

December 2014

Public Health Legislation – Enforcement Project

Communication Document



Government
of South Australia

SA Health

Introduction

Enforcement is defined as “the actions you take to gain compliance with legislation ranging from verbal advice to prosecution”. It may be proactive or reactive.

A priority for Project 2 ‘Food Act Toolkit’ under the SA Health & LGA Food Act 2001 MOU Working Group Work Plan (2014-16) is to establish documents and training aids to improve the consistency of enforcement of the *Food Act 2001*. The Enforcement Project was initiated as part of the larger Project 2 in response to data from the 2009-10 Food Act Annual Report which showed that the use of warnings, improvement notices and expiations varied significantly between enforcement agencies.

Whilst the project falls within the auspices of the Food Safety and Nutrition Branch, its scope has broadened to encompass public health-related legislation additional to the Food Act 2001, as the principles of enforcement are the same.

This project aims to:

1. Promote a consistent approach to the enforcement of public health legislation between enforcement agencies.
2. Improve compliance with legislation through the use of enforcement methods to influence behaviour.

Based on research at the commencement of the project, the problem with enforcement was defined as follows:

- a) There is inconsistency in the enforcement of the *Food Act 2001* between enforcement agencies.
- b) Few local councils appear to have an enforcement policy despite there being a number of existing documents available that outline enforcement principles, such as the LGA model enforcement policy that was published in 2009.

Consultation

As the factors that contributed to the problem were unknown, an inclusive and collaborative approach to the project was taken. Two key strategies were used to consult with various stakeholders: establishment of a reference group including SA Health, local government and Environmental Health Australia (EHA) representatives and interviews of environmental health officers and their superior.

During April to May 2014, 17 interviews of staff from metropolitan and regional councils and SA Health took place. Top of mind thoughts were sought in response to predetermined questions posed to participants.

Many examples of good enforcement were communicated during the interviews. For example, team-based enforcement decisions were a common strategy and in some instances peer-review of enforcement decisions took place. One participant stated that the reasons for and against taking enforcement action is documented. Another participant had recruited a highly compliant proprietor when cultural issues were identified as a factor behind breaches of legislation by another business.

Outcomes of Consultation

Of the 17 authorities interviewed it was found that 13 have an enforcement policy or some other form of guidance document to assist with their enforcement decisions. However, only seven of those had executive endorsement. Many participants expressed the opinion that an enforcement policy instils confidence in staff as it demonstrates transparent decision-making especially if reviewed by a third party.

It was found that the most common enforcement method utilised was to give advice. Management became involved in the decision-making process when a decision was required to use legislative enforcement tools. Executive management involvement (eg: Directors and Chief Executive Officers) occurred if a prohibition order was to be issued or a prosecution initiated.

Time and cost were found to be the most common barriers to enforcement, specifically the time commitment necessary to take more severe enforcement action and the cost associated with a prosecution. This was followed by factors that are specific to working in regional areas, such as living in the region, the distances involved (eg: to conduct follow-up inspections) and safety concerns associated with working in isolation. Other barriers include:

- evidentiary / procedural issues
- the political / economic environment
- untested or inadequate legislation.

When seeking ideas to improve the consistency of enforcement, a strong preference was shown for easy to apply, documented state-wide guidance material that is endorsed by state government and local councils. Training was the next most common strategy suggested.

In-built flexibility in any enforcement approach to allow discretionary decision-making appropriate to the circumstances was the predominant expectation of the project. The need for leadership from SA Health was stressed so that regional and metropolitan needs are taken into consideration. Also, it was suggested that the project is targeted at levels above the authorised officer to address management perceptions eg: resourcing levels, necessity of enforcement.

The outcome that is sought from the enforcement activities of SA Health and local government is three fold:

- i. reduced risk to public health of illness and injury
- ii. a change in behaviour by the public, business operators and other people who are subject to the requirements of public health legislation.
- iii. long-term compliance with legislation.

Two predominant attitudes towards enforcement were identified during consultation: confident vs cautious. And they were found to have an effect on the enforcement process. While all participants stated that public health risk influences their enforcement decision, only one mentioned consideration of potential vs immediate risk. In the view of SA Health, evaluation of the public health risk to determine whether there is an immediate or potential risk is essential to achieving the above three outcomes of enforcement.

Based on an evaluation of the initially defined problem in context of the consultation findings, the key project findings are:

1. Few authorities have an endorsed enforcement policy.
2. There is inconsistency in the process of enforcement
3. There is inconsistency in the outcome of enforcement.

Additional to consultation, the methodology employed during the project included a literature review of local, interstate and international research reports and guidance documents. Also, existing model enforcement policies were evaluated. When considered in combination, the information obtained from consultation, the literature review and policy evaluation clarifies the direction required of the project.

Moving Forward

Several strategies have been considered to address the findings. The initial focus will be directed towards Finding 1, as follows:

	Finding		Strategy
1.	Few authorities have an endorsed enforcement policy.	1.1	Acknowledge available model enforcement policies.
		1.2	Develop a public health enforcement policy for SA Health.
		1.3	Promote adoption by state government and local councils of an enforcement policy that contains the essential principles.

It is proposed that findings 2 and 3 will be addressed by future strategies that are to be pursued in the longer term with potential partners such as the Local Government Association, Environmental Health Australia and Flinders University.

	Finding		Strategy
2.	There is inconsistency in the process of enforcement.	2.1	Develop statute-specific guidance material that addresses effective enforcement.
		2.2	Develop a training program addressing effective enforcement.
		2.3	Deliver training on a regular basis to capture environmental health graduates.
		2.4	Convene brief information sessions and arrange presentations of enforcement case-studies. Target audience: authorised officers and managers.
		2.5	Distribute enforcement case-study presentations to authorised officers and managers.
		2.6	Develop processes to ensure consistent advice is provided to local government.
		2.7	Provide in-field support and assistance to local government.
3.	There is inconsistency in the outcome of enforcement.	3.1	Develop statute-specific tools that evaluate risk to help decide the enforcement response.
		3.2	Develop indicators that measure public health outcomes ie: effectiveness of surveillance and enforcement.