

Choosing an enforcement option

Guideline

Description

This guideline compares the enforcement options available under the Public Health Act, outlining the relative advantages and disadvantages of each.

Option	Advantages	Disadvantages
Public health order	<ul style="list-style-type: none"> Relatively fast and simple Does not require an application to a magistrate Provides a platform to other monitoring and enforcement options such as steps to address the risks, PINS and 'enforcement order' Can escalate to an enforcement order which allows more flexible powers of entry 	<ul style="list-style-type: none"> Public health risk may not be addressed in a timely manner Will require ongoing monitoring and enforcement to ensure public health risk has been addressed If non-compliance ongoing does not allow entry to a building or other structure without the consent of the occupier, an enforcement order or a warrant
Enforcement order	<ul style="list-style-type: none"> Provides for forceful entry to places if necessary May stipulate who must pay the cost of taking steps to remove or reduce the risks More flexible powers of entry 	<ul style="list-style-type: none"> Requires previous issuing of 'public health order' Public health risk may not be addressed in a timely manner Application to a magistrate required Notice of hearing required (14 days before hearing)
Warrant for a place	<ul style="list-style-type: none"> Public health risks may be addressed in a timely manner Provides for forceful entry to places if necessary May provide for repeated entry to check on public health risks under a public health order May provide for seizure of evidence More flexible powers of entry 	<ul style="list-style-type: none"> Application to a magistrate needed

<p>Authorised prevention and control program</p>	<p>Targeted program response to designated pests giving considerable entry powers</p> <p>May give public health order for the designated pest to which the program relates followed by a PIN or enforcement order if non-compliance</p> <p>May issue PIN as a control measure</p>	<p>Limited to designated pests</p> <p>Cannot use other monitoring and enforcement powers unless investigating a contravention</p>
<p>Approved inspection program</p>	<p>Targeted program response to regulations for public health risks</p> <p>May use Chapter 9 monitoring and enforcement powers, for example to seize a thing or apply for a warrant</p>	<p>Limited to regulations made under s61 of the Act about public health risks</p> <p>Does not allow entry to building/structure if non-compliance is ongoing without consent, an enforcement order or a warrant</p>
<p>Seizure</p>	<p>Ensure evidence may not be tampered with</p> <p>May be used to prevent a thing from being used to continue or repeat an offence</p> <p>Quick</p>	<p>Not a total solution. Normally seizure will only support other enforcement action.</p>
<p>Prosecution for offences</p>	<p>Higher penalties</p> <p>Conviction may be recorded</p> <p>Conviction may be promoted as a deterrent to other potential offenders</p>	<p>Public health risk may not be addressed in a timely manner.</p> <p>Will require ongoing monitoring and enforcement of public health risk</p> <p>If non-compliance is ongoing, does not allow entry to a building/structure without consent, an enforcement order or a warrant.</p> <p>May be time consuming and not cost effective</p>
<p>Prescribed infringement notice (PIN)</p>	<p>Simple and cost effective</p> <p>Does not require an application to a magistrate if offender decides to pay the fine</p> <p><i>Public Health Regulation 2005</i> PIN offences do not require a 'public health order' to be issued in the first instance</p>	<p>Public health risk may not be addressed in a timely manner.</p> <p>Will require ongoing monitoring and enforcement to ensure public health risk has been addressed.</p> <p>If non-compliance is ongoing, it does not allow entry to a building or other structure without the consent of the occupier, an enforcement order or a warrant.</p> <p>For a PIN under the Public Health Act (and not the regulation) a 'public health order' must be issued before a PIN can be issued for non-compliance with the order.</p>

Enforcement orders

Procedure

Description

An issuing authority (the State or a local government) may apply to a magistrate for an enforcement order if the recipient of a public health order has failed to comply with the order. An enforcement order, by definition, enforces a public health order and holds more weight than a public health order as it has the backing of the court.

This procedure outlines the steps involved in applying for and enforcing an enforcement order. It may be used as a model and customised by local governments to account for specific administrative requirements.

Who may apply for an enforcement order

Only the issuing authority may apply to a magistrate for an enforcement order under section 24 of the Act. As the term issuing authority relates to the entity, this would require an application to come from the chief executive officer. Delegations may be put in place to facilitate use of this provision.

The application for an enforcement order should be signed by an appropriate delegate of the issuing authority.

What an enforcement order may require

A magistrate has two main options when making an enforcement order. The magistrate may order either:

- That the person who contravened the public health order must remove or reduce the risk from the public health risk, or prevent it from recurring, and if the person fails to take the steps, the issuing authority may enter the place and take the steps; or
- That the issuing authority may enter a place, by its employees or agents, to take steps to remove or reduce the risk from the public health risk, or prevent it from recurring.

Critical issues

An enforcement order may only be obtained if a person has contravened a public health order.

In order for the person to have some right of reply, a decision by the magistrate in regard to an enforcement order requires a hearing in front of both parties. Prior to a magistrate making an enforcement order, the person to whom the application relates must be given at least 14 days prior notice of the hearing of the application. However, if the person does not attend the scheduled hearing, the application may be decided in their absence.

In deciding an application for an enforcement order, the magistrate must be satisfied that the public health order was appropriate in the circumstances having regard to the nature and seriousness of the risk to public health from the 'public health risk' at the time the order was given.

If action must be taken urgently and the recipient of the public health order will not allow the issuing authority to enter and take steps under a public health order, a warrant may be sought allowing the authorised person to take the steps.

Options

If an authorised person has given a person a public health order and the recipient has failed to comply with the order, the following options should be considered:

- (a) take action under Chapter 9, of the Act, for example under section 388 (Power to enter place to take steps if public health order not complied with)
- (b) initiate legal proceeding for noncompliance with the public health order under section 23(4), unless the recipient has a reasonable excuse (prosecution)
- (c) issue a prescribed infringement notice (PIN) for noncompliance with the public health order (section 23(4) of the Act)
- (d) obtain an enforcement order for a public health order via the delegate under section 24
- (e) apply for a 'warrant for a place' (refer to the procedure *Warrant for a place*) if an enforcement order is unsuitable to manage the risk.

Note: a magistrate may hear an application for an enforcement order and a proceeding for contravention of a public health order at the same hearing.

Procedure

Preparing an application to a magistrate for an enforcement order

An authorised person should seek the authority of an appropriate delegate in order to lodge an application for an enforcement order.

In order for the magistrate to consider the application, the following documentation is required along with any additional evidence as necessary;

- A completed application form for an enforcement order
- A made out enforcement order for the magistrate to sign
- A copy of the public health order that is the subject of the application

The documentation should be provided to a delegate along with any additional information to support the application. A Justice of the peace must witness the delegate swear the application.

Submission to the magistrate

The magistrate's court which covers the area where the public health risk was identified should be contacted to find out when a magistrate may hear the matter and consider the application. It is the responsibility of the issuing authority to give notice of the hearing to the person to whom an enforcement order application relates. The form *Notice of hearing* may be completed and used to give the notice. A notice should be accompanied by a copy of the application.

The delegate's signed and sworn application, draft enforcement order, a blank copy of the enforcement order (in case the magistrate decides to change the draft order) and a copy of the public health order must be presented to a magistrate, ideally by an authorised person familiar with the circumstances of the matter.

Evidence that can be provided to the magistrate to support the application and enable the magistrate to make an informed decision may include:

- an identity card, or other document evidencing the authorised person's appointment under the Act
- a copy of any associated delegations for the Act related to the application and
- any previous history, such as correspondence or warnings associated with the public health order in question.

The magistrate may refuse to consider the application until provided with all the required information. For example, the magistrate may require additional information supporting the application be given by statutory declaration, as well as evidence of the issuing authority's delegations to authorise the application for the order and evidence of the authorised person's appointment under the Act.

If the person does not attend at the specified time and place, the application may be decided in their absence.

Section 27 of the Act sets out the matters that may be stated in the order. These include:

- the times and intervals for entry
- that the issuing authority by its employees or agents may use reasonable help and force that is necessary in the circumstances to take the steps authorised under the order
- who is to pay the costs incurred by the issuing authority under the order.

Procedure before entry under an enforcement order

Before entering a place under an enforcement order (s30) the authorised person, employee or agent must make reasonable attempts to:

- identify themselves, by for example, producing an identity card to an occupier present at the place
- give the occupier a copy of the order
- explain to the occupier that the order authorises employees, agents and/or authorised persons of the issuing authority to enter the place
- give the occupier an opportunity to allow the employees, agents or authorised persons immediate entry to the place without using force.

Note: compliance with the above entry requirements is not mandated if the employees, agents or authorised persons believe on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the order is not frustrated.

Safety issues

An authorised person, employee or agent may exercise powers under the order with reasonable help and force if necessary. Although the order gives legal authority to authorised persons, employees or agents to enter a place, no entry should ever be pursued that would put an authorised person, employee or agent at risk and should take account of the occupational health and safety and human resources policies of the authorised person's employer. The following precautions are recommended when entry under an enforcement order is to be effected:

- (a) No entry should be made without first advising the authorised person's supervisor of the details.
- (b) it is advisable that an enforcement order is enforced by more than one person.
- (c) If there is any risk to personal safety, the authorised person's employee is to be advised and, if necessary, the police contacted, to have them in attendance whilst the order is executed.
- (d) a means of communication (telephone or radio) should be available to the person executing the order.

Note: Before entering a place the need for personal protective equipment (PPE) or other safety precautions should be considered.

Use of force during entry

An enforcement order can only allow for the use of *reasonable* help and force to enter a place. If force is required to exercise a power, than a warrant for a place will need to be obtained.

Any force used should always be equal to the minimum level of force required to enter. To protect the government from the inappropriate use of this power and maintain a high level of accountability the following requirements are suggested.

If force is required, the authorised person's supervisor shall be contacted to seek approval to use force and, if necessary, the police should be requested to attend.

If force is used to gain entry and damage occurs to any property, the form *Notice of damage* should be completed and a copy immediately left with the owner of the property. For the purposes of section 421 'owner' includes the person in possession or control of the property. If practical, photographs should be taken by the authorised person of that damage and provided to their supervisor.

If permission is obtained from the supervisor and force is used to gain entry, then a report by the authorised person to the supervisor should be provided as soon as possible. Included with this should be a copy of the completed form *Notice of damage* left with the owner. The report should also explain:

- (a) why force was necessary
- (b) what force was used
- (c) what (if any) damage resulted in the use of force
- (d) what evidence was obtained
- (e) who was present during the execution of the enforcement order
- (f) any other relevant information.

Section 422 allows a person who incurs loss or expense because of the exercise or purported exercise of a power under Chapter 9, Part 2 (Powers of authorised persons) or Chapter 2, Part 4 (Authorised prevention and control programs) to claim compensation from the relevant authority.

Compensation may be claimed in a court with jurisdiction for recovery of compensation claimed. Official records should be retained in case a person makes a claim for compensation under section 422.

Official records

When an authorised person gives and enforces an order, they must officially record the details of the activities associated with executing the order including the time and date of entry to the place, time and date the order was given to the recipient and any enforcement activities and impacting issues such as

damage or confrontational circumstances encountered. This is important both for evidentiary purposes and for the retention of records in case of future litigation.

Person must comply with an enforcement order

Section 28 of the Act makes it an offence for a person to not comply with an enforcement order unless the person has a reasonable excuse. This offence does not limit any other liability a person may incur for a contravention of the order.

Local government cost recovery

The Act provides for an issuing authority to recover an amount payable under an enforcement order as a debt due payable 30 days after the issuing authority gives the person details of the amount of the costs. Similar to the cost recovery mechanisms under the *Local Government Act 1993*, section 31 of the *Public Health Act 2005* specifies that an amount payable to a local government bears interest as if it were an overdue rate payable to a local government under the *Local Government Act 1993*.

Further, section 32 of the Act allows a local government to request the registrar of titles to register a charge over land for an amount payable under an enforcement order.

RTI Released

Entry to a place

Procedure

Description

The *Public Health Act 2005* (the Act) allows an authorised person to enter places, and undertake investigations and certain enforcement actions. This procedure provides a step by step process for an authorised person to enter a place to exercise powers under the *Public Health Act 2005* in relation to the monitoring and enforcement of public health risks.

This procedure may be used as a model and customised by local governments to include specific administrative arrangements.

Critic issues for authorised persons

The powers of entry under the *Public Health Act 2005* are stand-alone powers that are different to the powers of entry under the *Local Government Act 1993*. That is, the *Local Governments Act* may not be used when entering a place in relation to the *Public Health Act* or *Public Health Regulation 2005*.

An authorised person may enter a place under the Act if:

- the occupier consents to the entry (s385) or
- it is a public place and the entry is made at the times that it is open to the public (s385) or
- the entry is authorised by a warrant (s385, s394, s395, s396) or
- entry is required to ascertain if a public health risk exists (s386) or
- entry is required to check compliance with a public health order (s387) or
- entry is required to take steps if a public health order is not complied with (s388) or
- undertaking an approved inspection program (s36, s37, s38, s39, s40, s41, s42).

It should be noted that an authorised person cannot use the general powers under section 399 of the Act until they have 'legally' entered a place.

Entry to State land under section 386 for local government public health risks is restricted by section 3 of the Act.

Important definitions

It is important to understand the differences between the definitions under the Act of 'place', 'premises', 'dwelling', 'structure', and 'vehicle' which are defined in the Dictionary at the end of the Act.

A 'place' includes a premise and vacant land. 'Premises' includes a building or other structure, part of a building or structure, a vehicle and a caravan. A 'dwelling' does not include land around a dwelling. A 'structure' includes any building, wall, fence, water reservoir or drain and anything projecting from a structure. A vehicle includes an aircraft and a vessel (ie. boat). Therefore, powers to enter a place also include the power to enter an aircraft or vessel.

Entry to a place

Seeking consent to enter

Authorised persons may enter land around a premise to contact the occupier for consent to enter. However, the authorised person can only enter a part of the place that the authorised person reasonably considers members of the public would ordinarily enter when they wish to contact the occupier. Entry can only be to a front door or open area. An authorised person cannot enter a dwelling or enter through a structure (including any building, wall, fence, water reservoir or drain, or anything projecting from a structure) without the occupier's consent, an enforcement order or warrant (s385, s386).

Entry with consent

Before entering a place, an authorised person must make a reasonable attempt to contact the occupier to obtain consent to enter (s391, s392).

The authorised person may enter the place at reasonable times. Entry is not permitted to a building or other structure without the occupiers consent (s386), an enforcement order or a warrant.

Authorised persons must identify themselves to a person present at the place who is an occupier of the place, by producing a copy of their identity cards (s380, s381) or other documents evidencing their appointments and tell the occupier:

- the purpose of entry (s391(2a)) and
- that the occupier is not required to consent to entry (s391(2b)).

The authorised person may ask the occupier to sign a written acknowledgement that they have consented to the authorised person's entry. The acknowledgement must state that the occupier has been told the purpose of the entry, that they are not required to consent and that the occupier gives consent for entry to exercise powers under this chapter, including the time and date consent was given. A copy must immediately be given to the occupier. The form *Consent acknowledgment by the occupier of a place* may be used for this purpose.

If an issue arises and the acknowledgement of consent is not produced, the onus of proof of lawful entry will be on the authorised person to prove that the occupier consented to the entry. This may sometimes be corroborated by the presence of a witness or another authorised person (s391(3,4)).

Entry when occupier cannot be located

If the authorised person is unable to locate an occupier to obtain their consent to enter after making a reasonable attempt to do so, the authorised person may enter the place (s392(4), s393(6)) to:

- ascertain if there may be a public health risk or
- check compliance with a public health order or
- under an 'approved inspection program' (s392(1)) or
- enter the place to take steps if a public health order is not complied with (s393(6)).

The authorised person must not enter a building or other structure without the occupier's consent, an enforcement order or a warrant (s386(3), s387(3) and s389(3)).

If the authorised person enters after being unable to locate the occupier, the authorised person must leave a notice in a conspicuous position and in a reasonably secure way stating the date, time and purpose of the entry (s392(5), s393(7)).

Entry without consent

If the occupier refuses to give consent to enter, the authorised person must not enter the place unless the entry is under an enforcement order or a warrant (s392(3)).

When applying to a magistrate for an enforcement order, a notice of hearing (s25) must be given to a person at least 14 days before the day the application is to be heard. An enforcement order will allow an authorised person entry to the place to check whether the steps under the order are being taken, or have been taken. The authorised person may use necessary help and reasonable force to enter (s27(1) to s27(4)).

In applying for a warrant, an authorised person needs to ensure that the application includes the thing(s) that may need to be seized, samples that may need to be taken or other actions considered necessary to remove or reduce the risk to public health or prevent it from recurring. A suitable timeframe, not more than seven days, should be requested to enable repeated entry where necessary, otherwise a separate application for a warrant may need to be made each time entry is required (s395(3)). A warrant for a place may also authorise the use of necessary and reasonable help and force to enter and exercise the authorised person's powers under Chapter 9 of the Act. For more information see the procedure *Public Health Act – Warrant for a Place*.

Entry to a residence

Generally under the Act an authorised person may only enter a building or other structure with the occupier's consent, an enforcement order or a warrant. It is good practice for an authorised person to only enter a building or other structure if accompanied by the occupier. However, this may not apply under the following circumstances:

- if the occupier is unavailable or unwilling to accompany the authorised person and the occupier has given written consent to enter or
- if entry is under a 'warrant for a place' and in accordance with the entry procedure for warrants set out in section 398 of the Act.

Use of other legislation

Under the Act, an authorised person must, when entering a place, identify themselves to the occupier by producing an identity card (or other document evidencing their appointment) and explain their purpose of entry. Should an authorised person, while at a place, identify a breach of legislation not related to the original purpose for entry, they do not need to exit and re-enter the place to enforce the other legislation, provided the authorised person is authorised under the other legislation. However, before enforcing the other legislation, the authorised person should:

- identify to the occupier their appointment under the other legislation, if they have not already done so, and
- satisfy the conditions for entry under the other legislation including stating their new purpose or reason for being at the place.

Procedures for entry

The Act outlines a number of procedures that authorised persons need to follow when entering a place in relation to public health risks. These are illustrated in Appendices 1 to 3. The entry requirements are mostly set out in the Act in sections 385 to 393.

1. Entry to ascertain public health risks and check compliance with a public health order

The process highlighted in flowchart 1 outlines what needs to be done when entering a place to ascertain if a public health risk exists and to check compliance with a public health order. This process includes obtaining consent to enter if required and identifies where consent for entry may not be required. It also identifies when an enforcement order or a warrant may be necessary.

2. Approved inspection programs

Flow chart 1 also identifies the requirements for entry to a place under an approved inspection program to monitor compliance with the Public Health Regulation in relation to mosquitos, rats and mice, or asbestos. An inspection program must be approved by the chief executive officer of a local government or the chief executive of Queensland Health and advertised prior to commencement. The approval must include the area and types of places that may be entered under the program. The only entry that may be made under the program is by authorised persons. For more information on approved inspection programs see the guidance note Public Health Act - Approved inspection programs.

3. Entry to take steps when there is non-compliance with a public health order

The issuing authority, by its employees or agents, may enter a place to take steps required by a public health order when the person subject to the order has failed to carry out the steps in the order. Appendix 2 sets out the different requirements for an authorised person to legally enter and take the steps in the order. An authorised person may enter a place according to the requirements of section 385 and take steps subject to conditions set out in section 388 and section 393, if a public health order has not been complied with. Entry is not permitted to a building or other structure without the occupiers consent, enforcement order or warrant.

4. Authorised prevention and control programs

An authorised prevention and control program is a program authorised by the Chief Executive of the Department of Health. It provides additional powers to an authorised person to enter (s41) and, amongst other things, search for designated pests (mosquitos, rats and mice) or anything which is, or may become, a breeding ground, source of food or harbourage for a designated pest and take reasonable steps to eradicate or prevent the occurrence or recurrence of the designated pests, including use of pesticide (s 43).

It should be noted that under an authorised prevention and control program, an authorised person may generally enter certain specified unrestricted areas of a dwelling that cannot be otherwise entered under the Act, such as a car port. Appendix 3 illustrates the conditions for entry and general processes to be followed.

5. Enforcement orders

If the issuing authority considers that a person has contravened a public health order they may apply to a magistrate to enforce the public health order. The magistrate may order either:

- that the person against who the order is being made, take steps in relation to public health risks, and if the person fails to take the steps that the issuing authority may enter and take steps, OR
- that the issuing authority's employees or agents enter a place to take steps to remove, reduce or prevent a public health risk (s27).

Under section 27, the order made by a magistrate must clearly set out the steps to be taken and the conditions for entry to the place. The order must state amongst other things:

- that an authorised person may enter to check whether the steps under the order are being or have been taken, and
- if steps are to be taken by the issuing authority, that an employee or agent of the issuing authority (who may not necessarily be an authorised person) may enter to take the steps.

Necessary and reasonable force may only be used by an authorised person or a person accompanied by an authorised person. The procedure for entry under an enforcement order is set out in section 30. A person must comply with an enforcement order unless the person has a reasonable excuse.

6. Warrants

A warrant for a place may allow (under section 395) an authorised person to carry out the following actions:

- a) enter the place authorised by the warrant or any other place necessary for entry to the place and
- b) exercise powers under Chapter 9 of the Act with necessary and reasonable help and force before the warrant ends and
- c) search the place to find evidence of an offence under the *Public Health Act 2005* (under section 399) and
- d) take the steps necessary in the circumstances to remove or reduce the risk to public health or prevent it from recurring including seizing a thing(s).

Before entering a place under a 'warrant for a place', authorised persons (under s398) must do, or make a reasonable attempt, to do the following:

- a) Identify themselves to the occupier of a place by producing an identity card or other document of evidence of authorisation under the *Public Health Act 2005*.
- b) give the person a copy of the warrant
- c) tell the person that the authorised person included on the warrant is permitted by the warrant to enter the place
- d) give the person an opportunity to allow authorised persons immediate entry to the place without using force.

Authorised persons need not comply with the above requirements if they reasonably believe that immediate entry is required to ensure effective execution of the warrant is not frustrated.

Assistance

An authorised person may take another person to a place for assistance or seek the assistance of police where deemed necessary.

The Police Powers and Responsibilities Act 2000 provides that a police officer may help a public official to perform their functions under the authorising law. Under the s457 of the Public Health Act 2005 the following persons are declared public officials for the Police Powers and Responsibility Act 2000: chief executive, authorised person, contact tracing officer, emergency officer, person in charge of a public sector health service and a designated medical officer. Under section 399(e), an authorised person may “take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power” in relation to monitoring and enforcement of the Act or establishing whether there is a public health risk at the place.

Obstructing authorised persons

A person must not obstruct an authorised person in the exercise of a power under the Act unless the person has a reasonable excuse. The maximum penalty under section 425 is 100 penalty units.

If an authorised person has been obstructed and they decide to proceed with the exercise of power, the authorised person must warn the person that:

- it is an offence to obstruct the authorised person, unless the person has a reasonable excuse and
- the authorised person considers the person’s conduct as obstruction (s425(2)).

In some circumstances prosecution of such an offence may be considered, to prevent the setting of a precedent where future non-compliance and obstruction of powers is likely.

Safety during enforcement

The Act allows an authorised person to obtain assistance when exercising powers under the Act. This may include using force that is reasonable in the circumstances only in respect to an enforcement order or a warrant. An authorised person may also seek the assistance of a police officer. Although an authorised person may have the legal authority to enter a place, no entry should ever be pursued that would put authorised persons at risk and should be undertaken according to relevant occupational health and safety and human resources policies.

Use of force during entry

The Act only provides for “necessary and reasonable help and force to enter” under an enforcement order, while under a ‘warrant for a place’ “necessary and reasonable help and force” may be used to both enter and “exercise the authorised person’s powers under this Chapter (Chapter 9)”.

Any force used should always be the minimum required. To avoid the inappropriate use of force and to maintain a high level of accountability, local governments may wish to consider applying the following principles:

- a) If force is required, prior approval should be sought and, if necessary, the police requested to attend.
- b) If force is used and damage occurs to any property, the form *Notice of damage* should be completed and a copy left immediately with the owner of the property. For this purpose ‘owner’ includes the person in possession or control of the property. If practicable, photographs should be taken by the authorised person of that damage and records kept.

c) It is good practice for the authorised person to make a record in a report as soon as possible. Included with this should be a copy of the completed form *Notice of damage*. Details to be recorded:

- why force was necessary
- what force was used
- what (if any) damage resulted in the use of force
- what evidence was obtained
- who was present during the execution of the warrant
- any other relevant information.

Section 422 allows a person who incurs loss or expense because of the exercise or purported exercise of a power to claim compensation. Compensation may be claimed in a court with jurisdiction. Official records should be retained in case a person makes a claim for compensation under s422.

Cost recovery

Reasonable costs that have been incurred by the issuing authority when exercising powers under s388 (Power to enter place to take steps if public health order not complied with) or s405 (Power to remove or reduce public health risk under a warrant) may be recovered as a debt payable to the issuing authority by the person named on the warrant or public health order. This amount is payable within 30 days after the details on amount of costs have been provided to the person.

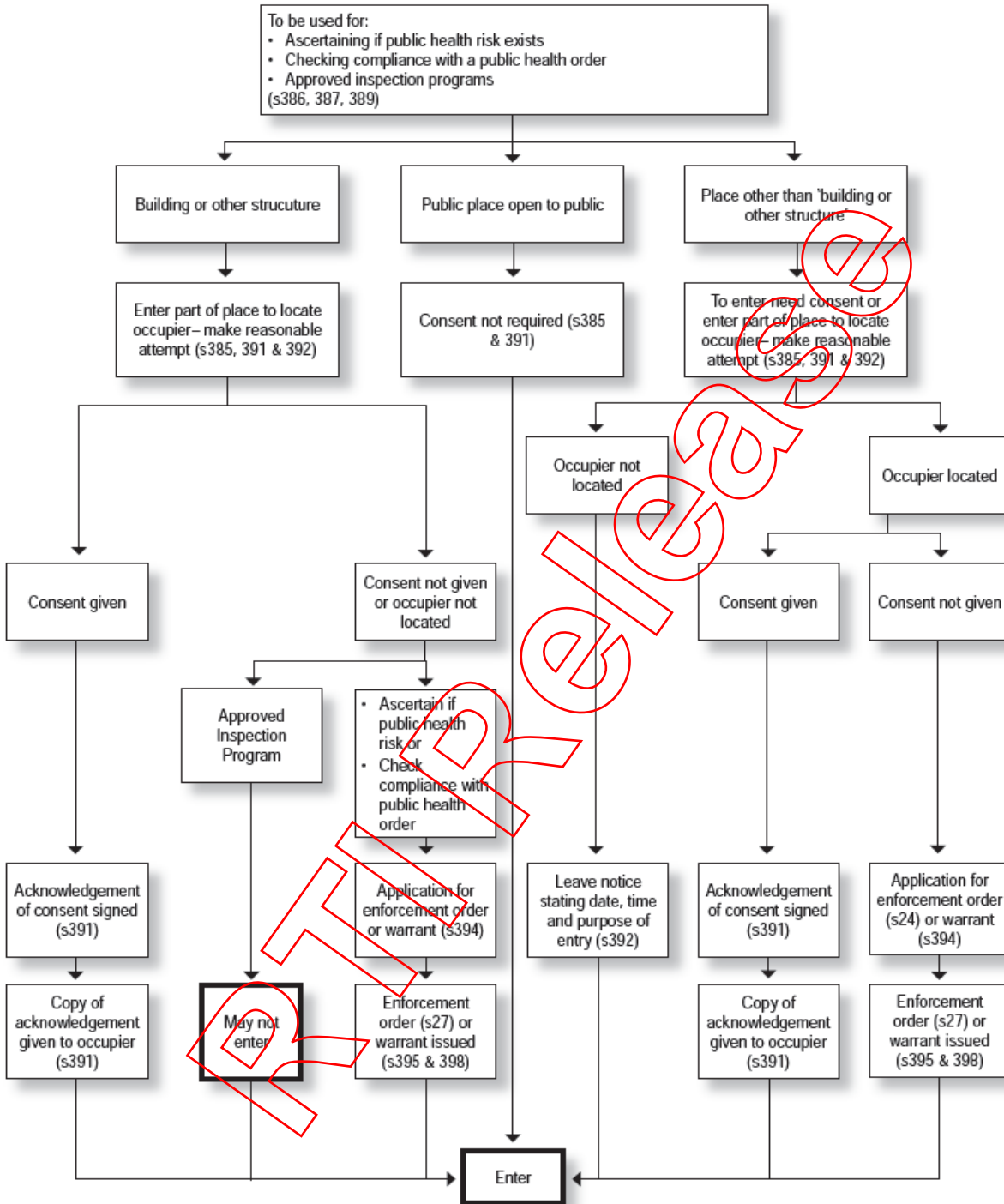
Local Governments may recover the amount payable plus interest as if the total amount were overdue as rates under the *Local Government Act 1993*. The unpaid amount may become a charge on the land and can be registered as a charge over the land with the registrar of titles (s406, 407).

The Act further provides that they have recourse to any other avenues available to them to recover an outstanding debt.

RTI REQUEST

Appendix 1

Flowchart 1 – Entry to ascertain public health risks (Entry under s392)

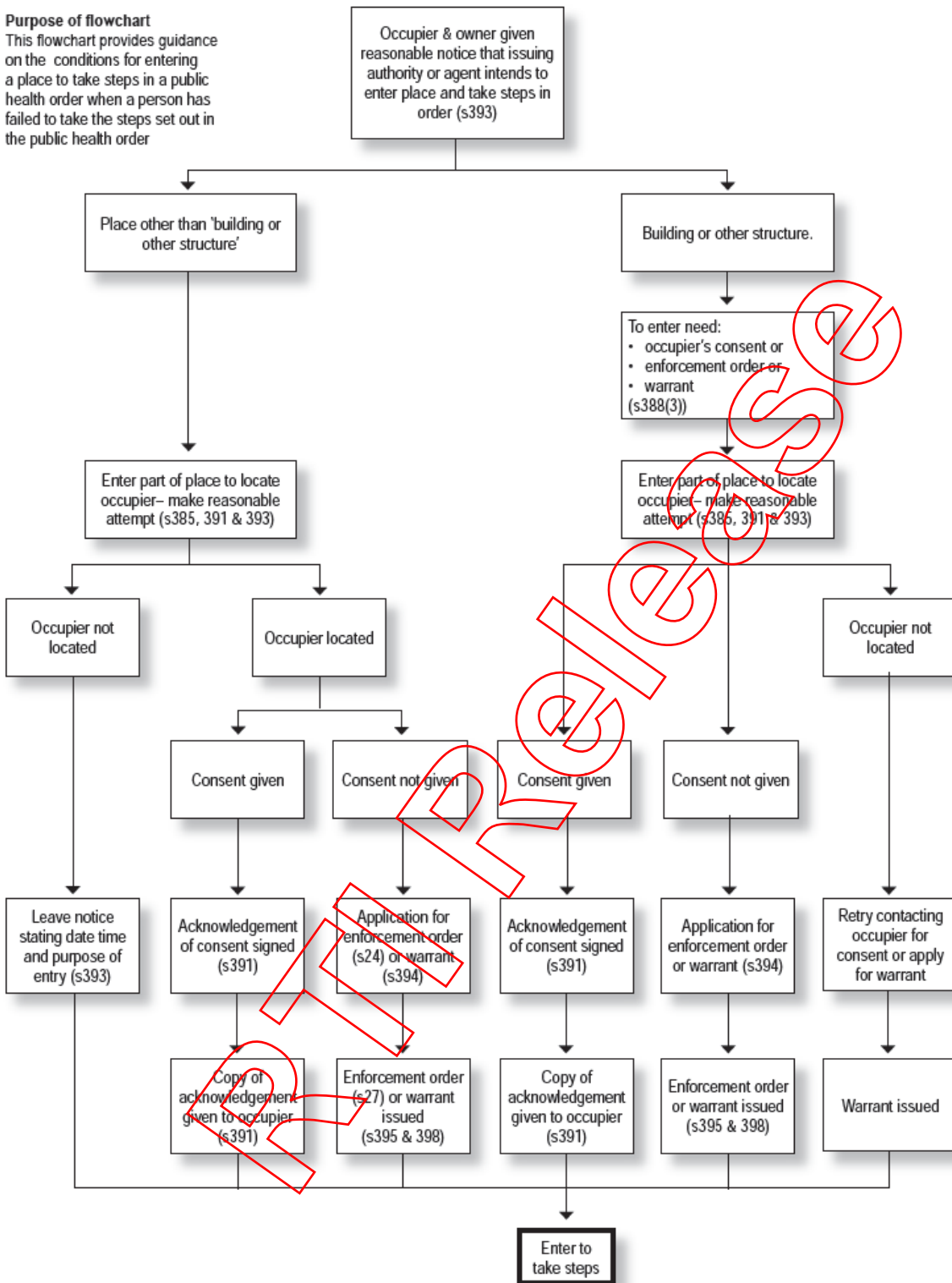


Appendix 2

Flowchart 2 – Entry to take steps if public health order not complied with

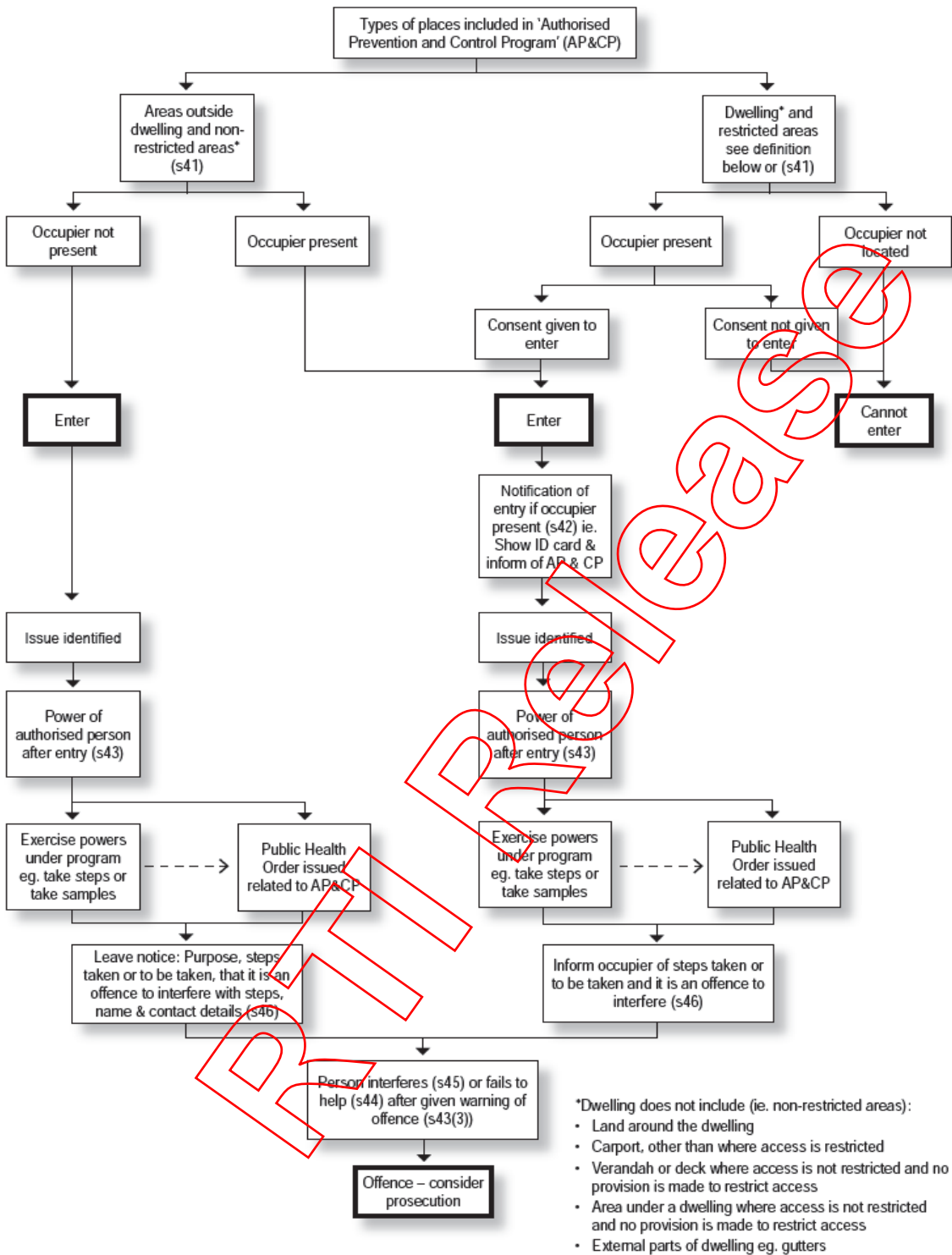
Purpose of flowchart

This flowchart provides guidance on the conditions for entering a place to take steps in a public health order when a person has failed to take the steps set out in the public health order



Appendix 3

Flowchart 3 – Entry under an authorised prevention and control program



Guidance Note

PUBLIC HEALTH ACT – Authorised prevention and control programs

Purpose

This guidance note is intended as a reference document for local governments and Queensland Health. It describes the legislative mechanisms related to authorising and undertaking a prevention and control program under the *Public Health Act 2005*, for the control of mosquitoes, rats or mice.

What is a prevention and control program?

Section 36 of the *Public Health Act 2005* (the Act) empowers the chief executive of Queensland Health to authorise a prevention and control program if there is, or is likely to be, an outbreak of a disease capable of transmission to humans by designated pests, or a plague or infestation of designated pests. Designated pests are defined as mosquitoes, rats, mice and other animals prescribed under a regulation.

Authorising a prevention and control program

The decision to authorise a prevention and control program requires serious consideration by the chief executive of Queensland Health (or delegate) due to the significant powers that can be invoked and their ability to impact on an individual's civil liberties.

Local governments may apply via their local Queensland Health public health unit if they consider an authorised prevention and control program is required. The local public health unit will facilitate the consultation and authorisation process required by the Act in collaboration with the relevant program area director.

To authorise a prevention and control program the chief executive (or delegate) of Queensland Health must be satisfied there is or is likely to be an outbreak of a disease capable of transmission to humans by designated pests or a plague or infestation of designated pests. This would include for example an outbreak of dengue fever or an infestation of mosquitoes capable of carrying dengue fever.

Before authorising a program the chief executive (or delegate) must consult with the local government for the area to which the program relates. Furthermore, if a prevention and control program relates to the outbreak of an exotic disease under the *Exotic Diseases in Animals Act 1981* or a notifiable disease under the *Stock Act 1915* before authorising the prevention and control program the chief executive (or delegate) of Queensland Health must consult with the chief executive of the administering department for those Acts (currently the Department of Employment, Economic Development and Innovation).

To implement the processes required by section 36 of the Act, consultation should occur locally between Queensland Health (at the public health unit level) and local government and, where applicable, the Department of Employment, Economic Development and Innovation (DEEDI). If contentious issues arise, or there is disagreement, local governments and/or DEEDI may take up the issues or disagreement directly with the chief executive (Director-General) of Queensland Health.

Required information

The following information should form part of the brief to the chief executive of Queensland Health (or delegate). The purpose of the brief is to assist the chief executive to determine whether an authorised prevention and control program is warranted.

- The designated pest to which the program relates and the proposed measures to be taken under the program to prevent or control the pest
- Clear rationale for the outbreak risk will include:
 - actions taken to date to address the risk and outcomes of same;
 - outline of the area(s) that requires the prevention and control powers;
 - reasons why other measures such as the following, are not sufficient to prevent or control the designated pest in those areas:
 - voluntary agreement by landowners to control of the designated pest; and
 - use of an approved inspection program under section 427 of the Act to inspect properties for designated pests and to require the property owner to take measures to eradicate the designated pest; and
 - description of the types of places within the area that need to be accessed in order to prevent or control the designated pest (photographic evidence is useful)
- The proposed duration of the program; the duration should be limited to the minimal amount of time necessary to implement prevention and control measures
- Clarity on who will be undertaking the program, including any special licensing requirements for the persons involved
- If any special conditions are requested to carry out the program, these need to be clearly specified and the reasons for the special conditions fully explained
- Additional information to be included as relevant:
 - increase in year to date/weekly incidence of disease related to the designated pest eg. mosquito borne disease
 - increase in the numbers of public complaints about the designated pest
 - for mosquitoes, an increase in larvae or adult mosquitoes and identification of the mosquito species of concern
 - identification of issues that could increase the risk of disease from the designated pest eg. presence of viraemic travellers with dengue.
- The briefing note template includes the following attachments:
 - Attachment 1: Template - *Authorisation of prevention and control program* (s36(2))
 - Attachment 2: Template - *Publication of an authorised prevention and control program* (s38)

- Attachment 3: Template – *Letter advising of an authorised prevention and control program* (s36)
- Attachment 4: Template – *Letter proposing an authorised prevention and control program* (s36).

Information on how to access these documents is at the end of this guidance note in the section *Further information and related resources*.

Publication of authorisation

The chief executive (or delegate) must publish the authorisation for a prevention and control program at least seven days before the start of the program by newspaper, radio or television. The publication must include the reasons for the program, the area to which the program relates and the measures to be taken under the program. Public notice sections of newspapers may be used to publish the chief executive's authorisation.

If the chief executive's authorisation cannot be published in a timely manner, radio or television publication options should be considered. However, as time constraints may be a factor, failure to publish does not invalidate the authorisation. A template for publishing a program is shown in Attachment 2 of the template *Briefing note for approval of a prevention and control program*.

Who may undertake prevention and control programs

The chief executive (or delegate) of Queensland Health may authorise the state, local governments, or both the state and local governments to undertake the program. The program must be undertaken by authorised persons appointed under section 377 of the Act. It is important to consider if any limitations have been placed on the powers of a person's appointment as these may impact on their ability to participate in a program.

Information on appointing authorised persons is in the guidance note *Appointments and delegations by local governments under the Public Health Act 2005*.

The following two fact sheets describe the roles and powers of people generally authorised under the Act and those authorised specifically for vector control work with powers limited to chapter 2 part 4 *Authorised prevention and control programs*.

- *Fact Sheet – PUBLIC HEALTH ACT - Roles and Responsibilities – Authorised persons*
- *Fact Sheet – PUBLIC HEALTH ACT - Roles and Responsibilities – Authorised persons (limited to authorised prevention and control programs)*

Powers available for prevention and control programs

Powers available to an authorised person following entry to a place under a prevention and control program are limited to those necessary to achieve the objectives of the program.

The Act clarifies that for undertaking a prevention and control program an authorised person may only use the powers under chapter 2 part 4 *Authorised prevention and control programs* and may not exercise general powers under chapter 9.

However, an authorised person conducting a prevention and control program, who is also appointed for chapter 2 part 3 *Public health orders*, may give a person a public health order if the order is for the prevention and control of the designated pests to which the program relates. For

example, following entry under a prevention and control program for mosquitoes, an authorised person may give a public health order requiring the recipient to empty a stagnant pool to prevent mosquitoes from breeding in the pool.

Note: An authorised person with powers limited to chapter 2 part 4 of the Act (for instance Queensland Health vector control officers) cannot issue a public health order.

Powers of entry

Authorised persons undertaking a prevention and control program may enter a place (which includes premises defined in the Act and vacant land) at any reasonable time, or if conditions have been set, only during the period described in the authorisation (s41 refers).

Authorised persons may not enter a dwelling without the occupier's consent, an enforcement order or a warrant. The authorised person may enter:

- a) a carport, other than a carport to which access is restricted
- b) the area of a verandah or deck, to which access is not restricted and no provision is made to restrict access
- c) the area underneath a dwelling to which access is not restricted or no provision is made to restrict access
- d) any other external parts of the dwelling, including, for example, the dwelling's gutters
- e) land around a dwelling.

The conditions for entry under an authorised prevention and control program are illustrated in a flowchart in Appendix 3.

Notification of entry

If the occupier is present at a place and an authorised person has entered under a prevention and control program (s46(a) refers), the authorised person must:

- a) produce identification to the occupier
- b) give the occupier notice of the authorised person's entry to the place under a prevention and control program
- c) inform the occupier of the purpose of the program and include any steps taken, or to be taken, under the program to eradicate or prevent the occurrence or recurrence of the designated pest
- d) if steps have been taken, or are to be taken, inform the occupier that it is an offence to do anything that interferes with a step taken.

If an occupier is *not* present at the place the authorised person must leave a notice at the 'place' in a reasonably secure way and in a conspicuous position (eg. in a letter box) stating (s46(b) refers):

- a) the purpose of the prevention and control program
- b) any steps taken, or to be taken, under the program to eradicate or prevent the occurrence or recurrence of designated pests
- c) if steps have been taken, or are to be taken — that it is an offence to do anything that interferes with a step taken
- d) the name and contact details of the authorised person.

The notice can be based on the template *Notice to occupier regarding authorised prevention and control program*.

Offences

It is an offence for a person to fail to comply with an authorised person's reasonable request for help *after* entry to a place; unless the person has a reasonable excuse (s44 refers). It is also an offence for a person to interfere with steps taken by an authorised person under a prevention and control program, unless the person has a reasonable excuse (s45 refers).

Steps for authorising and undertaking a prevention and control program

The flowchart in Appendix 1 *Authorised prevention and control programs* outlines the relationship between each section of the Act for authorised prevention and control programs, from approval of the program through to entry under the program and enforcement options.

The explanatory notes and flowchart in Appendix 2 *Steps for authorising and undertaking a prevention and control program* are to assist Queensland Health staff set up a program.

Processing an application

The timeliness of a decision to authorise a prevention and control program is dependent upon the detail and accuracy of the supporting material submitted with the application. Insufficient detail may require more information to be provided and in some instances a site inspection and assessment by a Queensland Health medical entomologist may be required before a final decision can be made.

Evaluation and reporting

A report should be provided by the agency involved in the authorised prevention and control program to the chief executive (or delegate), via the relevant program director, to advise on the effectiveness of the program in helping mitigate the public health risk.

Current legislation

- *Public Health Act 2005*
- *Public Health Regulation 2005*

Queensland state legislation is available via the Queensland Parliamentary Counsel website at www.legislation.qld.gov.au/Legislation.htm

Further information and related resources

All referenced documents are available to:

- Local government at www.health.qld.gov.au/eholocalgov
- Queensland Health staff via QHEPS at <http://qheps.health.qld.gov.au/PHS/ehpom/>.

Queensland Health Contacts

For further information on authorised prevention and control programs related to:

- mosquitoes contact Communicable Diseases Branch by emailing CDPCU@health.qld.gov.au or telephone 3328 9724
- rats and mice contact the Environmental Health Branch by emailing EHU@health.qld.gov.au or telephone 323 40938.

Review Date

2016

Approved by

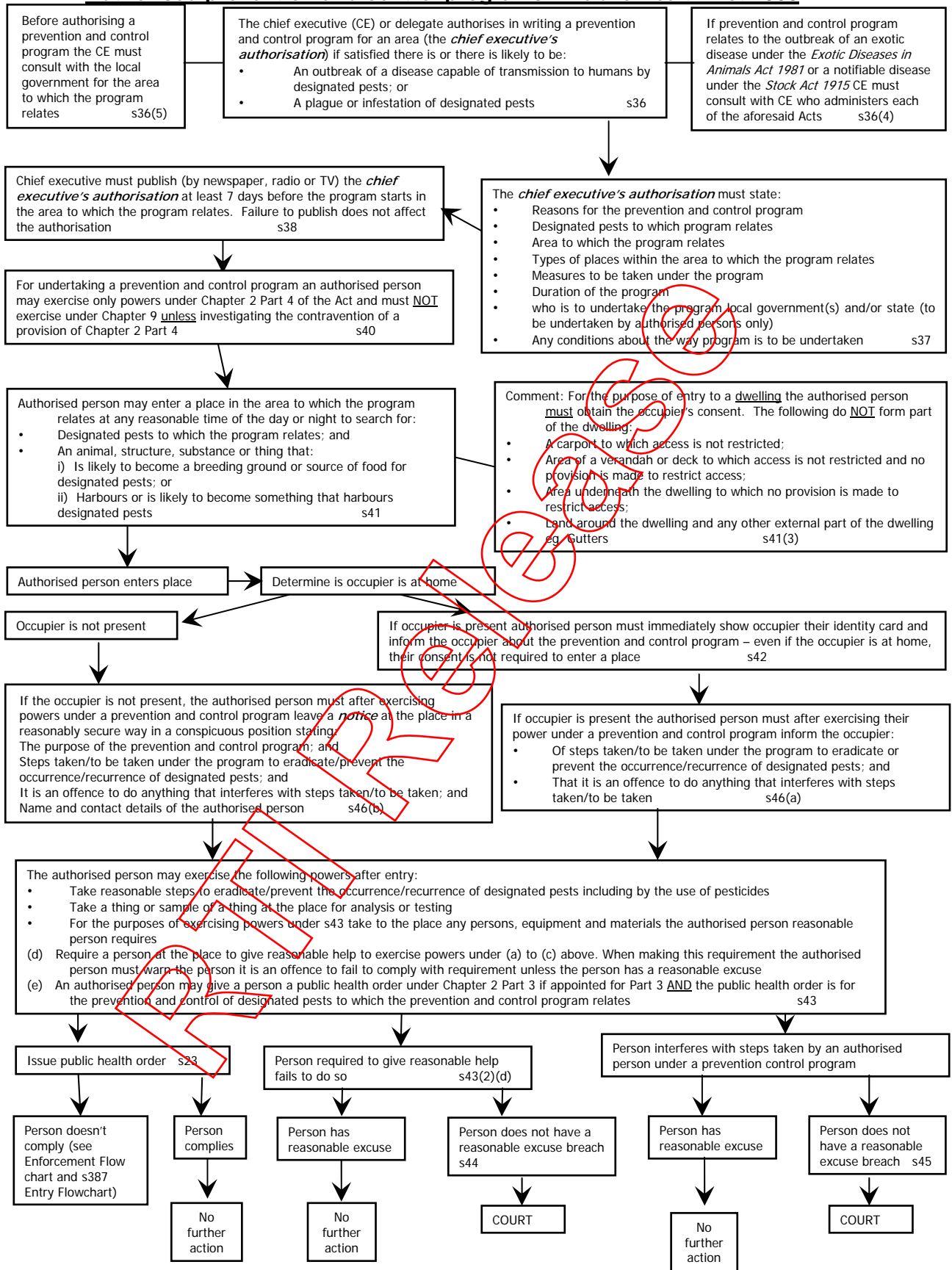
Designation: Executive Director Health Protect Directorate

Date: February 2011

Version February 2011

RTI Release

Authorised prevention and control programs – Public Health Act 2005



APPENDIX 2**Steps for authorising and undertaking a prevention and control program****Introduction**

The following explanatory notes are for the process of authorising a prevention and control program under the *Public Health Act 2005* Chapter 2 Part 4.

Steps for authorising and undertaking a prevention and control program

The following steps relate to the attached flowchart.

1. Identification of need for a prevention control program [Section 36(1)]

- Public Health Unit (PHU) identifies an outbreak of disease capable of transmission to humans by a designated pest (mice, rats, mosquitoes and any other animal prescribed under a regulation). For example, a person is identified as testing positive for dengue fever.
- PHU identifies a plague or infestation of a designated pest such as rats.

2. Internal consultation

- PHU should consult with Communicable Diseases Branch, Senior Director Regional Service and others as appropriate to advise of outbreak, plague or infestation. This internal consultation should help determine if there is a need to instigate an authorised prevention and control program and ensure there is internal support to authorise the proposed program. The medical entomologist should be the major source of technical advice for the Regional Services where the designated pest is a vector.

3. Consultation with local government and DEEDI if required [Section 36 (4)&(5)]

- The PHU must consult with the local government to which the program relates. Consultation with local government should address the issues associated with Section 37 of the Act.
- If there is an exotic disease as listed under the *Exotic Disease in Animals Act 1981* or notifiable disease under the *Stock Act 1915*, the PHU should consult with DEEDI.
- Local government and/or DEEDI may initially approach Queensland Health locally at the public health unit level. Local government and/or DEEDI representatives involved in the consultation process are required to have appropriate delegations in place within their organisation prior to any lawful representation in the context of section 36 of the Act. If there are any contentious issues or there is any disagreement, local government and/or DEEDI may take up the issues or disagreement with the chief executive (Director-General) of Queensland Health.

3A. It is recommended that consultation initially be undertaken at officer level to help gain support for the program, help expedite formal consultation (step 3B) and allow officers of the local government or DEEDI to brief their CEO (or delegate) and provide more time for the local government or DEEDI to respond to outbreaks or plague/infestation.

3B. Formal consultation as required by the Act should include formal correspondence which can if necessary seek a reply indicating their support for the proposed program.

4. Briefing notes/memos [Section 37]

- After consultation with local governments the PHU should prepare a draft briefing note to the chief executive or memo to the delegate detailing the requirements for the prevention control program. The briefing note/memo should contain a level of information sufficient to allow the delegate to authorise or otherwise the program. The briefing note/memo should be accompanied by the following completed draft documents (prepare based on templates):
 - a) authorisation of the prevention and control program
 - b) publication of the authorised prevention and control program
 - c) letter to local government/s advising of the authorised program.

5. Authorisation [Section 36(2)]

- Chief executive or delegate authorises the prevention and control program or determines that an authorised program is not warranted.

6. Advice of program

6A. Letter of advice to local government and surrounding local governments

- The chief executive (or delegate) signs and sends a letter to the local government advising on the outcome of the request for an authorised prevention and control program. As a courtesy a similar letter could be sent to surrounding local governments to keep them informed.
- Advice should also be sent to DEEDI if applicable.

6B. Publication of authorisation (Section 38)

- The chief executive (or delegate) must publish the authorisation of the program by newspaper, radio or television in the area to which the program relates at least seven days before the start of the program. Public notice sections of newspapers may be used to publish the 'chief executive's authorisation'. If the 'chief executive's authorisation' cannot be published in a timely manner, radio or television publication options should be considered. Failure to publish the authorisation does not affect the authorisation.
- A copy of the 'chief executive's authorisation' should be forwarded to the relevant program areas, that is, the Communicable Diseases Branch and/or the Environmental Health Branch.

7. Undertake authorised prevention and control program [Section 39, 40, 41, 42]

- Authorised persons must undertake the program.
- Either local government to undertake the program, OR Queensland Health to undertake the program, OR local government and Queensland Health combined to undertake the program jointly as authorised by chief executive or delegate.

8. Exercise of powers [Section 40]

- For undertaking a prevention and control program, authorised persons may only exercise powers under Chapter 2 Part 4 of *Public Health Act 2005* and must not exercise the powers under chapter 9, unless investigating a contravention of a provision of Chapter 2 Part 4 of the Act.
- Note: Sections 41, 42 and 43 deal with entry powers and notification and sections 44 and 45 deal with breaches.

- Note: vector control officers appointed under the Act as authorised persons with powers limited to Chapter 2 Part 4 ‘Authorised prevention and control programs’ do not have general powers and cannot issue a ‘public health order’ as the person needs to also be appointed for the purposes of Chapter 2 Part 3.

9. Notification of prevention and control program [Section 46]

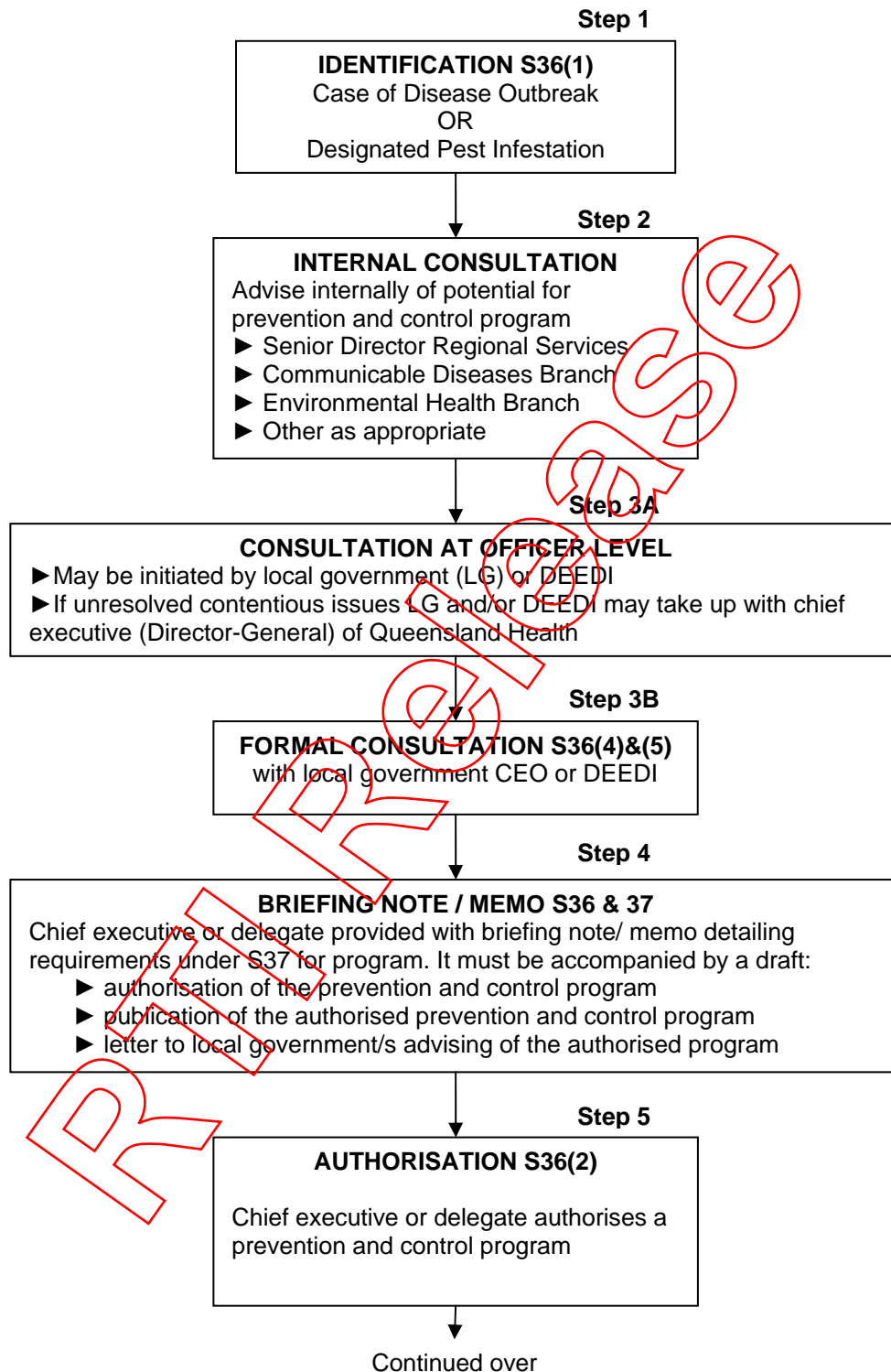
- An authorised person must after exercising powers when the occupier is at the place must under 46(a) inform the occupier:
 - a) of the steps taken/to be taken to eradicate and prevent the occurrence or recurrence of the designated pest and
 - b) that it is an offence for the occupier to interfere with a step taken to eradicate and prevent the occurrence of the designated pest.
- An authorised person after exercising powers when the occupier is not present at the place must under Section 46(b) leave a written notice in a reasonably secure way and in a conspicuous position (refer to template prevention and control program notice).

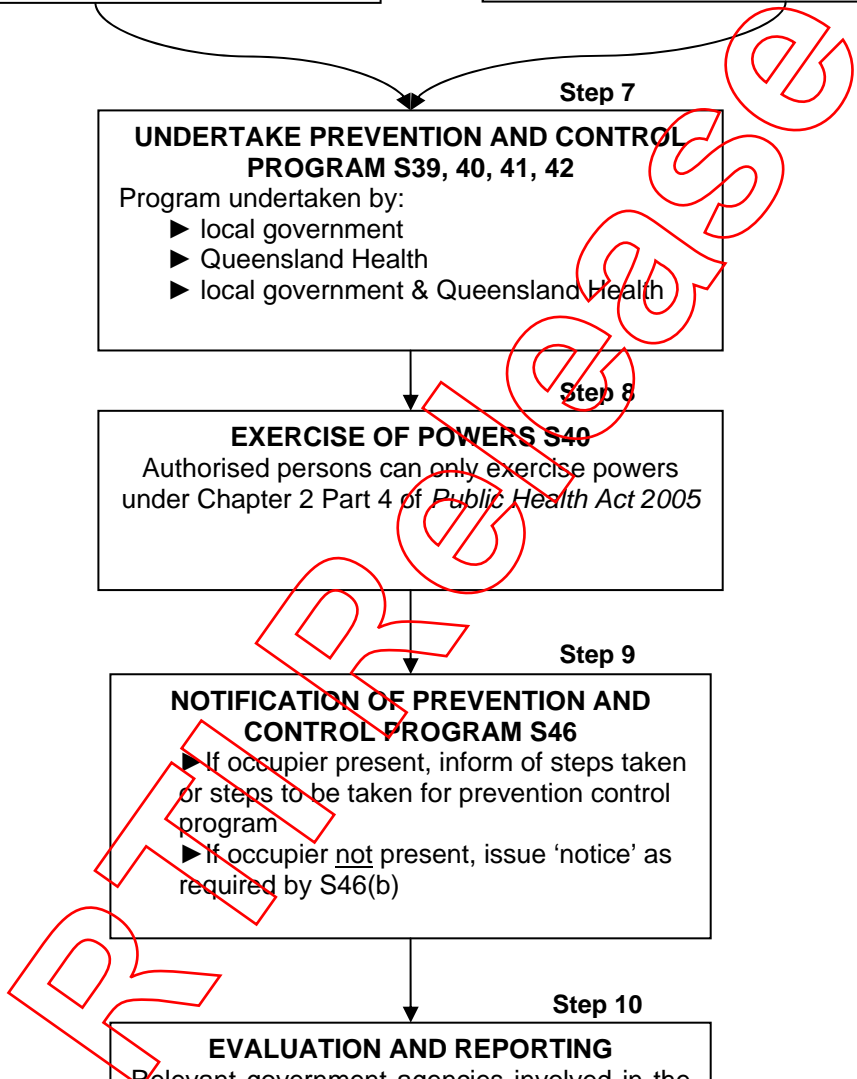
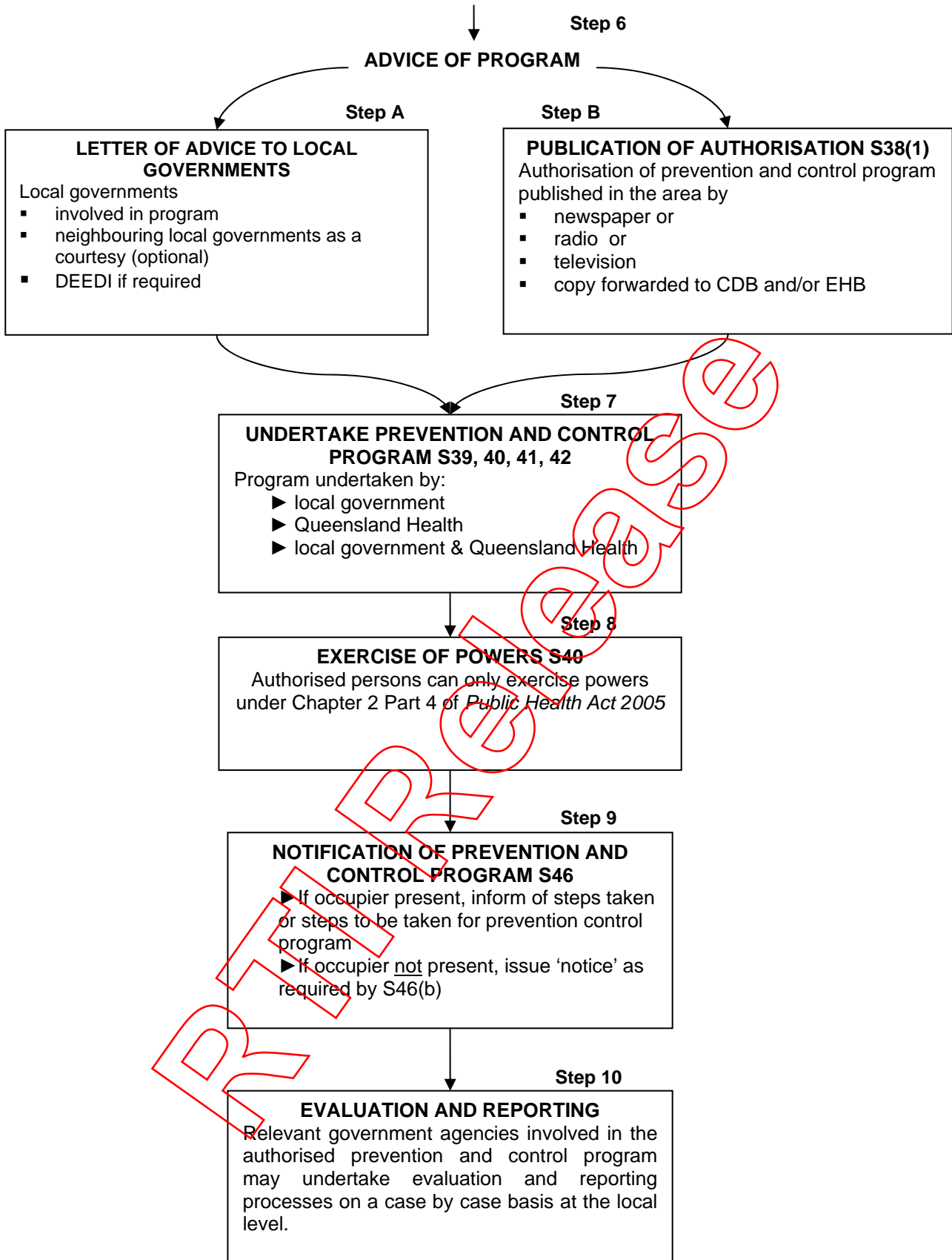
10. Evaluation and reporting

- Relevant government agencies involved in the authorised prevention and control program will undertake an evaluation and reporting process on a case by case basis at the local level. It would include an assessment on whether the program met its objectives. Relevant program areas, ie. the Communicable Diseases Branch and/or the Environmental Health Branch, should be involved in evaluation processes to facilitate continuous improvement objectives and convey findings that will benefit future prevention program planning.

RTI RELEASES

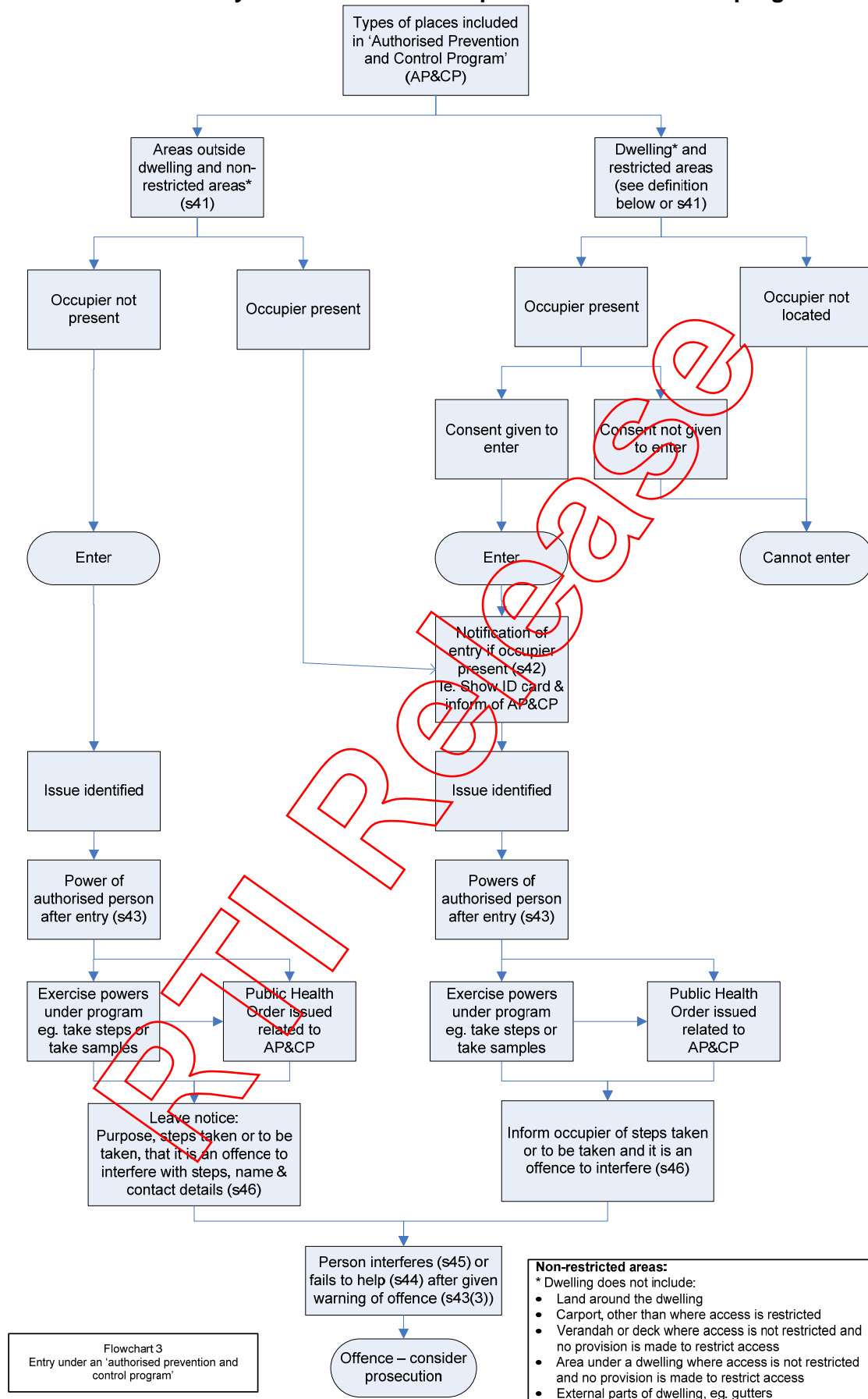
Flowchart
Steps for authorising and undertaking a prevention and control program





APPENDIX 3

Flowchart – Entry under an authorised prevention and control program



Purpose

To provide guidance to local government Environmental Health Officers on the mosquito provisions of the *Public Health Regulation 2005*.

Background

The health impacts and management of mosquitoes is not a new issue to government, businesses and the community. Legislation to deal with the health risks posed by mosquitoes has been in place for some time under the *Mosquito Prevention and Destruction Regulations 1982* and the *Health Regulation 1996*. This policy has been continued under the *Public Health Regulation 2005* (the Regulation). The regulation does not bind the state and the division is administered and enforced by local government.

In the Regulation, 'mosquito' includes a mosquito in each stage of its life cycle (adult, egg, larvae and pupa).

Legislation

The *Public Health Regulation 2005* (the Regulation) sets out a number of legal responsibilities for various people to manage the health risks posed by mosquitoes. The purpose of the legislation is to control mosquitoes and prevent and control the public health risks mentioned in section 11(1)(a) and (b)(i) of the Act in relation to mosquitoes. Mosquitoes are defined as a designated pest in schedule 2 of the Act. The harbourage provisions of the *Health Regulation 1996* are now contained in the public health risk provisions section 11 (1)(a)(ii) of the *Public Health Act 2005*.

The Act and Regulation is available at www.legislation.qld.gov.au.

House-to-house visitations are dealt with under Chapter 2, Part 4 Authorised prevention and control programs, and Chapter 9, Part 4 Approved inspections programs of the *Public Health Act 2005*. Offences under the regulation may be used as part of an Authorised Prevention and Control Program and more information is contained in the document 'Guidance Note – Public Health Act - Authorised Prevention and Control Programs'. Approved inspection programs can be used to monitor compliance with the requirements in the regulation. Information on enforcement options for mosquitoes, such as public health orders, and legal options for entry to places to enforce the regulation can be found in the document 'Public Health Act 2005 - Public Health Risks Enforcement Guidelines'.

General information on offences

Below is a table of the offences relating to mosquitoes. Separate guidance on Prescribed Infringement Notices (PINs) is in the document 'Procedure – Public Health Act – Prescribed Infringement Notices'. Information on other enforcement options, such as public health orders, and legal options for entry to places to enforce the Regulation can be found in the document '*Public Health Act 2005 Public Health Risks Enforcement Guideline*'.

Public Health Act – 7 Public Health Regulation – Mosquitoes

QLD Health		Short / Common Description of Offence	Penalty (penalty units)	
Offence code	Section PH Act	Public Health Act 2005	Public Health Act	Penalty Infringement Notice*
QH 401	s 23(4)	Failure by the recipient of a public health order to comply with the public health order or provide a reasonable excuse for not complying	200	5 (Individual) 25 (Corporation)
Offence code	Section PH Reg	Public Health Regulation 2005	Public Health Regulation	Penalty Infringement Notice*
QH 408	s.2N(1)	Failure by a relevant person for a place to ensure that an accumulation of water or another liquid at the place is not a breeding ground for mosquitoes	40	4
QH 409	s.2O(1)	Construction of a 'relevant tank' that does not comply with section 2P of this regulation	40	3
QH 410	s.2O(2)	Installation of a 'relevant tank' (whether above or below ground) that does not comply with section 2P of this regulation	40	3
QH 411	s.2O(3)	Failure by a relevant person to ensure the tank is maintained so it continues to comply with section 2P	40	3
QH 412	s.2Q(1)	Destroying, damaging or removing a mosquito-proof screen or flap valve fixed to a 'relevant tank'	40	3

*Offences prescribed under the *State Penalties Enforcement Regulation 2000*. Under the *Sentence and Penalties Act 1992*, a penalty unit is equal to \$110.

Interpretation

Each section of the Regulation is interpreted below.

Section 2L - Definition of 'relevant tank'

The definition of a 'relevant tank' covers a wide range of receptacles that can hold a liquid. A relevant tank means a tank or other receptacle that is used or intended to be used for holding or storing water or another liquid. The liquid has to be capable of sustaining the life cycle of the mosquito. It cannot be weed killer for example.

The definition appears to include dams and artificial ponds made using earth, which are sometimes referred to as tanks. Clearly sections 2O, 2P and 2Q are not to be applied to dams.

Section 2N - Requirement to ensure place is not a breeding ground for mosquitoes

Section 2N sets out the requirement that a relevant person must ensure that an accumulation of water or another liquid at a place is not a breeding ground for mosquitoes. The definition of 'relevant person' is contained in section 2L - "A relevant person means an occupier of the place or if no occupier the owner of a place". This is the same intent that existed in the previous regulation.

The relevant person has the responsibility of making sure all 'reasonable steps' have been taken to ensure the place does not become a breeding ground for mosquitoes. 'Reasonable steps' could include but are not limited to emptying all containers holding water and wiping the container out, chemically or biologically treating accumulated or impounded water to prevent mosquito breeding, filling in ditches to prevent ponding of water and adding fish to ponds or water features. Local government officers can and will need to use their professional knowledge and discretion in deciding alternative steps.

The definition of 'breeding ground' for mosquitoes means a place where mosquito eggs, larvae or pupae are present. It is important to be aware that it now includes not only larvae and pupae being present but also includes when eggs are present.

Section 2N(1) - Failure by a relevant person for a place to ensure that an accumulation of water or another liquid at the place is not a breeding ground for mosquitoes

Refer to section 2L of the regulation for the definitions of 'mosquito', 'relevant person' and 'relevant tank' and section 2N(3) of the regulation for the definition of 'breeding ground'. Some examples of areas where liquid may accumulate and become a breeding ground for mosquitoes include bromeliads, bowls and other containers, drains, gutters, car bodies, ponds, swimming and tidal pools, sump traps, tyres, tubs and water features.

Note: It is a defence for the defendant in a proceeding for an offence against section 2N(1) to prove that they took all reasonable steps to ensure compliance with section 2N(1).

Section 2O - Construction, installation and maintenance of a relevant tank

This section contains three offences. The offences are self explanatory and relate to *section P – requirements for a relevant tank*. Refer to section 2L of the regulation for the definitions of 'mosquito', 'relevant person' and 'relevant tank' and section 2N(3) of the regulation for the definition of breeding ground.

Section 2P - Requirements for a relevant tank

These provisions are very similar to those in the previous regulation. The relevant tank needs to be in good repair, as do the mosquito-proof screens and the flap valves which are at every opening of the tank. The mosquito-proof screens are to be made of brass, copper, aluminium or stainless steel gauze and have a mesh size of not more than 1mm. The screens are to be installed in a way that does not cause or accelerate corrosion. Professional judgement will be required.

Section 2Q - Offence to damage screen or flap valve

This section is self explanatory. It carries a qualification that an offence is not committed by a person carrying out maintenance on the relevant tank provided all screens or flap valves are replaced immediately after the maintenance is completed.

Associated documents

Guidance Note – Public Health Act - Appointments and delegations by local governments under the *Public Health Act 2005*

Guidance Note – Public Health Act – Authorised Prevention and Control Program

Guidance Note – Public Health Act – Approved Inspection Programs

Procedure – Public Health Act – Prescribed Infringement Notices.

Contact

For further information, please contact the Queensland Health Communicable Diseases Branch on 3328 9741.

Further Information

More information and resources related to the Public Health Act 2005 are available at:

- <http://www.health.qld.gov.au/publichealthact/default.asp>

Prepared by: Communicable Disease Unit, Chief Health Officer Branch, Health Service and Clinical Innovation Division, State Department of Health

Effective Date: 14 February 2014

Review Date: 2019

Administering the Act in partnership

Public Health Act Guideline

Scope

Chapter 2 of the *Public Health Act 2005* clearly delineates the roles of the State and Local Government in the administration and enforcement of public health risks. However, under section 14, with the agreement of both the chief executive of Queensland Health and a chief executive officer of a Local Government, the State may perform a function designated to Local Government and alternatively, a Local Government may perform a function designated to the State. In this circumstance, the chief executive and the chief executive officer may perform the functions and exercise powers under the Act designated to the other party.

This guidance note explores some considerations when putting into place such an agreement, to ensure it has a comprehensive and well defined scope and is acceptable and workable for both parties. The focus of this document is on an agreement whereby Queensland Health provides an authorised person to work in a local government area. Nevertheless, in the reverse situation, the considerations for the agreement would be the same.

Critical issues

There is no requirement under the Act as to the format of a partnership agreement. It may take a number of forms, ranging from a formal written contract, to an exchange of letters or a verbal agreement. Verbal agreements are not recommended. If a verbal agreement is made, it should be confirmed in writing as soon as possible.

The scope of the partnership agreement must be limited to the administration and enforcement of public health risks for the *Public Health Act 2005*, or a regulation about public health risks under section 61, such as the *Public Health Regulation 2005*.

An agreement of this type between the State and a Local Government is unrelated to an agreement whereby two or more local governments jointly appoint an authorised person under sections 376 and 377 of the Act.

Delegations

The Act states the agreement will be between the chief executive, Queensland Health and the chief executive officer of the Local Government. Queensland Health has delegations in place for such agreements. Local governments may also delegate the authorisation of such an agreement. When any such agreements are entered into, the agreement must be appropriately authorised by the chief executive of Queensland Health, the chief executive officer of a Local Government, or persons delegated to make the decision.

Appointments

The chief executive of Queensland Health or the chief executive officers of Local Governments may appoint authorised persons. An authorised person may only exercise powers in accordance with their instrument of appointment, within the area of their appointment and only in relation to functions for which their employer is responsible.

Further to this, section 14 allows the chief executive of Queensland Health to exercise powers and perform functions for the Act in matters administered by local government and conversely, the chief executive officer of a Local Government to exercise powers and perform functions for the Act in matters administered by the State. This includes appointing authorised persons. Therefore, the appointment of an authorised person by the chief executive of Queensland Health is sufficient, under an agreement by both parties, for a Queensland Health authorised person to perform the functions of a local government authorised person and vice versa. No *separate* appointment would be required for a Queensland Health authorised person to work in a local government area, and any authorised person appointed by the chief executive of Queensland Health could perform the function.

An authorised person in the above role may be appointed before or after the agreement was made. Local governments may obtain more information in the guidance note *Appointments and delegations by local governments under the Public Health Act 2005*.

Considerations

The exact scope of the agreement between the parties should be clearly set out and understood. The scope may vary across a range of parameters. Some particular items for consideration are:

Timeframe

Partnership agreements may operate in a number of different ways. Some scenarios may be:

- a long term arrangement eg. where a remote local government administers State public health risks or the State administers local government public health risks for a small local government.
- a standing agreement but the partnership only applies from time to time upon request
- a request for short term assistance from a local government or from the State
- a request for a one-off action (eg. enforcement action for a particular issue).

For long term or standing agreements, there should be a renewal or review of the agreement after a specified period of time.

Functions included in the agreement

The administration of public health risks includes monitoring and surveillance, dealing with complaints, general enforcement action, conducting authorised prevention and control programs and approved inspection programs. The agreement may have a limited scope or may apply to all functions for the administration of public health risks under the *Public Health Act 2005*.

It is also possible that functions from other Acts could be included (section 25 of the *Food Act 2006* provides for a similar partnership agreement).

Authorisation and enforcement issues

The terms of the agreement should detail who is the authorising body for actions taken by the authorised person in the local government area. According to the Act, either administration could authorise official matters.

The identity of the authorising body has implications for enforcement action taken by the authorised person. Responsibility for any follow up action and possible legal proceedings will most likely rest with the authorising body. If actions are authorised by the local government chief executive officer, this would allow legal proceedings to be routed through the usual legal systems of the local government. If Queensland Health were the authorising body, costs associated with legal action would be incurred on behalf of the local government.

The agreement should also consider how the decision making mechanisms will operate. The local government may desire a level of consultation before any enforcement action is taken on their behalf. This would allow their participation in deciding what level of action is appropriate. The level of consultation expected should be clearly set out in the agreement.

Debt recovery

The Act provides for a debt recovery mechanism when action is taken to remove or reduce a risk to public health under an enforcement order (section 31), or a public health order or warrant (section 406). The issuing authority may recover the amount of the reasonable costs and expenses incurred in exercising powers under orders or a warrant. If the debt is for action taken by a local government on land owned by a person in the local government area, any unpaid debt becomes a charge on the land and may be registered with the registrar of titles. Cost recovery mechanisms for local governments mirror those available under the *Local Government Act 2009*.

If the issuing authority for any of the above is Queensland Health, the debt may be recovered but it is not possible to convert this to a charge on land. The only recourse Queensland Health would have to recover a debt owed would be to take the matter through the court system. Information on resolution of these claims is provided on the Department of Justice and Attorney-General website.

The Act also allows a cost recovery mechanism for a member of the public who has been given a public health order but believes another party is either wholly or partly responsible. Section 33 allows a person to seek part or full payment for costs of removing or reducing a public health risk from another party.

Assessing public health risks

Guideline

1. Introduction

1.1 Purpose

The purpose of this guideline is to provide:

- background information on health risk assessment and how it can generally be applied to environmental health issues
- guidance on how to determine if a 'public health risk' exists under the provisions of the *Public Health Act 2005* (the Act)
- example approaches to collecting and documenting information to support public health risk assessment.

The guideline should be read in conjunction with the Act.

1.2 Context

The Act uses the term 'public health risk'¹ to cover particular types of hazardous agents. These agents include breeding grounds for mosquitos, vermin harbourage, water and waste.

Section 11 of the Act provides the meaning of 'public health risk'. Authorised persons under the Act must be able to determine that a public health risk exists or is likely to exist before taking enforcement action (eg. serving a public health order). To be able to determine that a public health risk exists, an authorised person must be able to prove the elements of section 11. This guideline can assist in proving some of these elements (eg. "is, or is likely to be, hazardous to human health", "contributes to, or is likely to contribute to, disease in humans", "the transmission of an infectious condition to humans").

NOTE: It is important to remember that when determining whether a public health risk exists that **risk is more than just presence of a hazardous agent**. In order for a hazardous agent to be a public health risk, people need to be exposed to a level of the agent that is known to be responsible for an adverse health effect. For example, the presence of dog faeces in a person's backyard is not a public health risk on its own. However, dog faeces are known to contain pathogenic microorganisms and attract flies. Flies are known to be carriers of pathogenic microorganisms. If it can be proven that flies are landing on the faeces and that humans in the vicinity are likely to be exposed to the faecal matter carried by the flies, then this could be determined to be a public health risk.

2. Health risk assessment and public health risk

The use of health risk assessment as a tool to respond to and manage environmental health issues has become increasingly important as it is recognised that situations cannot be judged simply as either 'safe' or 'unsafe'.

The application of health risk assessment in assessing public health risks is not a new concept. Under the other legislation, officers assess environmental hazards to determine whether risk exists. Often this assessment is intuitive or based on previous experience.

Under the Act, the same intuitive or experience-based approach to assessing public health risks remains valid. Notwithstanding this, a more structured approach to assessing risks provides greater surety that risks are assessed in a systematic, consistent and transparent manner across different hazards and by officers across the state.

The enHealth Council (2002) has developed guidelines on environmental health risk assessment and provide a framework (Figure 1) for the assessment of public health risks. The guidelines define health risk assessment as: *'The process of estimating the impact of a chemical, biological, physical or social agent on a specified human population system under a specific set of conditions and for a certain timeframe'* (enHealth Council, 2002).

Determining whether a public health risk exists may require different levels of professional skills and knowledge. In some situations, an authorised person will be able to assess and determine a public health risk exists based on their personal skills and knowledge and quick, relatively simple investigation. In other situations, advice/evidence may need to be sought from an appropriately qualified and skilled expert (eg. a toxicologist, a medical professional) and more detailed risk assessment and investigation required.

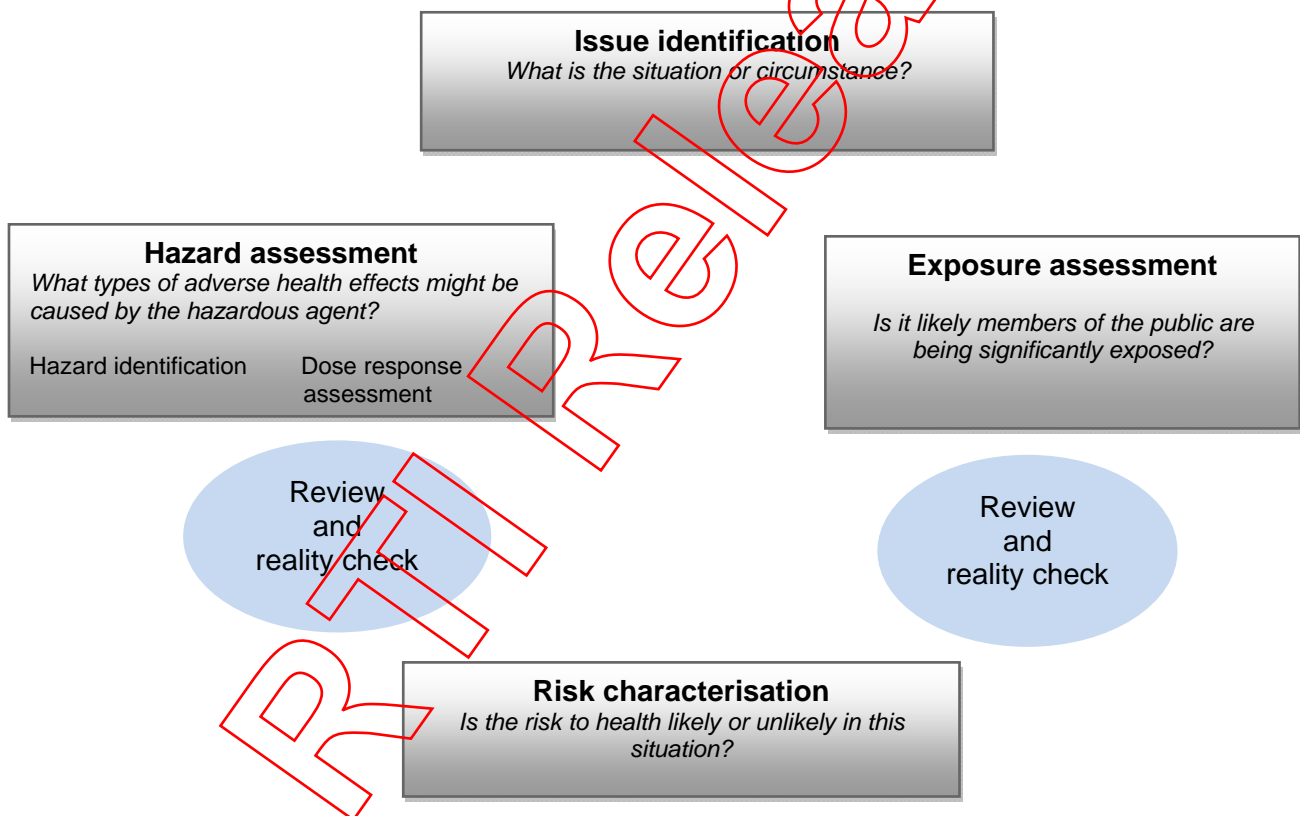


Figure 1 Health risk assessment flow chart (adapted from enHealth Council, 2004)

2.1 Steps to assessing public health risk

The following sub-sections provide a brief description of each step of health risk assessment. The enHealth Council guideline (2002) on environmental health risk assessment provides more detail on each step.

2.1.1 Identifying the issues

This step involves developing a clear understanding of the issues the risk assessment will need to address. This process will assist in determining the scope and specific objectives of the risk assessment.

In identifying the issues it will be necessary to consider:

- how the problem was initially identified;
- what types of hazardous agents are causing the identified problem;
- how quickly and for what duration the problem might be experienced (eg. short, medium or long term); and
- how does the public/complainant perceive the problem

2.1.2 Hazard assessment

Hazard assessment comprises two aspects: hazard identification and dose-response assessment.

- **Hazard identification**

Hazard identification involves determining

- what types of adverse health effects might be caused by the hazardous agent/s, or
- how quickly the adverse health effects might be experienced and their duration

- **Dose-response assessment**

Dose-response assessment would normally be undertaken for complex assessments. If a health based exposure standard or guideline is available for a hazardous agent, further assessment of the level of exposure required to produce an adverse response will not be necessary.

The enHealth Council guidelines (2002) provide further information on how to assess dose response.

2.1.3 Exposure assessment

Exposure assessment involves determining the magnitude, frequency, duration, route and extent of exposure to one or more hazardous agents for the general population, for different subgroups of the population, or for individuals.

During the exposure assessment process, the following may need to be considered:

- - are samples/measurements required
- - what will be sampled/measured
- - where will the samples/measurements be taken
- - how will the samples/measurements be taken
- - how will the samples/measurements be interpreted and communicated
- - are photographs required
- - what other information is required.

The enHealth guidelines (2002) provide a useful description of how to assess exposure. Generally, exposure assessment will require consideration of:

- Exposure pathways and routes:
 - The potential and most significant exposure pathways (eg. water, air, food, soil, injury (eg. bites));

- Exposure routes (eg. ingestion, inhalation, absorption/puncture skin).

- Magnitude:

When evaluating the level of exposure, it is important to consider the frequency and extent of exposure as well as the population (including any specific sub-populations) exposed to the hazardous agent/s. The estimate of the magnitude of exposure may be qualitative (ie. Insignificant, intermediate or significant).

An estimate of the magnitude or level of exposure, for example may consider:

- The estimated number of pests or potential number of pests,
- The estimated or actual amount of hazardous agent taken in by the exposed individuals through various pathways (eg. ingestion of water/food/soil, inhalation of air) under a range of scenarios, including worst case.
- Frequency and duration:
 - How frequently the exposure has occurred or is likely to occur if not mitigated (eg. intermittent or continuously);
 - How long each exposure event has occurred or is likely to occur if not mitigated (eg. intermittent or continuously); and
 - If there is potential for cumulative exposure (eg. through exposure to multiple sources of the hazardous agent).
- Extent:
 - The geographical extent of exposure (ie. how wide spread is the hazardous agent and how many people could be affected including any sensitive sub-populations); and
 - The behaviour, occurrence, distribution and fate of the hazardous agent in the environment (eg. transport/mobility in soil or water, uptake by plants, persistence in the environment, potential to bioaccumulate in the food chain). This is mainly relevant for chemicals (eg. dioxins, pesticides) and is particularly useful information for determining appropriate risk management strategies.
- Population exposed:
 - The exposed population, particularly sensitive sub-populations:
 - General sensitivity common to most hazardous agents (eg. children, pregnant women, elderly, immuno-compromised)
 - Specific sensitivity to the hazardous agents by predisposed individuals (eg. air pollution and asthma);
 - Whether the hazardous agent could affect sensitive sub-populations at key locations (eg. schools, nursing homes, hospitals, child care centres).

2.1.4 Risk characterisation

Risk characterisation involves synthesising information from the previous steps of the risk assessment to describe the potential for adverse health effects to occur and to evaluate any uncertainty in the results and assessment process. Risk characterisation should enable a decision to be made on whether a public health risk exists or not.

Risk characterisation describes the risks to individuals and populations in terms of the nature, extent and severity of potential adverse health effects resulting from exposure (or potential exposure) to the hazardous

agent. It should include a summary of the key issues and conclusions of each of the other steps of the assessment, as well as describing the nature and likelihood of adverse health effects. The summary should include a description of the overall strengths and limitations (including uncertainties) of the assessment and conclusions.

Standards/guidelines/references can be used to assist in determining whether a public health risk exists or not. For example, the Australian Drinking Water Guidelines provides guideline concentrations for particular contaminants in drinking water. Where there are standards to compare the exposure levels against, these should be used to characterise the risk. Where there are no standards, it is appropriate to use the information gathered in the issue identification, hazard assessment and exposure assessment steps to determine the likelihood of exposure and the consequences.

In some situations, it may be difficult to determine that a public health risk exists when exposure exceeds a standard or guideline by a very small amount. It may be appropriate to undertake a more detailed assessment or expert advice will be required to determine the extent that a public health risk might exist.

Where there are no standards or guideline values it may be necessary to derive an "acceptable" guideline value. In these cases it may be appropriate to seek assistance from qualified professionals (eg. toxicologists). Reference can also be made to the enHealth Council guidelines (2002) for guidance.

Caution is required when interpreting standards and guidelines. Varying assumptions are used to derive standards and guidelines. These can relate to: exposure pathway (eg. inhalation, ingestion, absorption), amount of material consumed, duration of exposure and specific characteristics of sensitive populations (eg. children). An understanding of these assumptions is important when comparing exposure with standards, particularly when an estimated exposure is close to or above a standard or guideline. Further, standards and guidelines may often account for uncertainty by using uncertainty factors. These factors account for adequacy of the study, interspecies extrapolation, inter-individual variability in humans, adequacy of the overall data base, nature and extent of toxicity and scientific uncertainty.

2.2 Risk management and risk communication

If a health risk assessment is carried out on a particular issue and it's found that a public health risk exists, the next step is to determine what action must be taken to manage it. For an authorised person, this means determining what the person responsible for the public health risk must do to remove or reduce the public health risk or to prevent the risk from recurring. It also means determining what enforcement action should occur.

The action taken to manage a public health risk should be appropriate to the circumstances and have regard to the nature and seriousness of the risk to public health. Further information on choosing an appropriate level of response is available in the '*Public Health Act 2005 – Public Health Risks – Enforcement Guideline*'.

Risk communication is essential throughout the process of health risk assessment particularly after results of the assessment have been obtained. Risk communication involves clearly explaining in a manner understandable to the audience (eg. the public, industry) what the likely health risks are from exposure to the hazardous agent they are concerned about.

Attachment – case examples and approaches for collecting and documenting information

Example A: Micro – organism contamination of rainwater tank

Example B: Mosquito breeding in a water reservoir

Example C: Termiticide contamination of drinking water

The following examples illustrate the health risk assessment process.

They are not to be relied upon as evidence for any real assessment or investigation. Officers must gather their own data, information and evidence and conduct their own assessment and investigation.

Other examples of health risk assessments are available in the enHealth document “*Environmental Health Risk Assessment: Guidelines for assessing human health risks from environmental hazards*”.

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Example A: Micro – organism contamination of rainwater tank

Assessment

Identifying the issues

- Possible presence of pathogenic micro-organisms (e.g. *Salmonella*) in water tank
- The water tank is the primary source of drinking water for residents in the household
- All residents are adults with no existing health problems
- Owner found a dead frog in the tank and residents have reported stomach cramps and diarrhoea
- Already experiencing the problem and expected to be a short-term problem

Hazard assessment

From testing of the water, *Salmonella* was identified

Identifying the hazard associated with Salmonella

- Gastroenteritis, stomach cramps, diarrhoea
- Symptoms appear 6 – 12 hours after exposure and may last for several days

Dose-response assessment

- No *Salmonella* should be detected in any water samples (ADWG)

Exposure assessment

- Tank provides only source of water for domestic use
- *Salmonella* detected in drinking water samples from taps and tank
- Tank provides water to only one house
- No sensitive groups currently live in

Risk characterisation

Public health risk	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
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Justification

Reasonable belief that a public health risk exists due to the presence of *Salmonella* in the primary drinking water source and residents have reported symptoms of gastrointestinal illness.

Example B: mosquito breeding in a water reservoir

Please note: this particular scenario could constitute an offence under the Public Health Regulation. Depending on the enforcement measure required, the public health risk provisions may be used instead of the Public Health Regulation.

Assessment

Identifying the issues

- There are existing cases of Dengue fever in the area
- Mosquitoes breeding in water reservoirs near to residential areas may carry Dengue viruses
- Part of a campaign to reduce Dengue fever cases in the area following an outbreak of Dengue fever
- Considerable community concern

Hazard assessment

Identifying the hazard

- Dengue fever – more commonly seen in older children and adults
- Dengue haemorrhagic fever – most commonly seen in children under fifteen years of age, but can also occur in adults
- Health effects usually occur suddenly

Dose-response assessment

- One mosquito can infect a person

Exposure assessment

- Known cases of Dengue fever in area and numerous suitable water reservoirs for breeding mosquitos are located in people's backyards throughout the community – photographs have been taken of water reservoirs
- The mosquito that carries the virus is known to be in the area – identified from collected mosquitos
- Mosquitos usually only travel about 1 km from their breeding sites
- People living within 1 km of cases of Dengue fever are at risk
- Young children live within the mosquito affected area

Risk characterisation

Public health risk	Yes	✓	No
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Justification

Reasonable belief that a public health risk exists due to the significant presence of suitable water reservoirs for mosquito breeding and reported cases of Dengue fever in the area.

Example C: Termiticide contamination of drinking water

Assessment

Identifying the issues

- Organ-phosphate pesticide (chlorpyrifos) used to kill termites has possibly leached into a household's drinking water. Children live in the household.
- Residents have detected a taint in the drinking water and reported experiencing nausea and headaches
- Considerable concern and anxiety among people in household

Hazard assessment

Identifying the hazard

- Chlorpyrifos, like other organophosphate compounds, inhibits cholinesterase enzymes that play a key role in the normal functioning of the nervous system
- Health effects generally occur within 4 hours of exposure

Dose-response assessment

- Guideline values for chlorpyrifos – ADWG health value of 0.01 mg/L

Exposure assessment

- Reticulated water supply is only source of water for domestic use
- Chlorpyrifos concentration in the water samples was 0.1 mg/L (approx. 10 times the ADWG)
- Contamination localised to single residence
- Adults and children living in the residence
- Children are a sensitive sub-group

Risk characterisation

Public health risk	Yes	✓	No
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Justification

Reasonable belief that a public health risk exists due to the presence of chlorpyrifos in the primary water source at approx. 10 times the ADWG and people in the residence have reported symptoms consistent with mild chlorpyrifos poisoning

References:

enHealth Council, 2002. *Environmental health risk assessment: guidelines for assessing human health risks from environmental hazards*. Canberra: Department of Health and Ageing.

Assessing public health risks

Template

Process / Model

Assessment

Identifying the issues

- How the problem was initially identified
- Why the issue is a problem
- What types of hazardous agents are causing the identified problem
- How quickly and for what duration the problem might be experienced (ie short or medium or long term)
- How do the public perceive the problem

Hazard assessment

Identifying the hazard

- What adverse health effects might be caused by the hazardous agent or situation
- How quickly the health effects might be experienced and their duration

Dose response assessment

- What standards / guidelines / reference values have been developed for the hazardous agent?

Exposure assessment

Exposure pathways and routes

- The potential and most significant exposure pathways (water, air, food, soil and injury)
- Exposure routes (ingestion, inhalation and absorption / puncture of skin)

Magnitude or level of exposure

- The estimated number of pests or potential number of pests, or
- The estimated contaminant intakes from the various pathways (ie water, air, food and soil) under a range of scenarios, including worst case

Note: an estimate of the magnitude of exposure may be qualitative (ie insignificant, intermediate or significant) or the estimate may be quantitative where reliable data is available.

<p>Things to consider re data collection</p> <ul style="list-style-type: none"> • Are samples / measurements required • What will be samples/measured • Where will the samples/ measurements be taken • How will the samples/measurements be interpreted and communicated • Are photographs required[what other evidence is required= 	
<p><i>Frequency and duration</i></p> <ul style="list-style-type: none"> • How frequently the exposure has occurred or is likely to occur if not mitigated (eg. nil, daily, weekly, monthly); • How long each exposure event has occurred or is likely to occur if not mitigated (eg. nil, minutes, hours, days); • If there is potential for cumulative exposure (through exposure from multiple sources); <p><i>Character and extent</i></p> <ul style="list-style-type: none"> • The geographical extent of exposure (ie. How wide spread is the hazard and how many people could be affected); and • The behaviour, occurrence, distribution, and fate of the hazard in the environment (eg. transport/mobility in soil or water, uptake by plants, persistence in the environment, potential to bio-accumulate in the food chain). This is mainly relevant for chemicals, eg dioxins, pesticides, and is particularly useful information for determining appropriate risk management strategies. <p><i>Population exposed</i></p> <ul style="list-style-type: none"> • The exposed population, particularly sensitive sub-populations: <ul style="list-style-type: none"> a) General sensitivity common to most hazards (eg. children, pregnant women, elderly, immuno-compromised) b) Specific sensitivity to the hazard by predisposed individuals (eg. air pollution and asthmatics); • Whether the hazard could affect sensitive sub-populations at key locations (eg. schools, nursing homes). 	
<p>Risk characterisation</p> <p>Public health risk <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><i>Justification</i></p>

REF ID: A58488

Authorised persons

Roles and responsibilities

Introduction

This fact sheet provides a brief introduction to the role of an authorised person appointed under section 377 of the *Public Health Act 2005*.

Powers and responsibilities of an authorised person

Section 376 of the Act provides that an authorised person has the powers given under the Act. In exercising their powers, an authorised person is subject to the directions of the relevant administering executive (ie. the Chief Executive of Queensland Health or, for a local government, the Chief Executive Officer).

An authorised person may be appointed for the Act generally or for specific provisions, or to administer and enforce the Act only in respect of particular public health risks such as mosquitos or rats and mice. There are two types of public health risks:

- a) local government public health risks and
- b) state public health risks.

The distinction is made to enable responsibility for the administration and enforcement of specified public health risks to be allocated to either the State or local governments (refer to sections 12 to 18 of the Act).

Production or display of identity card

When exercising a power under this Act in relation to another person, an authorised person must produce/display their identity card so that is clearly visible to the other person.

Entry

An authorised person is given the power to enter a place through several methods. An authorised person may enter a place if:

- a) the occupier consents to the entry
- b) if it is a public place and the entry is made when it is open to the public
- c) the entry is authorised by a warrant or enforcement order.
- d) Entry is under section:

386 (Power to enter place to ascertain if public health risk)

387 (Power to enter place to check compliance with a public health order)

388 (Power to enter place to take steps if public health order not complied with)

389 (Power to enter place under approved inspection program)

390 (Power to enter a health care facility) or

e) entry is under section 41 (Power of authorised persons to enter place for a prevention and control program).

For the purpose of asking the occupier for consent to enter, an authorised person may enter land around the premises at the place to an extent that is reasonable to contact the occupier, or enter part of the place the authorised person reasonably considers members of the public are ordinarily allowed to enter when they wish to contact the occupier (section 385). It is important to note that if an authorised person cannot enter a dwelling without the occupier's consent, an enforcement order or a warrant is required.

The procedure for entry that the authorised person chooses will depend on the purpose of the entry. The following is a list of entry procedures available:

a) section 391 Entry with consent

b) section 392 Entry of place under section 386 (Power to enter place to ascertain if public health risk), section 387 (Power to enter place to check compliance with a public health order) or section 389 (Power to enter place under approved inspection program)

c) section 393 Entry of place under section 388 (Power to enter place to take steps if public health order not complied with)

d) section 398 Warrants - procedure before entry

e) section 30 Procedure before entry under enforcement order

f) section 41 Notification of entry (for prevention and control programs).

Note the provisions of section 3 of the Act. Although the Act binds the State, it is not bound by the following provisions; chapter 2, part 3 (public health orders), sections 386, 394 and 395 (see above). This limits the powers of local government to take enforcement action against the State. Issues will be resolved by contacting the relevant State representatives.

General powers after entry

After entry has been effected, an authorised person may exercise a range of powers, including power to:

a) search any part of the place

b) inspect, measure, test, photograph or film any part of the place or anything at the place

c) take a thing, or a sample of or from a thing, at the place for analysis or testing

d) copy a document at the place or take the document to another place to copy it

e) take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under Chapter 9

f) require a person at the place to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e)

g) require a person at the place to answer questions by the authorised person to help the authorised person ascertain whether this Act is being or has been complied with or there is a public health risk at the place.

When making a requirement mentioned above, the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse (section 399).

It is important to note that when undertaking a prevention and control program (Chapter 2 Part 4), an authorised person may only use the powers under this part and may not exercise the powers under Chapter 9, unless the authorised person is investigating a contravention of a provision under this part (Section 40). It

should also be noted, however, that an authorised person conducting a prevention and control program who is also appointed for Chapter 2, Part 3 (Public health orders), may give a person a public health order if the order is for the prevention and control of the designated pests to which the program relates.

Stopping a motor vehicle

If an authorised person reasonably suspects that a thing in or on a motor vehicle may provide evidence of commission of an offence against this Act or that there is a public health risk in or on the vehicle, the authorised person may request a person to stop a motor vehicle or to take it to a convenient place (Section 402).

Power to seize evidence

An authorised person who lawfully enters a place under chapter 9 **without** the consent of the occupier and without a warrant may seize a thing at the place only if the authorised person reasonably believes the thing is evidence of an offence against this Act (section 403).

An authorised person who enters a place **with** consent may seize a thing if the seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent. An authorised person who enters a place with a warrant issued under section 395(1) (a) may seize the evidence for which the warrant was issued. The authorised person may also seize anything else at the place if they believe that seizure of the thing is evidence of an offence against this Act and the seizure is necessary to prevent the thing being: hidden, lost or destroyed; or used to continue, or repeat, the offence. An authorised person may also seize a thing at the place if he or she reasonably believes that it has just been used in committing an offence against this Act (section 404(6)).

Power to require name and address

If an authorised person finds a person committing an offence against this Act or suspects a person has just committed an offence against this Act or is responsible for a public health risk, that then authorised person may require the person to state their name and residential address. When making the requirement the authorised person must warn the person that it is an offence to not comply, unless the person has a reasonable excuse (section 416).

Power to require production of documents

An authorised person may require a person to make available for inspection a document issued to the person under this Act or a document required to be kept by the person under this Act. The authorised person may keep the document to copy it and must return it to the person as soon as possible (section 418).

Obstruction of authorised persons

A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse (section 425).

Authorised persons (authorised prevention & control programs)

Introduction

This fact sheet provides a brief introduction to the role of an authorised person (AP) limited to those powers necessary to conduct authorised prevention and control programs. Authorised prevention and control programs are for the prevention and control of designated pests, which the Act defined as meaning mosquitos, rats, mice and other animals prescribed under a regulation.

An authorised person exercising powers under the Act is subject to the directives of the State or relevant local government that they are employed by. Section 377 of the Act empowers the Chief Executive of Queensland Health or, for a local government, the Chief Executive Officer to appoint authorised persons. To allow smaller local governments to “share” an authorised person, provision is made for the chief executive officers of two or more local governments to appoint the same person.

An authorised person may be appointed for the Act generally or for specific provisions, or to administer and enforce the Act only in respect of particular public health risks.

Authorised prevention and control programs

Under chapter 2, part 4 the Chief Executive (or delegate) of Queensland Health may authorise a prevention and control program if satisfied there is, or is likely to be, an outbreak of a disease capable of transmission to humans by designated pests, or a plague or infestation of designated pests. This would include, for example, an outbreak of dengue fever, or an infestation of dengue fever carrying mosquitos. The Chief Executive (or delegate) may authorise the State, local governments, or both the State and local governments to undertake the program.

Responsibilities of an AP for authorised prevention and control programs

Who may undertake a prevention and control program

The Chief Executive (or delegate) of Queensland Health may authorise that a prevention and control program is undertaken by:

- one or more local governments, if the Chief Executive Officer (or delegate) of each local government agrees or the State or
- the State and one or more local governments, if the Chief Executive Officer of each local government agrees.

Only authorised persons may undertake prevention and control programs.

Entry to places

An authorised person undertaking a prevention and control program may enter a place, in the area to which the program relates, at any reasonable time of day or night to search for:

- the designated pests to which the program relates
- an animal, structure, substance or other thing that –
 - is, or is likely to become, a breeding ground or source of food for designated pests or
 - harbours, or is likely to become something that harbours, designated pests.

For example, under a program an authorised person could search for mosquitos and water sources capable of breeding mosquitos; or search for mice, food that may attract and feed mice and rubbish that may harbour them.

An authorised person must not enter a dwelling without the occupier's consent. An authorised person may enter the following (without consent), which do not form part of a dwelling:

- a carport, other than a carport to which access is restricted
- the area of a veranda or deck, to which access is not restricted and no provision is made to restrict access
- the area underneath a dwelling to which access is not restricted or no provision is made to restrict access (for example a closed gate)
- any other external parts of the dwelling, including, for example, the dwelling's gutters and
- land around the dwelling (section 41).

Notification of entry

After entering a place under a prevention and control program and the occupier is present, the authorised person must immediately produce identification and inform the occupier about the program (section 42).

Powers after entry

After entering a place under a prevention and control program an authorised person may exercise the following powers:

- take reasonable steps to eradicate or prevent the occurrence or recurrence of the designated pests, including by the use of pesticides
- take a thing, or a sample of or from a thing, for analysis or testing
- take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this section and
- require a person at the place to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (c) (section 43).

It is an offence for a person to fail to comply with an authorised person's reasonable request for help under section 43, unless the person has a reasonable excuse (section 44). It is also an offence for a person to interfere with steps taken by an authorised person under a prevention and control program, unless the person has a reasonable excuse (section 45).

Powers for prevention and control programs

When undertaking a prevention and control program, an authorised person may only use the powers under chapter 2 part 4 and may not exercise the powers under chapter 9 (section 40).

It should be noted, however, that an authorised person conducting a prevention and control program who is also appointed for chapter 2, part 3 (or the Act generally as is the case with Queensland Health environmental health officers) may give a person a public health order if the order is for the prevention and control of the designated pests to which the program relates. For example, following entry under a prevention and control program for mosquitos, an authorised person may give a public health order requiring the recipient to empty a stagnant pool to prevent mosquitos from breeding in the pool.

Notification of a program

After exercising the authorised person's powers under a prevention and control program, if the occupier is present, the authorised person must inform the occupier of any steps taken and that it is an offence to interfere with a step taken.

If the occupier is not present the authorised person must leave a notice at the place stating:

- the purpose of the prevention and control program
- any steps taken or to be taken under the program to eradicate or prevent the occurrence or recurrence of designated pests
- that it is an offence to do anything that interferes with a steps taken and
- the name and contact details of the authorised person (section 46).

RTI Release

Public Health Act – Approved inspection programs

Purpose

This guidance note is intended as a reference document for local governments and Queensland Health. It describes the legislative mechanisms for approving and undertaking an approved inspection program under the *Public Health Act 2005* related to public health risks.

What is an approved inspection program?

Section 427 of the *Public Health Act 2005* (the 'Act') allows the Chief Executive of Queensland Health or the Chief Executive Officer of a local government to approve a program under which authorised persons may enter places to monitor compliance with a regulation made under section 61 of the Act, ie. regulations about public health risks.

Sections 10 and 11 of the Act define terms for the purposes of the Act, including public health risk, local government public health risk and State public health risk. The definition for public health risks outlines those activities, animals, substances or things that are to be a public health risk for the purposes of the Act and also provides for other public health risks to be prescribed by regulation.

Local government public health risks and State public health risks are subsets of public health risks. The distinction is made to enable responsibility for the administration and enforcement of specified public health risks to be allocated to either the State or local governments. Section 14 of the Act provides for collaborative arrangements between the State and local government in the administration or enforcement of the Act.

Section 427(4) of the Act requires an approved inspection program to be a selective inspection program or a systematic inspection program.

A selective inspection program provides for the selection, in accordance with the Chief Executive's or Chief Executive Officer's approval, of places in an area to be entered and inspected under the approval.

A systematic inspection program provides for all places, or all places of a particular type, in an area, to be entered and inspected under the approval.

Approving a program

The power to approve a program is modelled on similar powers in the *Local Government Act 1993*. The Chief Executive (or delegate) of Queensland Health may approve programs for a regulation only if the State has responsibility for the administration and enforcement of the regulation.

Similarly, the Chief Executive Officer (or delegate) of a local government may only approve a program if the local government has responsibility for the administration and enforcement of the regulation.

The matters to be stated in the approval are listed in section 427 of the Act.

Section 14 of the Act enables the Chief Executive of Queensland Health and the Chief Executive Officer (on behalf of a local government), or their delegates, to enter into a collaborative arrangement whereby the State may assist local government in relation to a local government public health risk, or the local government may assist the State in relation to a State public health risk. Collaborative arrangements may include an Approved Inspection Program.

The template Briefing note for approval of an inspection program provides a mechanism to approve and publish an approved inspection program. Local governments will need to customise it to suit council administrative requirements. The briefing note template includes the following attachments:

- **Attachment 1:** Template – *Approval of inspection program (s427)*
- **Attachment 2:** Template - *Notice of approved inspection program (s428)*.

Information on where to access these documents is at the end of this document in the section '*Further information and related resources*'.

Notice of proposed inspection program

Section 428 of the Act requires the Chief Executive (or delegate) of Queensland Health or the Chief Executive Officer of a local government to publish information on the approved inspection program by newspaper, radio or television in the area to which the approved inspection program relates. This must occur at least 14 days but not more than 28 days before the approved inspection program starts. A template notice suitable for publication in newspapers is shown in Attachment 2 of the template *Briefing note for approval of an inspection program*.

Powers of entry

Entry to a place may be made under an approved inspection program by an authorised person under section 389 of the Act. The Act states that ‘place’ includes premises and vacant land. Entry to a building or other structure requires the occupier’s consent.

The conditions for entry under an approved inspection program are illustrated in the flow chart in Appendix 1.

Procedure for entry

The procedure for entry is provided under section 392 of the Act. The authorised person must, before entering the place, make a reasonable attempt to locate an occupier and obtain the occupier’s consent to the entry. If the occupier refuses consent to enter, the authorised person must not enter the place unless the entry is under an enforcement order or a warrant.

General powers of an authorised person after entering a place are detailed under section 399. These include the powers of search and inspection, the power to take samples for analysis and/or testing. They also include the power to require a person to give the authorised person reasonable help in exercising the authorised person’s powers, and to require a person to answer questions.

Appointment requirements

To enter a place under an approved inspection program the authorised person must be appointed under section 377 of the Act. It is important to consider section 379 of the Act in terms of appointment conditions and any limit on the powers placed on a person’s appointment as this may impact on the powers required by an authorised person to effectively undertake an approved inspection program.

Information on appointing authorised persons is in the guidance note *Appointments and delegations by local governments under the Public Health Act 2005*.

Access to program

Section 429 of the Act requires the Chief Executive of Queensland Health or the Chief Executive Officer of a local government, (or delegates) as the case may be, to provide a copy of the program to a person upon request. A fee may be charged that is not more than the cost of providing the copy to the person. Publishing the notice on a website (from the time of the publication of the notice until the end of the program) will help fulfil this requirement.

Current legislation

- *Public Health Act 2005*
- *Public Health Regulation 2005*

Queensland state legislation is available via the Office of the Queensland Parliamentary Counsel website at <http://www.legislation.qld.gov.au/OQPChome.htm>.

Further information and related resources

All referenced documents are available to:

- Local government at www.health.qld.gov.au/eholocalgov
- Queensland Health staff via QHEPS at <http://qheps.health.qld.gov.au/PHS/ehpom/>.

Queensland Health Contacts

For further information on approved inspection programs related to:

- mosquitoes contact Communicable Disease Branch by emailing CDU@health.qld.gov.au or telephone 323 4115
- all other public health risks contact the Environmental Health Unit by emailing EHU@health.qld.gov.au or telephone 32340938.

Review Date

2011

Approved by

Designation: Senior Director Population Health Branch

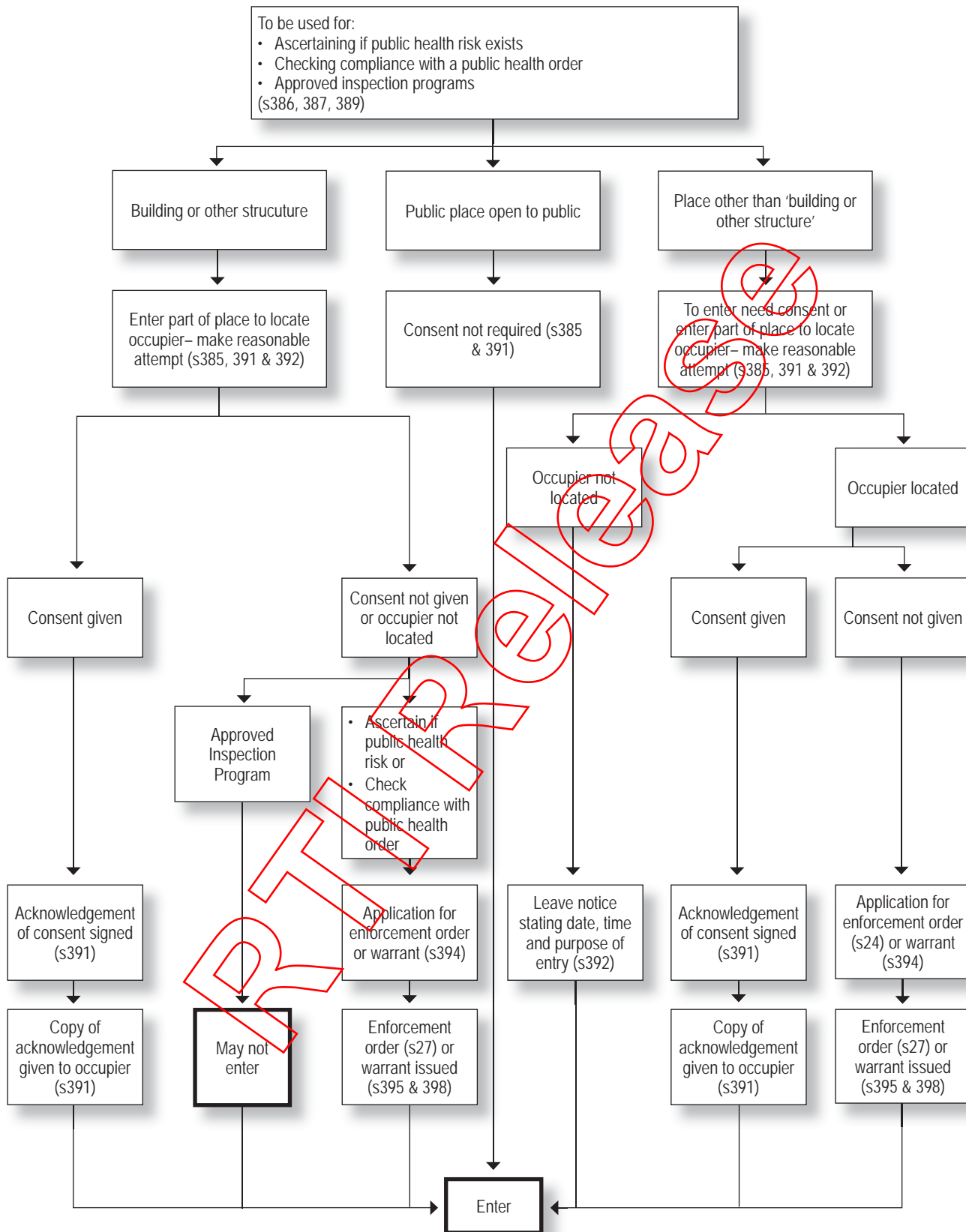
Date: April 2007

Version April 2007

RTI Release

Appendix 1

Flowchart – Entry under an approved inspection program



Public health order

Public Health Act 2005

Sections 23

Directions

(office use only)

- Print or type
- Please see "user information" at the end for documents that are associated with this form.

Purpose of form

To allow an authorised person to provide a public health order to a person who is reasonably believed to be responsible for a public health risk at a place.

Complete the name and address of the recipient of the public health order

To:	
Street name:	
Town/suburb:	Postcode:

Provide the name address and property details of the place of the public health risk

A public health risk has been found at the following place:

Name:				
Street name:				
Town/suburb:			Postcode:	
Property Number				
Real Property Description (RPD)	Lot No.	Plan	Parish	Local Govt

Complete details of the nature of the public health risk

The nature of the public health risk is:

--

Provide details of the steps the recipient must take, or action the recipient must stop, to remove or reduce the risk to public health or prevent the risk to public health from recurring

To remove or reduce the public health risk, or prevent the public health risk from recurring, you are required to undertake the following:

--

State the period within which the steps must be taken or the action must be stopped

The time period in which you must do this is:

This section states the things that the recipient of the public health order must do in relation to the public health order, including the effect of sections 387, 388, 392 and 393.

Please note the following requirements in relation to this order:¹

It is an offence for you as the recipient of this order not to comply with this order, unless you have a reasonable excuse – maximum penalty 200 penalty units (\$15,000). If you do not comply with this order, an application may be made to a magistrate’s court for an enforcement order or warrant.

This form may be customised by replacing ‘issuing authority’ with the name of the local government or Queensland Health.

An authorised person may, at reasonable times, enter the above named place where the public health risk exists to check if the order has been complied with, or to take the steps required in the public health order. If you have failed to take the required steps to remove or reduce the public health risk or prevent the risk to public health from recurring, these steps may be taken by the issuing authority.

Entry to the place to check if the steps have been taken, or to take the steps, may be made at reasonable times. The issuing authority must give the occupier and owner of the place reasonable notice that steps required in a public health order will be carried out, before taking these steps, if the recipient has failed to do so. A reasonable attempt must be made to locate the occupier and obtain their consent to enter the place. If the occupier is found and consent is refused, an authorised person may only enter the place under an enforcement order or a warrant. However, if an occupier cannot be found after a reasonable attempt to do so, the authorised person may enter the place. A notice must be left in a conspicuous position in a reasonably secure way stating the date, time and purpose of the entry.

Complete the name of the authorised person and the name, address and contact details of the issuing authority

*Delete these rows, if you do not wish to include this information

Name of authorised person:	
Signature of authorised person:	
Name of issuing authority	
Business address	
Town/suburb:	State and postcode:
Contact telephone number:	
*Fax number:	
*Email address:	
Time and date:	

¹ Sections 23, 387, 388, 392 and 393 of the *Public Health Act 2005* relate to public health orders. For requirements about enforcement orders, see section 24 and subsequent sections.

Not for public distribution

User information – public health order

Associated documents and issues for consideration

There are other forms that could need to be considered when this form is being used. These are:

- *Notice of entry* (Form PHA S392(5) and 393(7))
- *Notice of intention to enter a place* (Form PHA S393(2) and 393(3))
- *Application to a magistrate to enforce a contravention of a public health order* (Form PHA S24)
- *Notice of hearing* (Form PHA S25, S117, S134, S135, S356)
- *Enforcement order issued by a magistrate to enforce a contravention of a public health order* (Form PHA S26)

In addition, the procedure *Enforcement – Taking steps under a public health order* and the *Entry Process Flowchart (1) Public Health Act 2005* may apply to this form or the associated forms listed above.

RTI Release

Giving public health orders

Guideline

Purpose

This guidance note has been developed to assist in the enforcement of public health risks when a public health order is given. It addresses issues that may arise in determining responsibility for a public health risk.

Who is responsible for a public health risk?

The Act allows for a public health order to be given if an authorised person 'reasonably believes that a person is responsible for a public health risk at a place'. Public health risk is defined in section 11 of the Act and can be a Local Government or State Government responsibility. Person means individuals as well as corporations.

The Acts Interpretation Act 1954 allows that words used in legislation in the singular include the plural. Therefore, more than one person can be responsible for a public health risk and the risk can exist at more than one place.

The responsibility for a public health risk may lie with either:

- the person responsible for creating the public health risk, or in some circumstances
- the owner or occupier of the place where the risk exists or originated.

The person whose actions have caused the public health risk is primarily responsible. If this person cannot be located or otherwise held responsible, the next person in the chain of responsibility should be considered responsible – this may be the tenant of a property or ultimately the owner of the property from which the risk originated. For example, if a tenant has caused a public health risk but no longer rents the property, responsibility for the public health risk will lie with the property owner as they can be regarded as the party that causes the public health risk to be ongoing.

Can a public health order address responsibility for a public health risk at more than one place?

A public health risk which originated at a specific location may spread to other places. In practical terms this could mean a property owner may become responsible for mitigating a public health risk both on his/her property and any neighbouring property which is affected. A public health order can require a person to undertake some clean-up of contamination on a property other than their own.

If one public health order is given for a public health risk in several places, an agreement between the parties (property owners and/or tenants) will be necessary to establish how the public health risk will be dealt with. The order can then address any areas of potential dispute, for example:

- extent of work to be undertaken to remove or reduce the risk
- access to the place(s) impacted by the public health risk. Note that consent to entry must be provided by the tenant as the 'occupier' if the property is rented

- details of a licensed contractor who may be engaged by the responsible person to remove or reduce the risk (eg A class licence holder); and
- any other details relevant to the removal or reduction of the public health risk

Costs will be borne by the recipient of the public health order. If there is some dispute about costs, the recipient has recourse under section 33.

If the owner or occupier of a property refuses to allow the recipient of a public health order to remove or reduce a public health risk on their property, this can be managed in two ways

1. The owner of the second property may be deemed responsible for the ongoing public health risk on their property and can be given a public health order to remove or reduce the risk.

This approach is based on the second party being responsible for allowing the public health risk to continue by not allowing the responsible person to effect clean up.

or

2. The issuing authority can take further action to gain entry to the property to undertake the steps ordered by the public health order and recover costs from the recipient of the public health order.

Further action may take the form of gaining an enforcement order that will recognise the inability of the recipient of a public health order to comply and may go on to give the issuing agency authority to enter the property to remove or reduce the public health risk. Such an enforcement order may also require the responsible person (the public health order recipient) to pay the costs of these measures. Alternatively a warrant may be applied for to undertake the same actions.

It is likely that negotiation between both parties will avert the need for secondary enforcement action in most circumstances.

If a person who receives a public health order believes another person is partially responsible for the public health risk, what recourse do they have?

Section 33 of the Act allows for the recovery of costs from a third party if the recipient of a public health order believes another person is partly or wholly responsible for the public health risk. If more than one person has received a public health order for a public health risk originating from a single event, all parties may take a case before a Magistrate if they believe they are not wholly responsible for the matter and their contribution towards mitigation has been excessive.

Other methods of recourse to recoup monies from a third party that may be available include:

- non-refund of bond monies if a property owner has to assume responsibility for a public health risk caused by a tenant of the property
- insurance claim
- civil action through the courts

Can a public health order require a person to vacate their property?

The Act sets out what a public health order can require under section 21. This includes requiring a person to 'stop using the place, or part of the place, for a stated purpose, within a stated period or until stated steps are taken'.

This would therefore allow a public health order to require a person to stop using their place or residence until the public health order has been complied with. A more likely scenario is that the order would require them to stop using part of the place until the public health risk has been removed.

The Act has no provisions that would recognise how the cost of this might be apportioned. If the person was responsible for the public health risk they would need to bear the costs associated with temporarily vacating the property. If the public health risk had been created by a third party (e.g. a neighbour) they may need to take civil action against that party to recoup costs as section 33 only allows for an order to be made regarding the costs of removing or reducing a public health risk.

Example statements for a public health order

Section 21 of the Act sets out the types of things a public health order may require. Major considerations will be

- any activity in contravention of the Act or Regulation ceases immediately
- interim measures to prevent further dispersal are required, either because specialist expertise is not readily available or the nature of the risk requires such measures
- separate timeframes for individual actions as appropriate to ensure the risk remains controlled

Below are some example phrases that may be used in public health orders

1. Do not use (immediately cease using) high pressure water process to clean asbestos containing materials
2. Do not disturb or remove the by-product/debris created by the cleaning of /work on the asbestos containing material
3. Prevent the entry of all people not directly involved in the remediation into the area where the by-product of the cleaning / debris has been identified, until the requirements of this public health order have been complied with
4. Prevent further dispersal of the by-product / debris by covering with a suitable substance, such as secured, impervious plastic sheeting, *or*
5. Prevent further dispersal by lightly spraying with a water/PVA glue mixture (5 parts to one), *or*
6. Prevent further dispersal by lightly spraying the by-product /debris with water to keep it damp
7. Contract an asbestos removalist with an A class asbestos removal certificate issued under the Queensland *Work Health and Safety Act 2011* to remove the by-product from (state the place/s).
8. Obtain documentation from the removalist to certify that all asbestos contamination at the site has been removed and properly disposed of. Provide a copy of this documentation to the issuing authority.

Note 1 *if property other than your own contains the by-product, you will need to obtain permission from the relevant landowner/s before commencing activities on their properties.*

Note 2 *if you undertake some tasks personally, you should wear personal protective equipment (PPE) (state full requirements or provide as an accompanying document)*

Public health orders

Procedure

Purpose

This document gives guidance on the procedure for making, giving and enforcing a public health order. This procedure may be used as a model and customised by local governments to include specific administrative arrangements.

What a public health order may require

The *Public Health Act 2005* provides for an authorised person to give a person a public health order requiring the recipient of the order to take action to remove, reduce, or prevent from recurring, a risk to public health from a public health risk. A public health order can also be given under an authorised prevention and control program and for public health risks prescribed in the *Public Health Regulation 2005*, which currently covers mosquitos, rats and mice, and asbestos.

The requirements of the order must be reasonably necessary to remove or reduce the risk to public health from the public health risk, or prevent it from recurring. The Public Health order may require a person to do any of the following at the place:

- clean or disinfect the place, or part of the place, or a structure or thing at the place
- carry out insect or pest control
- demolish stated structures or property
- remove material or items from one place to another
- dispose of material for example burying material according to the instructions in the order
- destroy animals
- cease using a place for a stated purpose until the steps stated in the order are complied with (s21).

Critical issues

Section 21 of the Act sets out what may be required in writing by a public health order, subject to the following limitations:

- the requirements specified in the order must be appropriate in the circumstances having regard to the nature and seriousness of the risk to public health
- it must be reasonably necessary to remove or reduce the risk to public health, or
- prevent a risk to public health from recurring
- the period for compliance with the order must be reasonable having regard to the risk to public health from the public health risk

Section 22 of the Act directs the Chief Executive Officer of a local government or the Chief Executive of Queensland Health to consult with the department responsible for the administration of the *Exotic Diseases in Animals Act 1981* or the *Stock Act 1915* before an authorised person gives a public health order in relation to an animal the authorised person suspects has, or may have, a disease regulated under those Acts.

To reduce the risk of liability for any potential future damages claims in relation to a public health risk, it is important that all public health orders that have been given are finalised and the public health risk removed, reduced to an acceptable level and/ or prevented from recurring.

Procedures

Ascertain public health risk

Before a public health order may be given it must be established if the issue fits the definition of a public health risk under section 11 of the Act. If any doubt exists a health risk assessment should be undertaken to establish this.

Giving a public health order

Section 23 of the Act empowers an authorised person, who reasonably believes a person is responsible for a 'public health risk' at a place to give the person a public health order.

The order, among other matters must state:

- (a) the steps the recipient must take to remove, reduce or prevent the recurrence of the risk to public health (including any action the recipient must stop doing)
 - (b) the period for taking the steps or stopping the action
 - (c) the consequences of not complying with the order, including the enforcement measures available to authorised persons under the Act (such as sections 387 and 388).
- The completed order must be given¹ to the person reasonably believed to be responsible for a public health risk at a place by the authorised person.

Entering a place to take steps under a public health order or to check compliance with an order

Section 388 (Power to enter place to take steps if public health order not complied with) empowers the issuing authority, by its employees or agents, to enter a place to take the steps required under a public health order, which the recipient of the order has failed to take. Section 393 of the Act details the procedure for entry under section 388 and section 391 'Powers of entry with consent'.

¹ The term 'give' is not defined or provided for within the Act. 'Give' includes personal service (hand delivery). General provisions regarding service of documents under Part 10 of the *Acts Interpretation Act 1954* address service requirements under State legislation and includes posting or leaving the item at the address of the recipient in question. S459 of the *Public Health Act 2005* sets out requirements for giving a document by fax.

Section 392 applies to an authorised person intending to enter a place under section 389 (Power to enter under approved inspection program), section 387 (Power to enter place to check compliance with health order) and section 386 (Power to enter to ascertain if public health risk).

The issuing authority must give the occupier and owner reasonable notice appropriate to the circumstances of the intention to enter to take the steps required under the public health order. The notice must be in writing.

Entry to any building or structure, whether or not it is a dwelling, is prohibited (without the occupier's consent, an enforcement order or a warrant).

Before entering a place under any of these sections, the authorised person must do the following:

- Make a reasonable attempt to locate an occupier and obtain the occupier's consent to entry (in accordance with the procedure in section 391 (Entry with consent). The form *Consent acknowledgement by the occupier of a place* may be used for this purpose. A signed copy must be given to the occupier.
- Identify themselves by for example producing an identity card to an occupier present at the place.
- If entering a place to take steps if a public health order is not complied with, then give the occupier and owner a copy of the completed notice (*Notice of intention to enter a place*) stating the steps that are to be taken by the issuing authority.
- If the occupier does not consent, the section clarifies that the authorised person may only enter the place under an enforcement order or a warrant.
- If the authorised person is unable to locate the occupier after making a reasonable attempt to do so, the authorised person may enter the place and in this case leave a 'notice' (the form *Notice of entry* may be used for this purpose) in a conspicuous position and in a reasonably secure way stating the date, time and purpose of entry.

Evidence

It is important that appropriate evidence is collected and suitably documented when assessing a public health risk if a public health order may be issued. This evidence may be later required to support:

- a prosecution for a noncompliance with the public health order or enforcement order
- a contested penalty infringement notice
- application for an enforcement order
- application for a warrant for a place
- justification of issuing a public health order, should there be a complaint of misconduct (e.g. complaint to the Ombudsman).

The authorised person must be able to demonstrate they have a reasonable belief that a public health risk exists. The evidence could include items such as photographs, video footage, statements (appropriately documented), samples, notes by the officer, etc. Other evidence could include referenced or reputable sources of information such as academic research material, expert opinions and documented assessment of the public health risk. Evidence collected must support the existence of a public health risk and also the elements of any offence and/or the requirements for a public health order.

Safety considerations

The occupational health and safety guidance and human resources policies of the authorised person's employer should be observed when entering a place. When entering a place in relation to a public health risk, the following precautions are recommended:

- (a) first advise the authorised person's supervisor of when, where and who will be present for the entry.
- (b) No entry should be made by only one authorised person if there is a risk to their safety. If entry is to be gained pursuant to an order there should always be two or more authorised persons, employees or agents present for the entry for both safety and evidentiary purposes.
- (c) If there is any risk to personal safety, the authorised person's supervisor should be called and, if necessary, the police are to be contacted to have them in attendance whilst the order is executed.
- (d) The authorised person, employee or agent giving the public health order should have a means of communication (telephone or radio) with them whilst issuing the order.

Authorised persons, employees or agents should not be subject to health and or safety risks by circumstances surrounding enforcement of a public health order. Before entering a place the need for personal protective equipment (PPE) or other safety precautions should be considered.

Please note, the Act does not allow force to be used in relation to a public health order. "Necessary and reasonable help and force" may only be used in relation to an 'enforcement order' or a 'warrant for a place', if included in the order or warrant by a magistrate.

Damage during entry

If damage occurs to any property a notice of damage should be prepared and a copy immediately left with the owner of the property. For the purposes of section 421 'owner' includes the person in possession or control of the property. If practicable, photographs should be taken by the authorised person of that damage and provided to their supervisor.

Section 422 allows a person who incurs loss or expense because of the exercise or purported exercise of a power, to claim compensation from the local government or the State, as the case may be. Compensation may be claimed in a court with jurisdiction for recovery of the compensation claimed. Official records should be retained in case a person makes a claim for compensation under section 422.

Official records

When an authorised person gives and enforces a public health order, the authorised person must officially record the details of the activities associated with issuing the order for evidentiary purposes. This may include the time and date of entry to the place, time and date of service and any enforcement activities and impacting issues such as damage or confrontational circumstances encountered. The magistrate may require evidence that the public health order was appropriate under the circumstances before issuing an enforcement order. Therefore, this information should be officially recorded somewhere accessible.

Person must comply with a public health order

Section 23(4) of the Act makes it an offence (with a maximum penalty of 200 penalty units) for the recipient of a public health order to not comply with the order, unless the recipient has a reasonable excuse. This offence does not limit any other liability a person may incur for an infringement notice subsequently issued by an authorised person for the contravention of the public health order.

Options when a public health order not complied with

If an authorised person has given a public health order for a public health risk at a place and the recipient has failed to comply with the order, the following options can be considered:

- (a) Take action under Chapter 9, of the Act, for example under section 388 (Power to enter place to take steps if public health order not complied with).
- (b) Issue an infringement notice (PIN) for noncompliance with the public health order (section 23(4) of the Act), unless the recipient of the public health order has a reasonable excuse.
- (c) Initiate legal proceeding for noncompliance with the public health order under section 23(4), unless the recipient has a reasonable excuse.
- (d) Apply to a magistrate for an enforcement order for a public health order under section 24. A magistrate may hear an application for an enforcement order and a proceeding for contravention of a public health order at the same hearing. Note this application process requires at least 14 days' notice to be given to the person to whom the application relates.
- (e) If entry for the public health order is refused and an enforcement order process is unsuitable (eg. an urgent response is required) consideration could be given to applying to a magistrate for a warrant for a place under section 394 of the Act. A magistrate may issue a warrant for a place if satisfied there are reasonable grounds for suspecting there is or will be, at the place, evidence of an offence against the Act, or there is a public health risk at the place.

Recovery of costs from third parties

Sections 33 and 34 of the Act outline the processes whereby a person who has complied with a public health order can apply to a magistrate's court for an order that will allow for a third party to pay all or part of the costs of complying with the order. The third party to whom the application for a cost recovery order relates must be given notice of the hearing to decide the application. However, if the person fails to attend, the application may be decided in the person's absence.

Section 35 lists the matters about which the magistrate must be satisfied before making a cost recover order against a third party. Of principal importance is that the magistrate must be satisfied the third party is responsible for all or part of the public health risk to which the original public health order related.

Warrant for a place

Procedure

Description

The *Public Health Act 2005* (the Act) allows an authorised person to apply to a magistrate for a warrant to enter a place and undertake certain enforcement actions. This procedure provides a step by step process for an authorised person to apply to a magistrate for a warrant for a place.

This procedure may be used as a model and customised by local governments to include specific administrative arrangements.

Critical issues for the authorised person

A written application that states the grounds on which the warrant is sought must be sworn. This means the application must be signed (and the oath as to the truthfulness of the application taken) by a Justice of the Peace.

It is important to ensure copies of documents relating to the need for the warrant are made available at the time the magistrate is considering the application. The magistrate may refuse to consider the application until the applicant gives the magistrate all the required information in the way the magistrate requires. For example, the magistrate may require additional information supporting the application be given by statutory declaration. This may include information on previous relevant actions, photographs, documents or records that provide a history of previous and relevant noncompliance.

An electronic application for a warrant for a place may be made by telephone, fax, email or other form of electronic communication in urgent or other special circumstances. Such an application could be appropriate when the authorised person is in a remote location. It is always best to check with the Magistrates Court about the preferred form of communication and the timelines involved for a response.

The authorised person needs to ensure that when applying for a warrant, they make it clear to the magistrate what is required. For example, include the thing(s) that may need to be seized, samples that may need to be taken (eg. water samples for mosquito breeding, other health risk conditions), or other actions considered necessary to remove or reduce the risk to public health or prevent it from recurring.

Under section 395 of the *Public Health Act 2005*, if the warrant is to determine if a public health risk exists at a place, the warrant may also state that the authorised person may enter the place again to check compliance with any public health order issued as a result of the entry under the warrant. If a warrant authorises re-entry, the warrant expires seven days after the expiration of the period stated in the public health order for completing the steps stated in the order. If re-entry may be needed and is not sought when applying for a warrant, a separate application for a warrant may need to be made each time entry is required.

What a warrant for a place enables an authorised person to do

A warrant for a place may allow an authorised person to do the following things:

- a) exercise powers under Chapter 9 of the Act with the help, and using the force, that is reasonable in the circumstances;
- b) enter any place authorised by the warrant;
- c) search the place to find evidence of an offence under the relevant Act;
- d) take the steps necessary in the circumstances to remove or reduce the risk to public health or prevent it from recurring including seizing a thing(s).

Note: An authorised person exercising a power under the warrant, must cause as little inconvenience and do as little damage as is practicable in the circumstances. The warrant must clearly state the steps or actions that are authorised to be taken. Only those actions set out by the warrant can be undertaken upon entry.

Procedures

There are a number of steps to be taken by an authorised person when obtaining and executing a warrant for a place. The processes, including applications by electronic communication are outlined below:

Obtaining a warrant

An authorised person has the following options when applying to a magistrate for a warrant for a place.

Option 1 – Application in person or

Option 2 – Application by electronic communication

The authorised person applying for the warrant should be fully aware of the circumstances of the case.

Option 1 – application in person

An authorised person completes the form *Application for warrant for a place* that states the grounds on which the warrant is sought.

The authorised person should also, as far as practicable, complete the form *Warrant for a place* ready for the magistrate to consider.

The authorised person takes the following documents to a magistrate for their consideration;

- a) the signed and sworn form *Application for warrant for a place*
- b) the form *Warrant for a place*, completed as far as practicable for the magistrate's consideration, plus a blank copy of the form in case the magistrate wishes to change the particulars you have completed
- c) supporting evidence including an identity card or other document evidencing the authorised person's appointment under the Act and a copy of any associated delegations
- d) records or previous actions such as correspondence or warnings to assist the magistrate in making an informed decision.

Option 2 – Application by electronic communication

An electronic application for a warrant for a place may be made by phone, fax, email or other form of electronic communication in urgent or special circumstances

An authorised person completes the form *Application for warrant for a place* that states the grounds on which the warrant is sought.

If possible, the application should be sent to the magistrate by fax or email.

The application may be made before the written application is sworn. However, as soon as possible, the authorised person must send a sworn application to the magistrate.

The magistrate may issue the warrant (the original warrant) if satisfied it was appropriate and necessary to make the application by electronic communication.

What the magistrate must do and ask an authorised person to do

After the magistrate issues the original warrant the magistrate must immediately give a copy of the warrant to the authorised person, if there is a reasonably practical way of doing so, for example, by sending a copy by fax or email.

If the magistrate cannot physically provide a copy of the original warrant the magistrate must tell the authorised person the date and time the warrant is issued and the other terms of the warrant.

The authorised person must then complete a 'form of warrant' as far as practical, ideally using the form 'Warrant for a place', including on it the magistrate's name, date and time the magistrate issued the warrant and the other terms of the warrant.

The copy of the warrant sent to the authorised person, or the form of warrant completed by the officer on the magistrate's direction (in either case the duplicate warrant), is a duplicate of, and as effective as, the original warrant.

If the application could not to be sworn before the warrant was issued, the application should be sworn before a Justice of the Peace as soon as practical.

What the authorised person must send to the magistrate

The authorised person must, at the first reasonable opportunity, send to the magistrate:

- a) the signed and sworn form Application for warrant for a place and
- b) the completed form of warrant (duplicate completed by the authorised person on the magistrate's direction), if applicable.

Onus of proof is on the authorised person

If an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued by electronic communication and the original warrant is not produced in evidence, the onus of proof is on the authorised person, relying on the lawfulness of the warrant, to prove the warrant authorised the exercise of the powers. For this reason the authorised person should ensure an original warrant and documents provided to the magistrate (which the magistrate must give to the clerk of the court of the relevant magistrates' court) are obtained for evidentiary purposes, should the matter be contested. In any case all relevant documents should be filed.

Procedure before entry and executing warrant

Authorised persons intending to enter a place under a warrant for a place (under s398) before entering the place must do or make a reasonable attempt to do the following:

- a) identify themselves to a person present at the place who is an occupier of the place by producing a copy of their identity cards or other documents evidencing their appointments
- b) give the person a copy of the warrant
- c) tell the person that the authorised person included on the warrant is permitted by the warrant to enter the place
- d) give the person an opportunity to allow authorised persons immediate entry to the place without using force.

Authorised persons need not comply with the above requirements if they believe that immediate entry to the place is required to ensure effective execution of the warrant is not frustrated.

An authorised person may be assisted by other people in executing the warrant. This may include entering the place with necessary and reasonable help and force under s395(2)(b) and/or exercising general powers under s399 after entering the place.

Safety during enforcement of the warrant

An authorised person may exercise powers under the warrant with help and using the force that is reasonable in the circumstances. Although an authorised person has the legal authority to enter a place, occupation health and safety and human resource considerations of the authorised person's employer should always be taken into account. The following precautions are recommended:

- a) No entry be made without first advising the authorised person's supervisor of when, where and who will be present for the entry.
- b) A warrant should not be given and enforced by only one person for both safety and evidentiary purposes.
- c) If there is any risk to personal safety the police are to be contacted to have them in attendance while the warrant is executed.
- d) The authorised persons executing the warrant should have a means of communication (telephone or radio) with them while executing the warrant.

Note: The authorised person should also consider the need for personal protective equipment.

Use of force during entry

Any force used should always be the minimum required to gain entry and use the any powers as necessary. To avoid the inappropriate use of force and to maintain a high level of accountability, the following should be considered:

- a) If force is required, the authorised person's supervisor shall be contacted to seek approval to use force and, if necessary, the police should be requested to attend.
- b) If force is used to gain entry and damage occurs to any property, the form *Notice of damage* should be completed and a copy immediately left with the owner of the property. For this purpose 'owner' includes the

person in possession or control of the property. If practicable, photographs should be taken by the authorised person of that damage and provided to their supervisor.

c) If permission is obtained from the supervisor and force is used to gain entry, it is good practice for the authorised person to provide a report to the supervisor as soon as possible. Included with this should be a copy of the completed form *Notice of damage*. The report should also explain:

- why force was necessary
- what force was used
- what (if any) damage resulted in the use of force
- what evidence was obtained
- who was present during the execution of the warrant
- any other relevant information.

Section 422 allows a person who incurs loss or expense because of the exercise or purported exercise of a power under Chapter 9, Part 2 (Powers of authorised persons) or Chapter 2, Part 4 (Authorised prevention and control programs) to claim compensation from the local government or the State, as the case may be.

Compensation may be claimed in a court with jurisdiction for recovery of compensation claimed. Official records should be retained in case a person makes a claim for compensation under s422.

Official records

The authorised person must record, for evidentiary purposes, the details of the activities associated with executing the warrant, such as time and date of entry and details associated with giving the warrant and enforcing the warrant. This may be recorded at the time by the authorised person in an official note book used to record evidence. This information may also be recorded on the *Record of warrant for a place* section at the end of the form *Warrant for a place* if no other administrative system is in place for recording this information. The completed form and any other information, such as records of official interviews, should be placed on file.

Defect in relation to a warrant

A warrant for a place (including a duplicate warrant obtained by electronic communication) is not invalidated by a defect in the warrant or the process unless the defect affects the substance of the warrant in a material particular.

Cost recovery

Reasonable costs that have been incurred by the issuing authority may be recovered when exercising powers under s 388 or s 405, as a debt payable by the person named on the warrant or public health order to the issuing authority. This amount is payable within 30 days after the details on amount of costs have been provided to the person.

Local Government may recover the amount payable plus interest as if the total amount were overdue rates under the *Local Government Act 1993*.

The unpaid amount may become a charge on the land and can be registered as a charge over the land with the registrar of titles (s406, s407).