



Government of **Western Australia**
Department of **Health**

Consultation summary

For the Discussion Paper – Managing the public health risks of *Legionella longbeachae* associated with commercial garden soils

June 2019



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Executive Summary

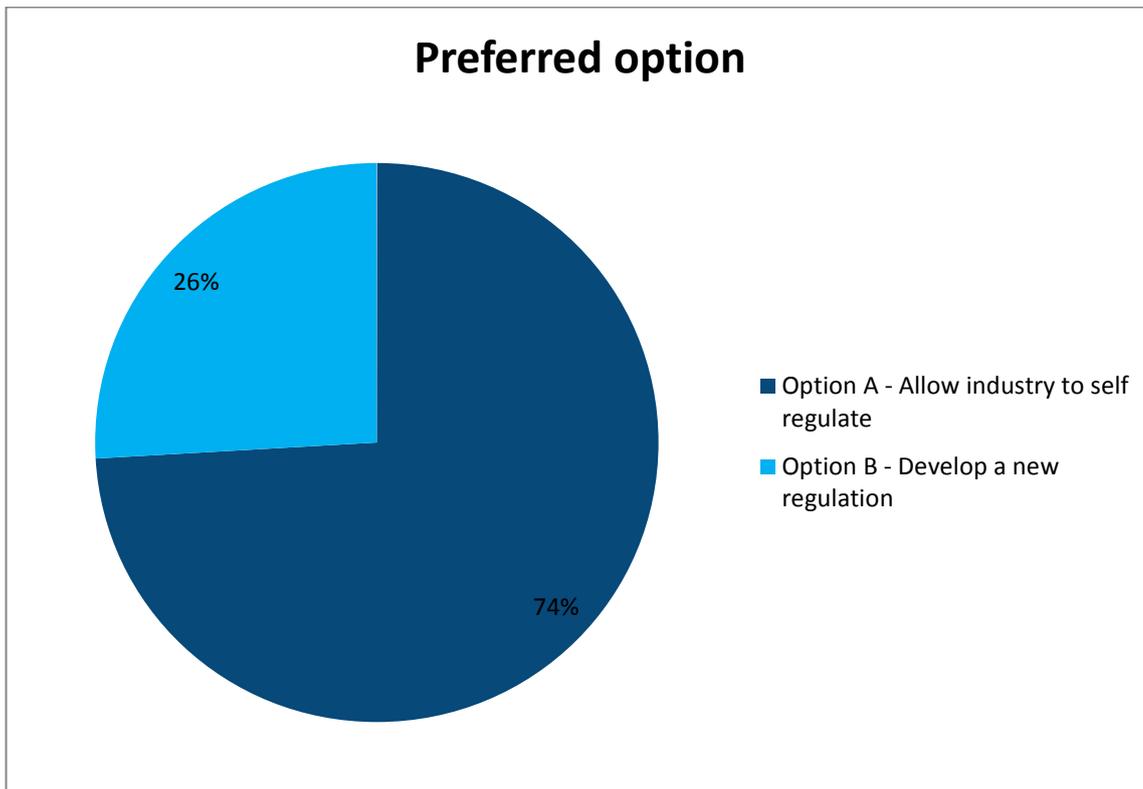
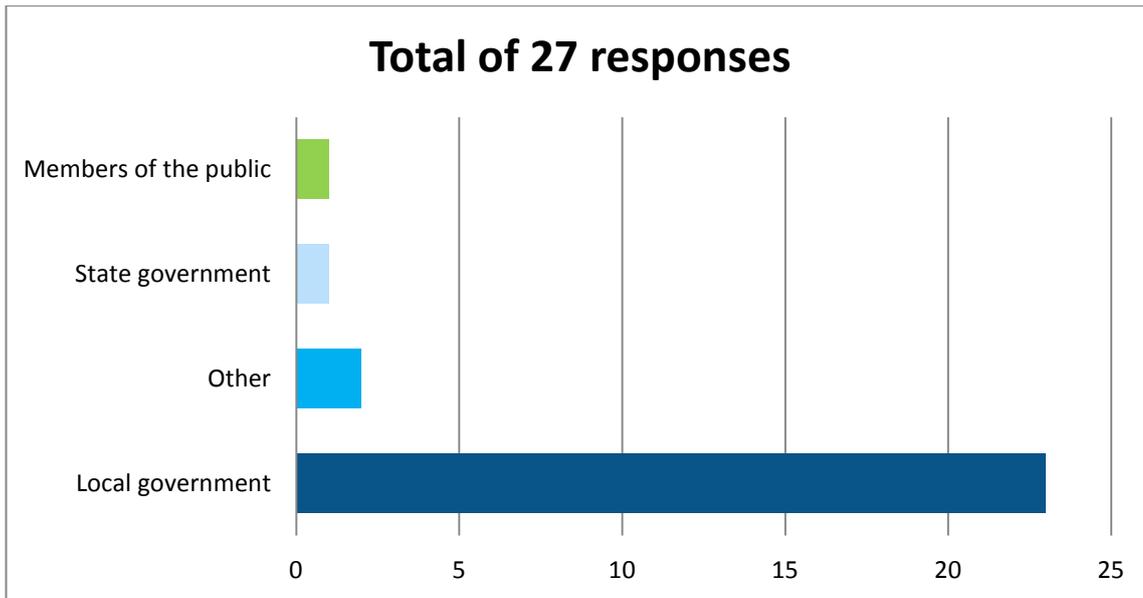
The discussion paper considered the public health risks of *Legionella longbeachae* associated with commercial garden soils in Western Australia (WA) and the current management of these risks under the *Health (Garden Soil) Regulations 1998* (the Garden Soil Regulations).

Stakeholder consultation was undertaken by the Department of Health (DOH) to obtain feedback on the current and future management of these risks and has demonstrated strong support to repeal the legislation and replace it with a Guideline to provide support to local government and industry.

As *Legionella longbeachae* is naturally occurring in the environment and regulated labelling of these products does not control for this public health risk, the future regulation of this industry may be unwarranted.

If the Garden Soil Regulations are repealed, a Guideline for managing public health risks associated with commercial garden soil will be published by the DOH. This Guideline will provide advice to assist the packaged and bulk garden soils industry to meet their obligations under the general public health duty specified in Part 3 of the *Public Health Act 2016* (the Public Health Act).

Consultation Summary



Background

The Discussion Paper '[Managing the public health risks of *Legionella longbeachae* associated with commercial garden soils](#)' was released in December 2018.

The discussion paper outlined the overall risk to public health from exposure to *Legionella longbeachae* from commercial garden soils and identified the risk level to be a moderate public health risk. The Chief Health Officer has a responsibility to ensure appropriate controls are in place, proportionate to this level of risk. However control measures related to garden soils are difficult because there are very few risk management practices that can be applied.

In WA, there are basic requirements that industry must adhere to under the Garden Soil Regulations. These regulations came into operation on 1 July 1998. WA was the first and only Australian State to adopt a regulatory approach. This was partly attributed to WA recording the highest number of *Legionella longbeachae* cases across Australia at the time, which initiated a risk management response by the DOH.

Currently, no strategies are available to control or eliminate *Legionella longbeachae* growing in commercial garden soils. In addition to this, soil in the natural environment may still present a risk when people are working in their gardens. Preventative strategies for this disease are limited to educating the community on the safe use of garden soils, which includes publishing health warnings on bagged materials and providing signage near bulk products.

The Discussion Paper outlined two potential future management options and was released in order to obtain stakeholder feedback on these listed options. The two options for managing public health risks associated garden soils were:

- **Option A: Enable the industry to self-regulate by providing an industry guideline.**
Repeal the existing regulations and enable the industry to self-regulate by providing an industry guideline outlining acceptable practices in accordance with relevant Australian Standards. Compliance with the guideline can be required using the general public health duty provided by part 3 of the Public Health Act. A person will not be taken to have breached the general public health duty if they have acted in a manner that is consistent with the guideline or other generally accepted practices. Where a person is in breach of the general public health duty, further action such as the issuing of an improvement notice or enforcement order may be considered under the Public Health Act.

This option is the DOH's preferred option and would be consistent with the rest of Australia.

- **Option B: Develop new regulations to manage public health risks associated with garden soils.**
It was proposed that new regulations would adopt the most up to date labelling and signage requirements outlined in the relevant Australian Standards 4419 - 2003, as well as specify any enforcement responsibilities for local government that allow the issuing of infringement notices for non-compliance. The application of the general public health duty would also apply in this circumstance.

This is not the DOH's preferred option as there no strategies available to control or eliminate *Legionella longbeachae* growing in commercial garden soils. Additionally, this is not an approach found to be utilised or required nationally or internationally.

Objectives

The key objectives for consulting on the management of public health risks associated with garden soils in WA were to:

1. assess the public health risk of *Legionella longbeachae* associated with garden soils
2. seek input on the two options for future management
3. provide an opportunity for stakeholders to comment on the issue.

Methodology

The Discussion Paper was distributed to a large (>450) stakeholder network. This included all 138 local governments, relevant business associations and the nursery, garden centre and hardware businesses listed in the yellow pages.

The survey was also distributed through the Environmental Health Listserver which has over 400 subscribers, including State and local governments.

The complete list of stakeholders is shown in Appendix 1.

Methods for providing feedback

Stakeholders were provided a link to the DOH's corporate website www.health.wa.gov.au directing the respondent to provide feedback by one of three methods:

1. Completing the questions on the online citizenspace survey
2. Submitting a personalised response by emailing the publichealthact@health.wa.gov.au email address
3. Writing a letter addressed to the Chief Health Officer

Summary of responses

A total of **27** responses were received from various stakeholder groups.

Stakeholder	Responses
Local government	23
State government	1
Public	1
Other	2
Total	27

Summary of all responses

Respondents were asked to choose between 2 possible legislative options for the future. A summary of Options A and B across all respondents was as follows:

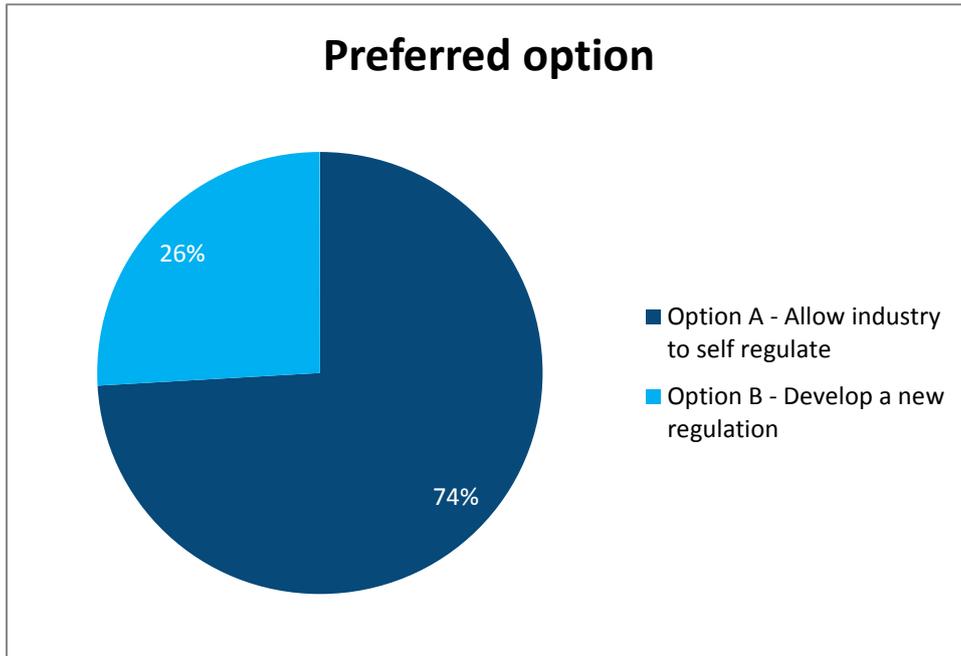
Option A: Enable the industry to self-regulate by providing an industry guideline.

- 20 respondents chose this option

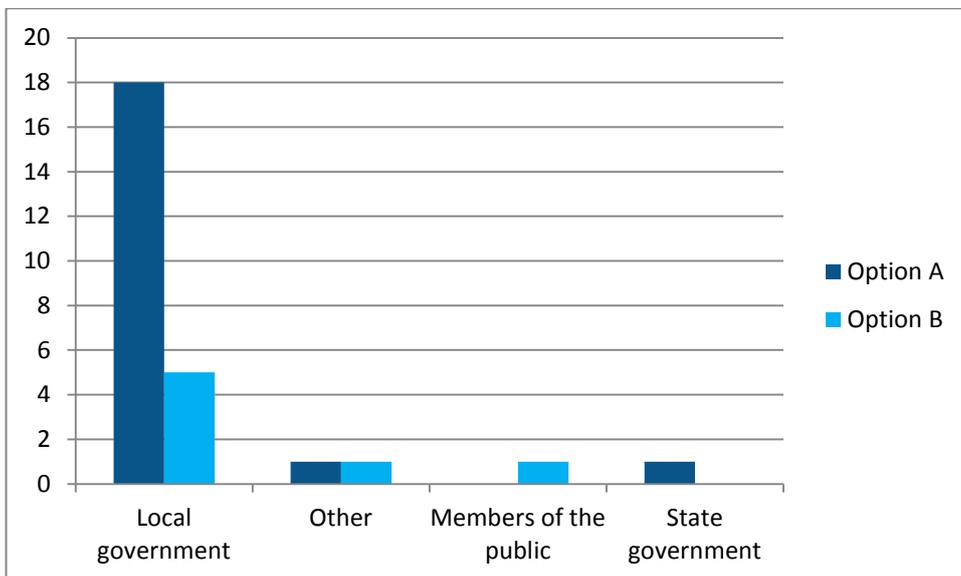
Option B: Develop new regulations to manage public health risks associated with garden soils. – 7 respondents chose this option

Key observations

The majority (74%) of respondents support deregulation of garden soils, as shown in the diagram below.



Local government enforcement agencies provided the greatest number of responses and the majority preferred Option A – Allow industry to self-regulate, as shown below.



Comments

The Small Business Development Corporation (SBDC) responded through the Public Health Act email and commented:

“The SBDC has reviewed the paper and supports the option to repeal the *Health (Garden Soil) Regulations 1998* and allow industry to self-regulate, in line with other States and Territories across Australia. The SBDC supports Option A: Enable the industry to self-regulate by providing

an industry guideline. The SBDC notes that this option also aligns with the State Government's red tape reduction program, which aims to minimise unnecessary regulatory burden on industry."

The free text comments are centred on a number of recurring themes.

Supporting Option A:

- Many of the local governments commented that they had never used the legislation in their working careers or since its proclamation.
- Deregulation would bring WA in line with the rest of Australia
- The general public health duty and a Guideline recommending the Australian Standard labelling would provide sufficient legislative support and guidance for local government, industry and consumers.
- *Legionella longbeachae* is naturally occurring in the environment so it is difficult for a regulation to minimise this risk.

Supporting Option B:

- Concerns were expressed regarding the effectiveness of self-regulation by industry and many commented that it does not work.
- Regulations should align with the wording in Australian Standard 4419 and 4454.
- Regulation of soil manufacturers and distributors provides more enforcement options for local governments, including the ability to issue infringement notices.
- The labels and products should be approved, and the enforcement undertaken, by State Government.
- Media should be released to encourage consumers to handle products safely.

The complete list of unedited free comments has been provided in Appendix 3.

Discussion

The summary responses showed significant (75%) support for the repeal of the *Health (Garden Soil) Regulations 1998* and to enable the industry to self-regulate by providing an industry guideline.

As *Legionella longbeachae* is naturally occurring in the environment it is difficult to control the public health risk completely.

At present, there are no known strategies to eliminate *Legionella longbeachae* and other pathogenic organisms from commercial garden soils. Appropriate health warnings and hazardous information labels on commercial garden soil products is considered to be an effective method in managing the risks to public health. However, this relies on consumers reading and following health warning advice on the packaging or available on-site.

If the Garden Soil Regulations are repealed, a Guideline for managing public health risks associated with commercial garden soil will be published by the DOH. This Guideline will provide advice to assist the packaged and bulk garden soils industry to meet their obligations under the general public health duty specified in Part 3 of the Public Health Act.

The general public health duty requires that a person must 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. Under the Public Health Act harm includes activities that may have adverse impacts and effects on a person's physical or psychological wellbeing, whether it is long term or an immediate impact

Recommendation

The recommendation of this consultation and risk analysis is that the garden soils legislation is repealed and the DOH produces guidelines for use by stakeholders. This approach will be monitored for five years after implementation and reviewed should a need for further management options be identified.

Next Steps

The information gathered from consultation and the recommendations from this report will be considered by the Chief Health Officer.

Appendix 1 – Stakeholder engagement list

The following stakeholders were targeted in communications designed to encourage a submission.

Local Government
138 local governments in WA
Western Australian Local Government Association WA
Public Health Act Reference Group
State Government
Small Business Development Corporation
Industry / other associations
Nursery and garden soil association
Garden soil centres
Major garden and soil company head offices
Environmental Health email distribution list- (>400 Subscribers)

Appendix 2 – Online citizen space questionnaire

Citizenspace is the Department of Health's preferred online community consultation and citizen engagement software. This program was used to ask stakeholders 11 questions.

A total of **27** responses were received via Citizenspace.

The Citizenspace questionnaire is shown below:

Garden soil regulation review

Overview

The key focus of this review is to obtain feedback on the most effective option for managing the public health risk associated with commercial packaged and bulk garden soils in Western Australia.

Commercial garden soils which include packaged potting mixes and bulk soil supplies have been associated with a number of cases of Legionnaires' disease in WA, as a result of exposure to the bacteria *Legionella longbeachae*. This public health risk is currently managed under the **Health (Garden Soil) Regulations 1998**

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1553_homepage.html (Garden Soils Regulations), which requires warning labels to be included on packaged materials or for signage to be displayed in prominent locations at bulk soil suppliers.

The **Garden Soil Regulation Review Discussion Paper** reviews the management of this public health risk to determine the best option for WA into the future.

It is important that you read the discussion paper prior to completing the survey.

The survey should take approximately 15 minutes to complete.

You do not have to comment on all the questions, and can focus on those areas that are important to you.

You can read the **survey questions** user_uploads/cloth-material-survey-questions.pdf here prior to completing the online survey.

Why we are consulting

In the lead up to stage 5 of implementation of the **Public Health Act 2016** <https://health.us7.list-manage.com/track/click?u=bbc68d42eff51a06d25cb71db&id=7a3547c786&e=20844c296a> in WA, WA Health must review the Garden Soil Regulations to determine whether this public health risk must continue to be regulated under the framework provided by the Public Health Act, or whether the risks can be effectively managed through an alternative approach such as other State legislation, a guideline or a local law.

This paper identified two options for consideration for WA:

Option A: Enable the industry to self-regulate. Provide an industry guideline.

Repeal the existing regulations and enable the industry to self-regulate by providing an industry guideline or Code of Practice outlining acceptable practices in accordance with relevant Australian Standards. A person will not be taken to have breached the general public health duty if they have acted in a manner that is consistent with a guideline or other generally accepted practice.

Option B: Develop new regulations to manage public health risks associated with garden soils

It is proposed that new regulations would adopt the most up to date labelling and signage requirements outlined in the relevant Australian Standards 4419 - 2003, as well as specify any enforcement responsibilities for local government that allow the issuing of infringement notices for non-compliance. The application of the general public health duty would also apply in this circumstance.

You also have the opportunity to provide feedback on alternative options that may not have been considered as part of this review.

Introduction

The questions below relate to your personal information and who you represent. This information helps WA Health to ensure we have consulted with the right people.

Your details will be included in the consultation summary report unless you indicate that you would like your response to be confidential.

The summary report will be made available on WA Health's website.

1 What is your name?

Name (Required)

2 What is your email address?

Email (Required)

3 Please indicate who you represent?

(Required)

Please select only one item

- Local government State government Industry representative
 Member of the public Other

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

(Required)

5 Would you like this response to be confidential?

(Required)

Please select only one item

Yes No

Preferred option

The Garden Soil Regulation Review Discussion Paper considers two options for WA.

Option A: Enable the industry to self-regulate. Provide an industry guideline.

Repeal the existing regulations and enable the industry to self-regulate by providing an industry guideline or Code of Practice outlining acceptable practices in accordance with relevant Australian Standards. The application of the general public health duty would apply in this circumstance.

Option B: Develop new regulations to manage public health risks associated with garden soils

It is proposed that new regulations would adopt the most up to date labelling and signage requirements outlined in the relevant Australian Standards 4419 - 2003, as well as specify any enforcement responsibilities for local government that allow the issuing of infringement notices for non-compliance. The application of the general public health duty would also apply in this circumstance.

The consultation process also enables you to identify alternative options that have not been considered as part of this review.

6 Please indicate your preferred option for managing the public health risk associated with commercial packaged and bulk garden soils.

(Required)

Please select all that apply

Option A - Enable the industry to self-regulate. Provide an industry guideline.

Option B - Develop new regulations to manage the public health risk associated with garden soils

None of these options

7 Based on your answer to the previous question, please explain why this is your preferred option.

Option 1 - Guideline

Option 1 discusses the development of an industry guideline for commercial packaged and bulk garden soils. Such a document would:

1. provide an overview of the risks of garden soils and Legionnaires' disease
2. include example templates for warning label requirements for packaged and bulk garden soil suppliers in accordance with current Australian Standards

The document would not be legally binding. However, a guideline would assist industry to comply with 'acceptable practices' to ensure they are complying with the general public health duty under the *Public Health Act 2016*.

The general public health duty requires that:

A person must 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.

In essence, we all have a legal responsibility to protect other people from harm.

If a person is found to breach the general duty by putting other people's health at risk, further enforcement action can be taken under the Public Health Act.

- 8** If option 1 is your preferred option, do you have any suggestions on the information that should be included in an industry guideline? Including links to useful resources to consider?

Option 2 - New regulation

Option 2 considers the potential to draft a new regulation. A new regulation would:

1. specify current warning label requirements for packaged and bulk garden soils in accordance with the relevant Australian Standards
2. provide for the issuing of infringement notices for non-compliance by local government authorised officers
3. specify roles and responsibilities of local government enforcement agencies. These would be limited.

9 If option 2 is your preferred option, do you have any suggestions on what should or should not be included in Regulation? Please share links or other useful resources that should be considered.

Option 2 suggestions

Alternative options

Do you have any suggestions for alternative options that have not been considered in the discussion paper?

10 Please provide details of any alternative options below. Please explain your ideas by providing examples of complaints, case studies, data or other useful evidence.

alternative options

Additional comments

11 Do you have any other comments about minimising the public health risks related to commercial garden soils in WA?

Appendix 3 – Stakeholder comments

Option A – Enable the industry to self-regulate by providing an industry guideline

Why is this your preferred option?

The City has never been required to enforce the current legislation as industry are providing the appropriate labelling. A simple labelling requirement does not require legislation.

I believe that with good guidelines and information provision the Industry is in a good space to self-regulate.

I don't believe that regulations are ever used, who last enforced them? How many times has a prosecution occurred using them? This is a low risk, common sense area.

As explained in the discussion paper that this would be in line with other major states across Australia. As long as the application of the general public health duty can be applied and the industry guide can be enforced through this when complaints arise. I suggest that factsheets from DoH regarding enforcing this particular guide would be required to ensure the risk is still be addressed without specific legislation for it.

I agree with the advantages and disadvantages provided on pages 18 and 19 for both options A and B. In order to establish consistency across Australia, it may be appropriate for regulations to be repealed in WA. As stated on page 19, regulation will not prevent or eliminate this public health risk because the risk of *Legionella longbeachae* is naturally occurring in the environment. The regulations do not provide public health protection against the microorganism.

"We believe the existing regulations are unnecessary and serve little purpose. Officers have reported this not being an issue and have rarely if at all relied on or used the current Regulations. In addition we question their effectiveness as a short staff survey here revealed most people handling garden soils did not follow the suggested precautions despite the existing warning.

Whilst an industry guideline may be a useful tool again it may be an unnecessary endeavour. We suspect most manufacturers would provide a warning regardless to address product liability issues and consumer disclaimer information as part of their legal due diligence and to cover themselves from compensation claims."

Unable to recall any instances where the City has been required to undertake an enforcement role under the Garden Soil Regulations. Aware of very few cases of Legionella that can be attributed to the use of garden soil. No other states or territories appear to have this legislation.

In 20 years in the industry I have never had to refer to the Regulations and aside from the labelling requirements they do not appear to have any other function. It appears that there are sufficient control mechanisms under option A to deal with any issues.

Rationale for choosing this option:

- Since the promulgation of the WA Health Garden Soils Regulations 1998, the City have not enforced them in any way.
- Industry compliance can likely be achieved through a Guideline/Code of Practice document outlining acceptable practices.
- The Public Health Act 2016 (once fully implemented) has a number of mechanisms to deal with public health risks. All persons are required to comply with the general public health duty under Part 3 of the Public Health Act 2016.
- A DoH Guideline/Code of Practice related to the safe use of garden soils would assist enforcement agencies in the application of the general public health duty.
- There appears not to be any clear pattern or link to the number of reported cases per year of illnesses from *Legionellae longbeachea* to any particular garden soil product.
- *Legionellae longbeachea* is naturally occurring in soils in the environment and not just isolated to commercially prepared garden soils.
- There are no other States or territories that legislate for this and there appears not to be any clear evidence that there is more or less control over the incidence of this disease.

Option 1 is my preferred option but there was no data input box available. The guideline should be a best practice guide for labelling and handling of garden soils.
New regulations are unnecessary.

"The City of Subiaco has not enforced the *Health (Garden Soil) Regulations 1998*. A Code of Practice would assist with industry compliance and could likely be linked to the general public health duty under the Public Health Act 2016."

"The current Environmental Health staff at the City are not aware of the City having ever utilised these regulations or having needed to enforce them in any way. Once the Public Health Act is fully implemented public health risks should be able to be dealt with under the general public health duty. There does not appear to be any clear pattern or link to the number or reported cases per year of illness from *Legionellae longbeachea* to any particular garden soil product and it is naturally occurring in soils. Given the level of risk industry guidance through a guideline/code of practice should be suitable. The guideline/code of practice would also be required to assist enforcement agencies in the application of the general public health duty in situations where enforcement is required. It would appear that WA is the only state that has regulations in place."

The issue is not wide spread and can be best managed by the industry. Not encountered any cases of illness due to use of garden soil or compost.

Option 1 is my selected choice, however there is no space provided to provide reasons on page 3. Reasons for my selection of option 1 are as follows:

- establish consistency across Australia with no regulations for garden soils
- The Australian Standard provides clear information that is necessary for the knowledge of industry, however the AS is currently not legislation in WA. The self-regulation of industry with the use of guidance material, including the AS would ensure that the rules for industry are specific and clear
- There is still legal obligation for industry in relation to public health duty of care and so they do not lose liability around this matter
- the cases of *Legionella* from exposure to garden soil is not consistent, as cases are sporadic and random. The bacterium also exists naturally in the environment and so regulation of commercial sale of garden soil does not mitigate the risks associated with human exposure to soil
- the requirements of the current regulations related to signage and labeling of commercial soil packaging are not adequate to mitigate the risks"

Simply repeal the existing regulations and let industry self regulate.

Department should set aside funds for education campaign should there be a need due to increase in cases as a contingency.

Other comments

Industry agreeing to self regulate and comply with the AS is sufficient along with additional information provided on DOH websites. Should there be a future spike in cases the DOH could initiate an education program as has been done in the past.

All information provided to soil purchasers must be in line with the Australian Standard.

DoH providing factsheet to the community on the risks associated with garden soils would help LGs provide advice to the community.

The advantages of option 1 and disadvantages of option 2 that are provided in the discussion paper support the lack of need for government regulation on commercial garden soil. It is indicated that the regulations may not effectively mitigate the health effects associated with human exposure to garden soil and so the risks to public health with self-regulation by industry with guidance material using the relevant Australian Standard may be more appropriate. These sources of information will enable industry to comply with their obligations under the Public Health Act 2016.

The reality is most people do not follow the recommended safety precautions anyway and this generally does not pose a problem for most people. Better education on this issue particularly targeting vulnerable groups may deliver the same end result.

Let the onus be on industry as the risk has been extremely low comparatively.

Whilst this is not a scientific response: Enquiries with one of the largest garden soil producers – Richgro - has not revealed any illnesses from *Legionellae longbeachea* being reported from workers within the organisation. Staff

who have been in the industry for as long as 20 years have not witnessed any reports of illnesses from any workers.

An enforceable Code of Practice would assist with education and enforcement.

Perhaps the public Health Focus for issues such as this should be around educating the public and in particular the relevant at risk groups rather than relying on a legislated approach.

Option B – Develop new regulations to manage public health risks associated with garden soils

Why is this your preferred option?

The current regulations impose little cost to industry. Self regulations by industry does not work.

So that there is a clear response to any outbreak/incident and enforcement option. Clear onus on suppliers.

As self-regulation doesn't work (see public enquiries into banks, insurance companies and superannuation) new regulations will be required at some point in the future anyway. By developing the legislation now members of the public remain protected, as required by the Public Health Act.

The existing regulations ensure that producers conform to a uniform requirement for labeling and ensures "back yard" operators do not create risk to the public by not providing the correct warnings. Given the current warning wording in the regulations are slightly different to those adopted in AS 4419 and AS4454 we would suggest that adopting the labeling and environmental health advice requirements of AS4454 and AS4419 would make sense and provide a clear guidelines for producers of product to follow.

The public expect 'someone' to be responsible for regulating industry associated with health effects and so it is important that EHO's are have powers which are legally binding. Soil manufacturers and distributors can be held liable for not complying with the current Regulations through notices and fines. The introduction of a guideline would mean that there would be no enforcement options for soil manufacturers and distributors if they failed to comply with requirements of a guideline.

So it can be thoroughly researched and implemented by an independent State Government Body.

Option B suggestions

Enforcement powers via infringement notices is a must.

Modelled on current legislation with an option to issue an infringement notice.

As previously mentioned, we suggest the adoption of the s labeling and environmental health advice requirements of AS4454 and 4419.

Increase the penalty for soil distributors who fail to comply with warning notice requirements. I.e. similar fines as outlined in the asbestos regulations. Environmental Health Officers to inspect soil suppliers and distributors on an annual basis and maintain a register.

This should be implemented and enforced by State Government not Local Government. Sellers should have to have their label and product approved by State Government due to the expertise required for assessment and risk involved.

No further suggestions to above

Other comments

Provide members of the public with relevant information.

The DOH could develop an information brochure to be displayed at the point of sale of all soil distributors. Media campaign to create awareness of Legionnaires' disease being associated with exposure to soil and potting mixes. Raising awareness through garden and horticultural associations.

This document can be made available in alternative formats on request for a person with a disability.

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