delegations to local government Chief Executive Officers to administer the Act. This includes designation of appropriately qualified Environmental Health Officers as ‘authorised officers’. The old *Health Act 1911* will be renamed the *Health (Miscellaneous Provisions) Act 1911* and will continue to be the main enforcement tool for local government during stages 3 and 4.

In addition to the above, the *Health (Asbestos Regulations) 1992* has been amended to increase the penalties for offences in accordance with the regulations and allow local government to issue infringement notices for specified offences. The amended legislation provides for delegation to appoint relevant officers as authorised or approved officers for the purposes of Part 2 of the *Criminal Procedure Act 2004*.

#### **BACKGROUND**

The *Public Health Act 2016* received Royal Assent on 25 July 2016 with stage 3 coming into effect on 24 January 2017. Currently, a transitional period between the new *Public Health Act 2016* and the old *Health Act 1911* is in effect for approximately 3 – 5 years, until the final stages 4 and 5 are implemented.

Through implementation of stage 3, section 21 of the *Public Health Act 2016* enables local government authorities, referred to as enforcement agencies in the legislation, the power to delegate the duty conferred or imposed on it to administer the Act to the Chief Executive Officer.

Previously, the appointment of Environmental Health Officers was in accordance with the *Health Act 1911* which required appointment to be approved by the Western Australian Department of Health’s Executive Director, Public Health. Transitional provisions of the *Public Health Act 2016* enable persons who are currently appointed as Environmental Health Officers to be deemed designated as authorised officers for the purposes of the *Public Health Act 1911* and a range of other relevant legislation.

Appointment and designation of new authorised officers (previously Environmental Health Officers) must now be made under the *Public Health Act 2016*. This is the responsibility of local government enforcement agencies by way of powers delegated to the local government Chief Executive Officer to approve appointments. Authorised officers are to be issued with a certificate of authority card, signed by the Chief Executive Officer, under delegation.

The *Health (Asbestos) Regulations 1992* have also been amended to increase penalties for offences under the Regulations and enable local government authorities to issue infringement notices for specified offences. Certificate of authority cards issued under the *Public Health Act 2016* will include wording identifying that the person is an authorized officer appointed to issue infringement notices in accordance with the *Health (Asbestos) Regulations 1992*. This will enable immediate enforcement action for asbestos related offences and provide a deterrent to offenders.

## **STATUTORY ENVIRONMENT**

*Public Health Act 2016*

*Health (Miscellaneous Provisions) Act 1911* (previously *Health Act 1911*)

*Health (Asbestos) Regulations 1992*

*Criminal Procedures Act 2004*

Note that the power to delegate under the *Public Health Act 2016* does not require an absolute majority decision of the Council.

## **RELEVANT PLANS AND POLICIES**

Nil.

## **FINANCIAL IMPLICATIONS**

Nil.

### **Long-term Financial Plan Implications**

Nil.

## **STRATEGIC COMMUNITY OBJECTIVES**

This report aligns with the City of Busselton Strategic Community Plan 2013 (revised 2015) as follows:

Key Goal Area 1 – Caring and Inclusive Community – A welcoming, inclusive, healthy and capable community that provides accessible services for all residents.

Key Goal Area 6 – Open and Collaborate Leadership – Governance systems that deliver responsible, ethical and accountable decision making.

## **RISK ASSESSMENT**

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identifies 'downside' risks only, rather than 'upside' risks as well. Risks are only identified in Council reports where the residual risk, once controls are identified, is 'medium' or greater. No such risks have been identified.

## CONSULTATION

Consultation has occurred with the Western Australian Department of Health as well as other local government authorities.

## OFFICER COMMENT

The new *Public Health Act 2016* has been a long awaited piece of legislation and provides a modern, proactive approach to promoting and regulating public health in Western Australia. The *Health Act 1911* was over 100 years old and very much outdated. It required a reactive, inflexible approach to health regulation.

The *Public Health Act 2016* provides scope to evaluate public health risks affecting individual local areas whilst also providing a risk based regulatory approach. The *Public Health Act 2016* provides a flexible and proactive framework for the regulation of public health including:

- Promoting public health and well-being in the community;
- Helping to prevent disease, injury, disability and premature death;
- Informing individuals and communities about public health risks;
- Encouraging individuals and their communities to plan for, create and maintain a healthy environment;
- Supporting programs and campaigns intended to improve public health;
- Collecting information about the incidence and prevalence of diseases and other public health risks for research purposes; and
- Reducing the health inequalities in public health of disadvantaged communities.

Through delegation, the *Public Health Act 2016* will enable local government Chief Executive Officers to appoint suitably qualified authorised officers immediately upon commencement with the local government authority. This process will alleviate the delay experienced by new Environmental Health Officers under the old legislation in having their appointment authorised by the Executive Director, Public Health of the WA Department of Health. The legislation also details appropriate qualifications required by authorised officers to enable appointment by local government Chief Executive Officers.

The new legislation requires local government authorities to enforce the *Public Health Act 1911*. Authorised officers are responsible for investigating any public health matter within their jurisdiction. Section 30 of the *Public Health Act 2016* requires authorised officers to be issued a certificate of authority card by the Local Government. It is envisaged this certificate of authority card would be signed or approved by the delegate of the Council who it is recommended would be the Chief Executive Officer.

Through this process, regulations under the old *Health Act 1911* are being reviewed and rewritten. As opposed to more than 30 health regulations previously enforced by Environmental Health Officers, 5 modern regulations will be developed within 3 -5 years' time. However, it was identified a need existed to amend the *Health (Asbestos) Regulations 1992* to make this legislation more usable and not wait another 3-5 years until the new regulations were developed and implemented.

Previously the *Health (Asbestos) Regulations 1992* arguably did not provide sufficient enforcement options and subsequent deterrent for non-compliance with the legislation. The amendments provide for the ability to issue infringement notices with increased penalties.

To enable these changes to occur, a local government may appoint a person or class of person to be authorised officers or approved officers for the purposes of Part 2 of the *Criminal Procedure Act 2004*, and these appointments must be in writing. Authorised officers will be the persons who are

authorised to issue the infringement notices under the Regulations on behalf of the local government. Approved officers are the persons authorised to extend the period to pay or withdraw an infringement notice but they are not eligible to also be appointed as an authorised officer.

It is intended that Environmental Health Officers be appointed as authorised officers and that both the Director Planning and Development Services and Manager Environmental Services be appointed as an approved officer.

A person appointed by a local government as an authorised person in accordance with the Regulations, must be issued with a certificate, badge or identity card identifying the officer as a person to issue infringement notices under the Regulations. The certificate of authority intended to be issued under section 30 of the *Public Health Act 2016* will provide the necessary identification for this authorised officer.

## **CONCLUSION**

Consideration of these delegations to the Chief Executive Officer to appoint suitably qualified environmental health staff as authorised officers for the purposes of enforcing the *Public Health Act 2016* enables efficient and effective appointment of new staff as authorised officers. This enables new staff to effectively undertake their role ensuring the health and safety of the community.

Delegation under the *Criminal Procedure Act 2004* in relation to issuing infringements for breaches of the *Health (Asbestos) Regulations 1992* enables environmental health staff to respond to and issue penalty for non-compliance with legislation. This course of action also acts as a deterrent for non-compliance. These actions both serve to protect the health of the community from asbestos.

## **OPTIONS**

Council may elect to not delegate power to the Chief Executive Officer enabling appointment of authorised officers or approved officers to enforce the *Public Health Act 2016* and *Criminal Procedure Act 2004*. This action reduces the capacity of Environmental Health Officers to undertake their roles ensuring the health and wellbeing of the community and satisfying Council's obligation to administer the *Public Health Act 2016*.

## **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Should the Officer Recommendation be endorsed, the Chief Executive Officer will be able to approve certificate of authority cards for existing Environmental Health Officers previously appointed under the *Health Act 1911* as well as new Environmental Health staff who commenced with the City of Busselton after implementation of stage 3 of the *Public Health Act 2016* on the 24 January 2017. This will enable all environmental health staff to fully undertake their role as authorised officers for both the *Public Health Act 2016* and *Health (Asbestos) Regulations 1992*.

## **OFFICER RECOMMENDATION**

That the Council:

1. Delegates to the Chief Executive Officer authority in accordance with section 21 of the *Public Health Act 2016* to designate a person or class of persons as an authorised officer for the purpose and provisions of the *Public Health Act 2016*; and
2. Delegates to the Chief Executive Officer authority for the purpose of Part 2 of the *Criminal Procedure Act 2004* to designate a person or class of person as Authorised Officers or Approved Officers for the purpose of Part 2 of the *Criminal Procedure Act 2004*.