
Management of public health risks associated with aquatic facilities in WA

Overview

The key focus of this review is to obtain stakeholder feedback on the most effective option for the management of public health risks associated with aquatic facilities in Western Australia.

Please read the Discussion Paper entitled **Management of public health risks associated with aquatic facilities in Western Australia**, before completing this survey.

The discussion paper outlines a number of options and recommendations for managing public health risks associated with aquatic facilities in WA.

These options include:

- **Option A:** Retain the status quo, that is, replace the current regulation of the Aquatic Facilities industry with equivalent regulation, as far as practicable, under the *Public Health Act 2016*
- **Option B:** Repeal the existing regulations without replacement and allow the industry to self-regulate
- **Option C:** Develop Aquatic Facilities Regulations in accordance with the *Public Health Act 2016* regulatory framework and continue to adopt the Code of Practice for the Design, Construction, Operation, Management and Maintenance of Aquatic Facilities 2015 with amendments.

The feedback will be presented to the Better Regulation Unit to aid in future management decision making.

The survey should take approximately 15 minutes to complete. There are 36 questions. You do not have to comment on all the questions, and can focus on those areas that are important to you.

Unless marked as confidential, all correspondence will be regarded as public documents and be made available on the Department of Health website or be viewed by members of the public on request. If you wish for your response to remain confidential please check the box at the beginning of the survey.

You can read the survey questions here prior to completing the online survey.

Why we are consulting

With the introduction of the *Public Health Act 2016* in WA, all public health regulations, including the *Health (Aquatic Facilities) Regulations 2007*, must be reviewed and either repealed or replaced with regulations compliant with the new regulatory framework.

You are welcome to provide additional feedback that may not be related to any of the questions or ideas for options that have not been considered.

Please explain the reasons behind your suggestions, and where possible evidence to support your views, estimates of any costs that may relate to the proposal, and examples of solutions.

Introduction

1 Would you like this response to be confidential?

(Required)

Please select only one item

Yes No

2 What is your name?

Name (Required)

3 Please indicate who you represent?

(Required)

Please select only one item

Local government State government Industry representative Member of the public
 Other Prefer not to say

4 What is the name of the organisation you represent? If you are a member of the public please type 'public'.

(Required)

5 Do you currently enforce the Health (Aquatic Facilities) Regulations 2007?

(Required)

Please select only one item

Yes No (please go to Question 6)

If yes how many aquatic facilities do you inspect or manage?

How often do you inspect or manage?

Have you had any complaints in the last 10 years? If so, please provide details

Future management options

The Discussion Paper entitled "Managing the public health risks associated with aquatic facilities in WA" has considered a number of options for the future management of aquatic facilities in WA including:

- **Option A:** Retain the status quo, that is, replace the current regulation of the Aquatic Facilities industry with equivalent regulation, as far as practicable, under the *Public Health Act 2016*
- **Option B:** Repeal the existing regulations without replacement and allow the industry to self-regulate
- **Option C:** Develop Aquatic Facilities Regulations in accordance with the *Public Health Act 2016* regulatory framework and continue to adopt the Code of Practice for the Design, Construction, Operation, Management and Maintenance of Aquatic Facilities with amendments

6 Please indicate your preferred option for managing public health risks associated with aquatic facilities in WA.

(Required)

Please select all that apply

Option A: Retain the status quo

Option B: Take no action. Repeal the existing regulations without replacement and allow the industry to self-regulate

Option C: Develop Aquatic Facilities Regulations and continue to adopt the Code of Practice

Option D: None of the above

Why is this is your preferred option?

7 Do you support the Code of Practice?

Please select only one item

Yes No Unsure

Why?

8 Can you identify and other advantages (benefits) or disadvantages (costs) for your preferred option?

Proposed regulatory changes

The following key changes are proposed for the regulations if the preferred **Option C**: Update regulation and Code of Practice in accordance with *Public Health Act 2016* is chosen.

In keeping with the risk based nature of the *Public Health Act 2016* it is important to ensure the regulations are evidence based and that the regulatory requirements are scaled based on the level of risk.

The following seven proposals are discussed and the Department of Health is seeking feedback on these and any additional proposals that should be considered.

- Proposal 1 – Devolve the administration role to local government enforcement agencies
- Proposal 2 – Prescribed offences for which an infringement notice may be issued
- Proposal 3 – Adopt a Code of Practice
- Proposal 4 – Revise the requirements and process for exclusions
- Proposal 5 – Revise the definition of aquatic facilities
- Proposal 6 – Revise the requirements for pool sampling and testing
- Proposal 7 – Revise the requirements that prohibit persons from entering

You do not need to comment on each proposal. Answer the survey questions that are relevant/of interest to you.

Proposal 1- Devolve the administration role to local government enforcement agencies

Currently the responsibility for assessing applications to install and operate a new public aquatic facility across WA is undertaken by the Environmental Health Directorate of the Department of Health. This administrative role has been summarised below.

This role could be devolved to local government enforcement agencies and Authorised Officers designated under the *Public Health Act 2016* to manage the approval and assessment process within their local district.

Local government are already required to take on the ongoing enforcement role under the *Health (Aquatic Facilities) Regulations 2007*. Being involved in the approval process would complement and streamline the process.

This role would require an Authorised Officer to:

1. Assess applications to construct, alter and operate an aquatic facility
2. Issue an approval to construct
3. Undertake a pre-approval inspection to commence operating
4. Issue an approval to commence operating

As part of this requirement, each local government would be required to keep and maintain a register of aquatic facilities approved in their local district. Many local governments already keep such a register. Currently, the Department of Health advises a local government each time the Department of Health approves an aquatic facility in their district. Following this, the local government's authorised officer then takes over the enforcement responsibilities.

Section 294 of the Public Health Act now empowers local governments to recover costs under the *Local Government Act 1995*, Part 6, Division 5. This means local government could charge a fee for any administrative service that is required under the proposed legislative changes.

The number of aquatic facility approvals for each local government would vary significantly across WA, and would be dependent on a number of factors including:

- Population
- Tourism
- Development (including multi-story apartment complexes).

There are currently 762 operating aquatic facilities in the metropolitan area and 703 across the regional areas.

9 Do local governments currently have the capacity to assess aquatic facility applications?

Please select all that apply

Yes No Unsure

Why?

10 Do you agree that local governments would be the appropriate agency to assess aquatic facility applications?

Please select all that apply

Yes- with cost recovery Yes- without cost recovery No Unsure

Why?

11 Do you agree with the listed advantages (benefits) and disadvantages (costs)? If not, what do you suggest?

Please select all that apply

Yes No Unsure

If not, what do you suggest?

12 Can you think of any additional advantages (benefits) and disadvantages (costs)?**Proposal 2- Prescribe offences for which an infringement notice may be issued**

The Public Health Act is a prescribed Act under the *Criminal Procedures Act 2004*. A regulation made under the Public Health Act may prescribe an offence for which an infringement notice may be issued (if appropriate) or prosecution commenced.

Infringement notices can only be served where prescribed by a regulation or local law. It is proposed that infringements will be issue by local government Authorised Officers for offences specified in the Aquatic Facilities Regulations.

Regulations may prescribe offences in relation to an activity. In accordance with Part 19, Division 5(3)(d) of the *Public Health Act* any proposed regulation may also declare a specified public health risk, or a public health risk within a specified class of public health risks:

- To be a material public health risk or a serious public health risk or
- Not to be a material public health risk or a serious public health risk

It is proposed that the regulations would include specified offences as either material or serious public health risks.

13 Do you agree with prescribing a list of offences for which an infringement notice may be issued?

Please select all that apply

Yes No Unsure

If yes, can you list offences and penalties that you believe should be captured? And why?

If no, why?

14 Do you agree with the listed advantages (benefits) and disadvantages (costs)?

Please select all that apply

Yes No Unsure

If not, what do you suggest?

15 Can you think of any additional advantages (benefits) and disadvantages (costs)?**Proposal 3- Adopt a code of practice**

Proposal - Section 305 of the Public Health Act provides the ability for regulations to adopt codes and any other subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or Territory.

It is proposed that the current Code of Practice be adopted under the newly proposed regulations with modifications. These amendments have been highlighted in the summary of proposed changes to the Code of Practice in the discussion paper. This proposal continues the current arrangement under the existing *Health (Aquatic Facilities) Regulations 2007*.

16 Do you agree that the proposed Aquatic Facilities regulations adopt a Code of Practice?

Please select all that apply

Yes No Unsure

If yes, have you found any issues with the current practice of adopting the Code of Practice? And if so why?

If no, what do you suggest?

17 Do you agree with the listed advantages (benefits) and disadvantages (costs)?

Please select all that apply

Yes No Unsure

If not, what do you suggest?

18 Can you think of any additional advantages (benefits) and disadvantages (costs)?

Proposal 4 – Revise the requirements and process for exclusions

It is proposed to amend the current classification system for aquatic facilities. To conform to the *Public Health Act 2016* it is proposed to reclassify all aquatic facilities based on their level of risk as opposed to the current Group system.

Facilities with a higher level of risk will have a higher level of requirements. For example an aquatic facility with high bather load and/or a combination of high risk activities (such as waterslides) may be classified as a high risk facility and will be subject to more stringent requirements compared to other facilities. See **Appendix 3 Aquatic Facilities Risk Assessment** in the discussion paper for details.

It is proposed that aquatic facilities satisfying the requirements of a low risk facility will be excluded (or removed) from the application of the Aquatic Facilities regulations and Code of Practice. Low risk facilities may instead be required to submit a risk assessment to the local government.

Currently, the Code of Practice classifies aquatic facilities into four groups- with Group 1 facilities considered the highest risk and Group 4 the lowest risk.

- The higher risk groups (such as those with high patron numbers e.g. aquatic centres and water parks) have greater regulatory requirements including a technical operator, supervisor (lifeguard) and emergency care to be on-site at all times as well as mandatory first aid requirements
- The lower risk groups such as bed and breakfasts and farm-stay facilities do not require on-site personnel or first aid equipment
- All facilities are required to apply for a permit to operate as an aquatic facility and must send water samples monthly to an approved laboratory. Samples are to be collected by an AO (or person under the direct supervision of an AO) unless they are granted an exemption by the CHO. If an exemption has been granted the operator of the facility ensures that monthly samples are collected and sent to laboratories in accordance with the Code of Practice

There has been strong objection to the inclusion of short stay accommodation into Group 4 facilities, particularly from regional tourist towns, because of the burden of testing and the performing of unscheduled testing on private residences. Only a small proportion of Group 4 facilities currently comply with the regulations. Many Group 4 facilities have not applied for a permit to operate and AOs do not have the time or resources to perform the required monthly sampling.

The logistics of fulfilling the regulatory requirements including permits to operate, certificates of compliance and including monthly sampling of each pool is difficult to achieve. In addition it is considered inappropriate to inspect a pool on a private residence unannounced and the logistics of identifying, booking appointments and sampling is a financial and administrative burden for local government enforcement agencies.

Feedback from local government has stated that the current sampling frequency and requirements are onerous and a cost burden to small business operators while the risk is minimal.

Facilities in private residences that are leased out as part of short stay accommodation (including holiday homes, bed and breakfasts and Air BnB); are considered to be a relatively low risk to public health. This is due to the low patron numbers and occasional use of the facilities. In addition, aquatic facilities in poor condition in short term accommodation are likely to be improved rapidly due to consumer complaints. Owners and operators are thus likely to keep the aquatic facilities in a good condition to avoid consumer complaint.

The current Code of Practice excludes strata units with less than 30 residential lots and there has been debate about whether holiday homes should be included or excluded from these regulations also.

The proposed risk matrix in **Appendix 3 Aquatic Facilities Risk Assessment** may be a basis for determining level of risk of any aquatic facility. Operators of these facilities may need to submit a risk matrix in their application to local government and the level of risk will determine the level of management required.

If the proposed risk matrix categorises some of the facilities currently defined as a Group 4 facility as a low risk facility and these facilities have reduced regulatory requirements please consider the following two options:

Option 1: Redefine regulatory requirements for low risk facilities to reduce regulatory burden and manage these facilities with guidelines.

Option 2: To require a risk management plan, submitted to local government for approval, for some types of low risk aquatic facilities such as short stay accommodation facilities.

Assuming that one of the 2 options is preferred and there is a reduced regulatory requirement for low risk facilities, the following impacts are considered:

19 Do you agree with redefining the current Group system for aquatic facilities using a risk matrix?

Please select all that apply

Yes No Unsure

If yes, would you support enforcing a risk management plan or can you provide an alternative option to reduce risk?

If no, why not?

20 Do you support reviewing the current regulatory requirements for low risk facilities?*Please select all that apply* Yes No Unsure

Why?

21 Do you support Option 1 (reduced regulatory requirement for low risk facilities)?*Please select all that apply* Yes No Unsure

Why?

22 Do you support Option 2 (requiring low risk facilities to provide a risk management plan to local government)?*Please select all that apply* Yes No Unsure

Why?

23 Do you agree with the listed advantages (benefits) and disadvantages (costs)?

Please select all that apply

Yes No Unsure

24 Can you think of any additional advantages (benefits) and disadvantages (costs)?

Proposal 5 – Revise the definition of aquatic facilities

Water based activities are a popular pastime in WA for recreation, sport or rehabilitation. Traditionally water activities included only standard swimming pools. However, in recent times, activities have extended to include water playgrounds, surfing pools, spray parks, spa pools and in the future may include ocean fed pools, wave pools and other activities yet to exist in WA.

Currently the *Health (Aquatic Facilities) Regulations 2007* has a limited definition of aquatic facilities which does not have the ability to encompass all types of aquatic facilities that may present a possible risk to public health now and in the future. Facilities that are currently missing include float tanks, salt plunge pools, spray parks and eco parks. With the increasing popularity in these types of venues it is important to consider whether these venues need to be included in any future regulation.

It is proposed to revise the definition of aquatic facilities so that the definition encompasses a wider range of aquatic venues that are currently not captured by the legislation.

Public health risk assessment of each of the captured facilities will determine the level of legislative requirements for each facility accordingly.

25 Do you agree with redefining Aquatic Facilities to encompass a greater range of facilities?

Please select all that apply

Yes No Unsure

If yes, are there particular facilities that you think need to be regulated or excluded? And why?

If not, what do you suggest?

26 Do you agree with the listed advantages (benefits) and disadvantages (costs)?

Why?

27 Can you think of any additional advantages (benefits) and disadvantages (costs)?

Proposal 6 – Revise the requirements for pool sampling and testing

Currently, all groups of aquatic facilities are required to log daily chemical tests and send monthly tests to an approved laboratory for sampling in accordance with Regulation 21 of the *Health (Aquatic Facilities) Regulations 2007*.

The Department of Health is aware that compliance is low. In both 2013 and in the 2015/2016 financial year, compliance with monthly sampling was estimated to be below 30%. Indicating the level of compliance has not improved in the past few years.

For the samples that were analysed, the microbial failure rates were low and were further reduced for samples with adequate chlorination. This indicates the public health risk is low where water samples comply with the chlorination requirements.

See the discussion paper for further information on sampling and compliance rates.

Facility non-compliances are usually remedied by local government Authorised Officers issuing improvement orders to facility operators. Closure orders are only issued if noncompliance is repeated and/or represents a significant public health risk. Five to ten closure orders are issued in a typical year across WA.

The 2009 **Reducing the Burden**

<https://www.treasury.wa.gov.au/uploadedFiles/Home/Publications/Independent_Reports/reducing_the_burden.pdf?n=1005> red tape reduction report notes that the costs associated with water testing could be reduced by removing the requirement that local government be the sole entity responsible for water testing. Recommendation 16.2 states the Regulations should be amended to allow operators the choice of testers and permit them to send water samples directly to a laboratory by courier, and keep a record of the results. Additionally, The Department of Health has received feedback that this is an unnecessary requirement and appropriately trained personnel would suffice and thus reduce the burden on local government.

28 Do you think that the current regulatory requirement of daily water testing and monthly sampling is appropriate for all groups of aquatic facilities?

Please select all that apply

Yes No Unsure

If yes, why?

If no please provide details of which groups you think may be excluded from these requirements.

29 Should we allow scope for pool sampling to be conducted by external companies, paid for by the pool owner?

Please select all that apply

Yes No Unsure

Why?

30 Should the Department of Health be the centralised point for pool samples data collection and notify appropriate local government of failed results or non-compliance?

Please select all that apply

Yes No Unsure

If yes, what do you need from the Department of Health?

If not, what do you suggest?

31 Do you agree with the listed advantages (benefits) and disadvantages (costs)?

Why?

32 Can you think of any additional advantages (benefits) and disadvantages (costs)?

Proposal 7 – Revise the requirements that prohibit persons from entering the water body

Stakeholders have identified that Regulation 24 –prohibiting certain persons from entering the water, is very difficult to enforce. They suggested signage/information may be more effective.

Part 4 — General provisions

Division 1 — Hygiene and use of facilities

24. Certain persons not to enter or use water body

(1) A person must not enter or use, or attempt to enter or use, a water body of an aquatic facility if the person is —

(a) suffering from any gastrointestinal disease, skin infection or other disease that is communicable in an aquatic environment; or

(b) in an unclean condition; or

(c) wearing unclean clothes; or

(d) under the apparent influence of alcohol, drugs or alcohol and drugs; or

(e) if the person is a baby or young child who ordinarily wears a nappy — not wearing an aqua-nappy.

(2) Subregulation (1)(a) does not apply to a person who has a written statement by a medical practitioner to the effect that the person will not be a health hazard to other users of the water body.

However, there is now evidence that exposure to chlorinated water in community pools may improve skin conditions such as scabies/skin sores as well as to reduce ear infections. It is thus proposed to removed Regulation 24(1)(b) and (c) at a minimum.

To reduce the regulatory burden, it is proposed to repeal regulation 24 of the *Health (Aquatic Facilities) Regulations 2007* and include a requirement for a facility to install signage advising patrons of hygiene requirements and prohibiting persons from entering the water under certain conditions which would be specified in the regulations.

The Department of Health could develop a model local law under the *Local Government Act 1995* similar to that by the **City of Mandurah** <<https://www.mandurah.wa.gov.au/-/media/Files/CoM/City-and-Council/Governance/Local-Laws/Current-Local-Laws/Local-Government-Property-and-Public-Places-Local-Law-2016.pdf>> . Clause 5.3(3) refers to refusing entry to people who are in an unclean condition or wearing unclean clothes. Infringement notice penalties exist for failing to comply (\$300). A local law with similar intent could be adopted by any local government that wishes to do so.

33 Do you agree with completely removing regulation 24 and using signage or information as an alternative?

Please select all that apply

Yes No Unsure

If yes, what you do need us to provide (posters, templates etc.)?

If no, do you wish for the regulation to remain in its entirety and why?

If no, do you agree with removing sections b and c only?

34 Do you agree with the listed advantages (benefits) and disadvantages (costs)?

Why?

35 Can you think of any additional advantages (benefits) and disadvantages (costs)?

Additional comments

36 Can you think of any additional regulatory proposals to be considered? Please provide details as well as supporting evidence where possible.