

Western Australian Auditor General's Report



Regulation of Consumer Food Safety by Local Government Entities



Report 28: 2019-20

30 June 2020

**Office of the Auditor General
Western Australia**

Audit team:

Jordan Langford-Smith
Gareth Govan
Matthew Monkhouse
Lyndsay Fairclough

National Relay Service TTY: 13 36 77
(to assist people with hearing and voice impairment)

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The Office of the Auditor General acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present.

WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

**Regulation of Consumer Food Safety by Local
Government Entities**

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June 2020



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

REGULATION OF CONSUMER FOOD SAFETY BY LOCAL GOVERNMENT ENTITIES

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of my Office's overall program of audit and assurance for Parliament. They seek to provide Parliament and the people of WA with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

This audit assessed whether local government entities effectively regulate consumer food safety in food businesses in their local area.

I wish to acknowledge the entities' staff for their cooperation with this report.

A handwritten signature in black ink, appearing to read 'C Spencer'.

CAROLINE SPENCER
AUDITOR GENERAL
30 June 2020

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Auditor General's overview

Local government entities (LG entities) are responsible for regulating food businesses in their local area. They ensure food businesses comply with the *Food Act 2008* and the *Australia New Zealand Food Standards Code* through a range of compliance activities such as food business inspections and enforcement actions. When food businesses are effectively regulated, the public can be more confident that the food they consume is safe.



This audit report focusses on the regulation of consumer food safety at 2 LG entities with a large number of food businesses such as restaurants, cafes and bars in their area. We found many inspections were overdue, recordkeeping was poor, and follow-up and enforcement was not always completed or consistent. These weaknesses increase the risk that unsafe food practices are not rectified, and the public consumes hazardous food.

The findings in the report are not about encouraging more regulation of businesses by LG entities, as this can lead to unnecessary burden on food businesses. Rather, the findings highlight the importance of a fair and equitable regulatory framework which focusses on the areas of highest risk to consumer safety. I am pleased that both LG entities generally agreed with the findings, and have advised that they are in the process of completing overdue inspections and improving their inspection and enforcement practices, and reporting.

Educating food businesses on safe food handling practices is an important part of the regulatory regime, and it was also pleasing to see examples of LG entities providing support to food businesses where there is a lack of knowledge, or where there is repeated non-compliance. However, it is also up to food businesses to make sure their staff understand and implement safe food handling practices. Ultimately, it makes good business sense to maintain clean premises and comply with food safety standards to avoid any reputational damage from serving food that makes people ill.

In the coming months I plan to report on the effectiveness of the Department of Health's (the Department) framework for monitoring consumer food safety. The Department was in the original scope of the audit, but my Office's work was put on hold as the Department was a frontline agency in the COVID-19 pandemic response. I'm looking forward to tabling this report as it will provide greater context and transparency as to how food safety is regulated in Western Australia.

I trust the findings in the report will help all LG entities with their compliance activities as food businesses continue to reopen in full, as a result of the easing of COVID-19 restrictions.

Executive summary

Introduction

This audit assessed whether local government entities (LG entities) effectively regulate consumer food safety in food businesses in their local area. It focused on inspection and enforcement processes at a metropolitan and a regional LG entity. These LG entities were selected because they have a large number of food businesses such as restaurants, cafes and bars, and were considered to provide a good baseline understanding of the risks and issues faced by LG entities and food businesses in relation to food safety regulation.

Due to the COVID-19 pandemic we amended the scope and size of the audit and decided to not identify the LG entities in the report.

Background

Food business regulation helps to reduce the number of food related diseases and ensure food is safe for consumption.¹ In 2016-17, Western Australia (WA) had over 23,000 registered food businesses. Across WA over 7,000 cases of intestinal infectious disease, such as salmonella, were reported in 2017.² The Department of Health (the Department) estimates that a 1% decrease in foodborne illness could save the community and health system nearly \$6 million annually.

In WA, the Department and LG entities are responsible for regulating food businesses. The *Food Act 2008* (the Act) and the Food Regulations 2009 (the Regulations) enable the Department and LG entities to inspect food businesses and enforce compliance with legislation and the *Australia New Zealand Food Standards Code* (the Standards). LG entities are responsible for food businesses in their district. Food businesses not in a district such as Rottnest Island and Kings Park, as well as hospitals and primary producers, are regulated by the Department.

To help make food safe for consumers, food businesses must meet specific requirements in the Standards (see examples in Figure 1).³ Some businesses are also required to have a food safety program which details how they manage high risk foods or vulnerable customers. For example, aged care facilities or restaurants selling uncooked seafood.

¹ Department of Health *Report on the Food Act 2008 (WA) – A report on the performance of the Food Act 2008 (WA) regulatory functions for the period 1 July 2013 to June 2016*.

² Not all of these cases were linked to food businesses.

³ This audit pre-dates the COVID-19 hospitality and tourism hygiene course requirements.

Australia New Zealand Food Standards Code



Source: OAG, using information from the Standards

Figure 1: Examples of the Standards food businesses must meet

LG entities have environmental health officers (EHOs) to conduct food business registrations and inspections. EHOs assess each new food business and assign it with either a high, medium or low risk classification. This classification determines how often businesses are inspected. LG entities charge annual fees to recover the costs of these regulatory activities. EHOs also carry out other duties such as investigating noise complaints, hazardous waste assessments and event approvals.

The Australia New Zealand Food Authority (ANZFA) and the Department have developed better practice resources on the administration of food legislation. The guidance (as summarised in Table 1) helps ensure a consistent approach to business risk assessments and how often businesses are inspected. The starting point is the initial inspection frequency after a business is classified. Inspection frequency can be increased or decreased based on compliance history.

Risk classification	Inspection frequencies (every x months)		
	Starting point	Maximum	Minimum
Low	18	12	24
Medium	12	6	18
High	6	3	12

Source: Australia New Zealand Food Authority

Table 1: ANZFA inspection frequency model

EHOs can monitor and enforce food businesses' compliance with the Standards through education and training, follow-up inspections, improvement notices, infringements, prohibition orders or prosecution. Food businesses face fines of up to \$50,000 for an individual or \$250,000 for a body corporate if they are found not to comply with the Standards. EHOs often exercise discretion choosing which enforcement option to use to achieve compliance.

Conclusion

Current inspection and enforcement processes in the 2 audited LG entities do not support an effective risk-based approach for regulating food businesses.

While the 2 LG entities were conducting inspections, there were shortcomings in the compliance activities they used to regulate food safety in businesses. Many inspections were overdue, recordkeeping was poor, and follow-up and enforcement of compliance with food safety standards was not always consistent or completed. These shortcomings may lead to unsafe food practices going undetected or left unaddressed.

Both LG entities have advised that they are taking steps to complete overdue inspections and improve their inspection and enforcement practices and compliance reporting to address the audit findings.

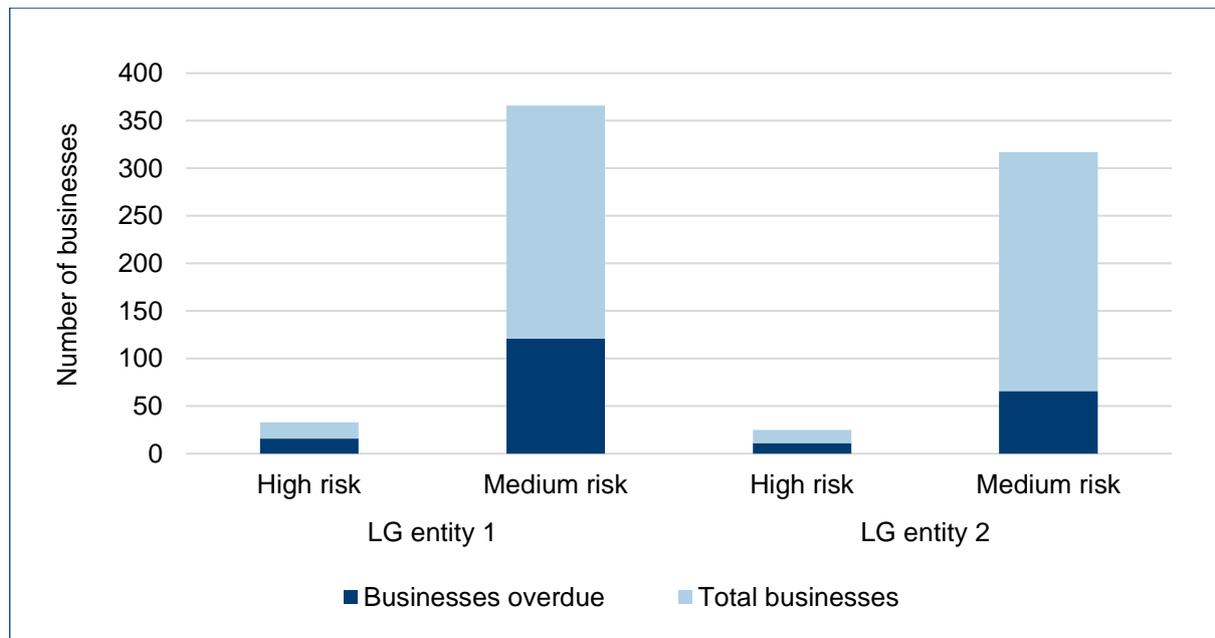
Findings

Nearly 30% of high and medium risk food business inspections were overdue

The 2 LG entities had not completed many required inspections. We found 214 of 741 high and medium risk food business inspections were overdue as at November 2019. When inspections are not completed according to risk, the LG entities are not checking that businesses comply with the Standards.

As LG entities did not have their own documented policy or approach to inspection frequency, we assessed inspections against the ANZFA starting point, the inspection frequency after a business is classified. Our analysis of high and medium risk business inspections (Figure 2) found:

- LG entity 1 had 48% of high and 33% of medium risk businesses overdue for inspection. On average, they were overdue by around 270 days
- LG entity 2 had 44% of high and 21% of medium risk businesses overdue for inspection. On average, they were overdue by more than 400 days.



Source: OAG, using information from the LG entities

Figure 2: Overdue high and medium risk business inspections by LG entity

LG entities have deviated from the better practice inspection frequencies and have not documented why. Therefore, they have less information about whether businesses are meeting food safety standards, increasing the risk that inadequate food practices are undetected. Additionally, businesses are paying annual fees for inspections not performed and they may miss out on receiving information and advice on their food safety practices.

Since being made aware of the findings, the LG entities advised that they were completing the overdue inspections. Both LG entities told us recently that some inspections could not be completed because businesses had cancelled their registration or were closed. One LG entity found some incorrect business risk classifications, which meant that an inspection was not due.

Record management shortcomings have reduced LG entities' ability to effectively regulate food businesses

Inspection and enforcement data was not well documented in the records systems at the 2 LG entities. We found instances where both LG entities had incomplete records of inspections and inaccurate business register data. We also found limited system functionality and compliance reporting. Quality records and reporting support good decision-making and help LG entities effectively and efficiently allocate limited resources.

In our sample of 35 Australian Food Safety Assessment (AFSA) paper inspection forms, we found examples where forms were difficult to read, missing details or an assessment against each standard was not recorded (Figure 3). EHOs need to complete these forms so non-compliance and inspection outcomes are clear to businesses and LG entities have correct records. Both LG entities acknowledged that there were issues with recording information and scanning the form. They advised us that they are developing an electronic form to improve the quality and completeness of inspection information. We note that there is an electronic version of the AFSA inspection form available.

The image shows an AFSA Australian food safety assessment form. It includes sections for Receiving, Recalls/Food Disposal, Health, Hygiene & Knowledge, Storage, Processing, Premises and Hygiene, Display, Packaging, and Transportation and Distribution. Each section contains numbered items with checkboxes for compliance. A 'Comments/Action to be taken' section at the bottom contains handwritten notes in blue ink. The form also has fields for 'Further Action?' and 'Reinspection'.

× Type and details of inspection not marked

× Assessment against Standards not filled in or incomplete

× Non-compliance and action taken difficult to understand due to handwriting and scanning

× Details of further action and risk assessment not completed

Source: OAG, using information from the LG entities

Figure 3: Example of an inspection form record

We found that business information stored in registers was not always accurate or complete. In particular:

- 47 of 1,204 businesses across both LG entities had no record of inspection in the registers
- 1 LG entity had 15 businesses in which the next inspection pre-dates the last inspection
- through a limited internet search by the OAG of 20 local businesses, 1 business was found to be operating but not known or registered by the LG entity. After we made the entity aware of this finding, they requested and received a registration application.

Incomplete or inaccurate information can result in missed inspections, and businesses not being inspected according to an appropriate risk classification.

Both LG entities had weaknesses in their risk assessment processes. One LG entity did not have supporting documentation for their business risk assessments, and advised that there were 24 high and medium risk businesses which had incorrect risk classifications. At the other entity, we found an instance where risk was not reassessed for a business after multiple items of serious non-compliance were identified. One of which was feeding cats in the kitchen. Inaccurate risk assessments can lead to businesses not being inspected appropriately or paying for more inspections than required.

The LG entities can also improve the way they manage and track inspections. Due to a system error at 1 LG entity, EHOs have to rely on setting reminders for follow-up inspections in their calendars to check non-compliance was resolved. We note 1 LG entity reports quarterly on inspections completed, while the other stopped similar reporting in November 2018, while they wait for a new system. Neither LG entity reported on inspections that were due or overdue. Compliance reporting provides management with oversight of inspections required and completed, and EHO workload.

Compliance information and data can also help identify systemic food safety issues, make decisions on education and support services, and determine appropriate enforcement options. Both LG entities have advised they are either conducting a review of their registers to identify other shortcomings or improving the accuracy and effectiveness of their register and compliance reporting.

LG entities did not always follow-up food safety issues consistently and enforce compliance

We found that the LG entities did not have adequate procedures to help EHOs determine which types of non-compliance require enforcement and follow-up, and when this should occur. While some compliance decisions may require the professional judgement and discretion of individual EHOs, it is important to have documented guidance to support consistent, risk based compliance actions.

Both LG entities were not following up instances of identified non-compliance in a consistent way, to ensure food safety issues were fixed. In our review of 41 inspections across both LG entities, there were 30 inspections that identified non-compliance in areas such as food skills and knowledge, cleanliness, maintenance, handwashing facilities and protecting food from contamination. We found:

- EHOs only recommended an improvement notice for 2 businesses, but these were never issued. One business had a follow-up inspection, while the other was later fined \$250 for hazardous foods that were being thawed with no temperature control.
- Five inspections completed by 1 LG entity identified between 11 and 20 separate items of non-compliance at each business but were enforced differently. Three of the

inspections required no further action, 1 resulted in a follow-up inspection, and the other was marked as requiring an improvement notice, but only had a follow-up inspection.

- Six businesses had follow-up inspections, but it was unclear if all items of non-compliance were fixed. One LG entity advised that non-compliance with a lower risk are often rectified at the time of inspection, but this wasn't always documented.

It is important for LG entities and other regulators to take consistent compliance actions for similar non-compliance. Clear and consistent enforcement processes and actions are equitable and make it easier for businesses to understand how LG entities assess and enforce compliance with the Standards.

We expected to see more formal enforcement processes used, based on the types of non-compliance found, but these were rarely used. According to Department records, in 2018-19, only 2.6% of 734 inspections across both LG entities resulted in formal enforcement. Less than 1% of all inspections resulted in an improvement notice, the first enforcement option for non-compliance. Under appropriate circumstances, formal enforcement actions send a clear and important message to businesses that their food safety practices need to be strengthened and is consistent with the Department's compliance and enforcement guidelines.

Recommendations

Local government entities should:

1. ensure food business inspections are prioritised and carried out according to their risk classification
2. ensure changes to inspection frequencies are only made based on a documented assessment of compliance history or other urgent requirement
3. improve recordkeeping for food business inspections and compliance reporting to:
 - a. better understand inspection and compliance history
 - b. identify compliance issues and follow-up activities
 - c. respond to emerging food safety issues
4. develop procedures and staff guidance to ensure non-compliant food businesses are followed up and Standards enforced in a consistent and timely manner
5. work with the Department of Health in the development and implementation of new electronic food safety inspection and recordkeeping systems.

Under section 7.12A of the *Local Government Act 1995*, all audited entities are required to prepare an action plan addressing significant matters relevant to their entity for submission to the Minister for Local Government within 3 months of this report being tabled in Parliament and for publication on the entity's website. This action plan should address the points above, to the extent that they are relevant to their entity, as indicated in this report.

Response from local government entities

Local government entities in our sample generally accepted the recommendations and confirmed that, where relevant, they will improve inspection and enforcement practices, recordkeeping and compliance reporting for regulating food businesses.

Audit focus and scope

This audit assessed if local government entities (LG entities) effectively regulate consumer food safety in food businesses. It focused on food business inspections, and enforcement of compliance with food safety legislation and the Standards at 2 LG entities. We did not attempt to detect non-compliance in food businesses.

In this audit we also examined how effectively the Department of Health monitors consumer food safety, inspects food businesses and enforces compliance. However, this part of the audit was put on hold due to the ongoing COVID-19 pandemic. We plan to table findings specific to the Department at a later date.

We reviewed practices for regulating food safety at 2 LG entities, including:

- food business registers containing 1,204 food businesses
- policies and procedures for regulating food businesses
- records and data on food businesses and regulatory activities
- inspection records and enforcement actions at food businesses from 2018 to 2019
- the timeliness and consistency of follow-up inspections and enforcement actions.

At each LG entity, we sampled 10 food businesses (5 high risk and 5 medium risk) from 2018 to 2019 to review risk assessments, any subsequent risk re-assessments, inspection records and any associated enforcement activities. We also accompanied an environmental health officer on a food business inspection at both LG entities.

We spoke with staff at the LG entities who deal with registration, risk assessment, inspection, education and enforcement of food businesses.

This audit did not review animal food processing premises, retail pet meat stores or businesses exempt from registration (such as newsagents selling low risk packaged foods).

This was a performance audit, conducted under Section 18 of the *Auditor General Act 2006*, in accordance with Australian Standard on Assurance Engagements ASAE 3500 *Performance Engagements*. We complied with the independence and other ethical requirements related to assurance engagements. Performance audits focus primarily on the effective management and operations of entity programs and activities. The approximate cost of undertaking the audit and reporting was \$184,000.

Auditor General's reports

Report number	2019-20 reports	Date tabled
27	Information Systems Audit Report 2020 – Local Government Entities	25 June 2020
26	Western Australian Public Sector Audit Committees – Better Practice Guide	25 June 2020
25	WA's Transition to the NDIS	18 June 2020
24	Opinion on Ministerial Notification	16 June 2020
23	Opinion on Ministerial Notification	29 May 2020
22	Regulation of Asbestos Removal	21 May 2020
21	Audit Results Report – Annual 2019 Financial Audits	12 May 2020
20	Local Government Contract Extensions and Variations and Ministerial Notice Not Required	4 May 2020
19	Control of Monies Held for Specific Purposes	30 April 2020
18	Information Systems Audit Report 2020 – State Government Entities	6 April 2020
17	Controls Over Purchasing Cards	27 March 2020
16	Audit Results Report – Annual 2018-19 Financial Audit of Local Government Entities	11 March 2020
15	Opinion on Ministerial Notification	28 February 2020
14	Opinion on Ministerial Notification	31 January 2020
13	Fee-setting by the Department of Primary Industries and Regional Development and Western Australia Police Force	4 December 2019
12	Audit Results Report – Annual 2018-19 Financial Audits of State Government Entities	14 November 2019
11	Opinion on Ministerial Notification	30 October 2019
10	Working with Children Checks – Follow-up	23 October 2019
9	An Analysis of the Department of Health's Data Relating to State-Managed Adult Mental Health Services from 2013 to 2017	9 October 2019
8	Opinions on Ministerial Notifications	8 October 2019
7	Opinion on Ministerial Notification	26 September 2019
6	Opinions on Ministerial Notifications	18 September 2019
5	Fraud Prevention in Local Government	15 August 2019
4	Access to State-Managed Adult Mental Health Services	14 August 2019
3	Delivering Western Australia's Ambulance Services – Follow-up Audit	31 July 2019
2	Opinion on Ministerial Notification	26 July 2019
1	Opinions on Ministerial Notifications	19 July 2019

**Office of the Auditor General
Western Australia**

7th Floor Albert Facey House
469 Wellington Street, Perth

Perth BC, PO Box 8489
PERTH WA 6849

T: 08 6557 7500
F: 08 6557 7600
E: info@audit.wa.gov.au
W: www.audit.wa.gov.au

 @OAG_WA

 Office of the Auditor General for
Western Australia