

Western Australian Auditor General's Report



Regulation of Consumer Food Safety by the Department of Health



Report 18: 2020-21

1 April 2021

**Office of the Auditor General
Western Australia**

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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 the Department of Health

Report 18: 2020-21
April 2021



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

REGULATION OF CONSUMER FOOD SAFETY BY THE DEPARTMENT OF HEALTH

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 the Department of Health effectively regulates consumer food safety in food businesses. It focused on the Department's inspection and enforcement processes, support to local government entities, and monitoring and reporting of regulation activities.

I wish to acknowledge the Department's staff for their cooperation with this audit.

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

CAROLINE SPENCER
AUDITOR GENERAL
1 April 2021

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Auditor General's overview

Food businesses, the Department of Health (Department) and local government entities (LG entities) have a shared responsibility to ensure that the food we consume is safe. The Department's role includes supporting LG entities to implement the *Food Act 2008* and regulating food businesses not located within a local government area, such as Rottnest Island and Kings Park.



In June 2020, I tabled my report on the regulation of food safety by LG entities.¹ This report builds on that audit by examining how effectively the Department regulates consumer food businesses, supports LG entities, and monitors and reports its regulatory activities.

We found several shortcomings in the Department's practices, which include overdue inspections and lack of timely follow up, poor recordkeeping, inefficient reporting practices and a lack of up-to-date guidance material. These weaknesses reduce the Department's ability to efficiently and effectively regulate consumer food safety and ensure the support it provides is relevant and useful. The findings relating to inspections and recordkeeping are similar to those we found in the audited LG entities.

As I noted in my previous report, the findings and recommendations in this report are not intended to add more layers of regulation for business. Instead, by improving the regulatory framework and the associated processes, the Department can ensure that regulatory resources are focused on the highest risk businesses and that all food businesses are subject to the same rules, regardless of where they are operating.

I trust that in the future the Department and LG entities can work together to make improvements to the regulation of consumer food safety in Western Australia (WA). I am pleased the Department has agreed to all the findings presented in this report and has already commenced work to respond to the recommendations.

We delayed finalising this audit to allow the Department, and the Public and Aboriginal Health Division in particular, to focus on its response to the COVID-19 pandemic. Together with our June 2020 audit, this report provides greater context and transparency as to how consumer food safety is regulated in WA.

¹ Western Australian Auditor General's Report, *Regulation of Consumer Food Safety by Local Government Entities*. Report 28: June 2019-20.

Executive summary

Introduction

This audit assessed whether the Department of Health (Department) effectively regulates consumer food safety in food businesses. It focused on the Department's inspection and enforcement processes, support to local government entities (LG entities), and monitoring and reporting of regulation activities.

During this audit we also examined how effectively 2 LG entities monitored consumer food safety, inspected food businesses and enforced compliance. We tabled our report on this part of the audit in Parliament on 30 June 2020² and it is available on our website at audit.wa.gov.au. It provides background and other information relevant to this report, and consequently, both reports should be read together. We delayed auditing some aspects of the Department's role in food safety until now, to allow it to focus on the State's COVID-19 pandemic response.

Background

The aim of food business regulation is to reduce the number of food related diseases and ensure food is safe for consumption.³ At June 2019, Western Australia (WA) had over 25,000 registered food businesses. Across WA over 7,000 cases of intestinal infectious disease, such as salmonella, were reported in 2017.⁴ 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 the regulation of food businesses. The *Food Act 2008* (the Act) and the Food Regulations 2009 (Regulations) allow the Department and LG entities to inspect food businesses and enforce compliance with legislation and the *Australia New Zealand Food Standards Code* (Standards). The Department is responsible for 30 food businesses that are not in a local government area, such as businesses on Rottnest Island and in Kings Park. While the Department is also responsible for regulating food safety in hospitals, and for primary producers, including dairy, the production and processing of bivalve molluscs⁵, and it is the controlling authority for meat, these were out of scope for this audit.

The Department has a key role in facilitating food safety regulation in WA. It liaises with national bodies, coordinates statewide food safety activities and supports LG entities to implement food safety legislation.

The Department's Environmental Health Directorate (EHD), which is part of the Public and Aboriginal Health Division (PAHD), is responsible for managing food safety in WA. There are 2 separate units within the EHD which manage issues related to food and its regulation. One unit coordinates food science and policy, and the other oversees compliance and enforcement of food safety legislation. Similar to LG entities, the Department has environmental health officers (EHOs) to register food businesses and conduct inspections. The PAHD also provides strategic and operational direction for public health issues such as COVID-19.

² Western Australian Auditor General's Report, *Regulation of Consumer Food Safety by Local Government Entities*. Report 28: June 2019-20.

³ 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*.

⁴ Not all of these cases were linked to food businesses.

⁵ These include clams, oysters, mussels and scallops.

Conclusion

The Department has weaknesses in its inspection and enforcement processes, and can provide more support to LG entities. Addressing these shortcomings will help improve efficiency and effectiveness of consumer food safety regulation across WA.

The Department's key guidance on risk classification, compliance and enforcement is out-of-date. This means LG entities can assess similar risks differently and food businesses may not be subject to appropriate enforcement action after non-compliance is identified. In addition, the Department does not collect sufficient data to effectively monitor and report on food safety, and the Act has not been reviewed as required. These weaknesses can lead to inconsistent or inefficient regulation of food businesses by LG entities and the Department.

While the Department conducts inspections for the food businesses it is responsible for, some inspections were overdue, enforcement of compliance with the Standards was not always consistent or timely, and practices for recording compliance history need improvement. As we found in the LG entities we reviewed, these shortcomings may lead to unsafe food practices going undetected or left unaddressed.

Findings

The Department can improve how it monitors and reports on food safety regulation

The Department lacks timely and appropriate data to effectively monitor and report on food safety regulation across WA. For example, the Department does not know:

- the frequency and types of non-compliance found during inspections carried out by LG entities
- whether risk-based inspections are completed by LG entities in a timely manner
- whether enforcement and follow-up is actioned consistently by LG entities.

The Department uses LG entity data on the number of inspections and enforcement activities for its annual performance report on food regulation activities, which it publishes on its website. However, the Department advised that due to the manual and time consuming process, of manually recording 137⁶ LG entity responses into a central register, and the lack of verification of LG entity data, some data is up to 18 months old and may be inaccurate. This limits the Department's ability to assess how well LG entities regulate food safety.

The Department acknowledged the need to improve its processes, and in June 2019, staff prepared a business case to review and improve the efficiency and effectiveness of the reporting process. The project is ongoing, but the Department expects it will improve how it monitors the performance of food safety regulation, and identify trends and the guidance needed for LG entities to respond to emerging issues.

The Department has not reviewed the operations and effectiveness of the Act since it commenced in 2008. Under the Act, a review was required, as soon as practicable, 5 years after the Act commenced. The Department started a review in 2018 by drafting a discussion paper, which was to be issued to stakeholders for comment. However, the Department advised the review was put on hold due to loss of key staff through the Government's voluntary redundancy scheme. A comprehensive review of the Act provides an opportunity to clarify roles and responsibilities of regulators, ensure legislation reflects modern regulatory practices, and identify further opportunities to protect the WA community from food-borne illnesses.

There are also emerging food safety issues, such as mobile food trucks (Case study 1), food delivery providers and the production of kombucha, which are not adequately covered under existing legislation or supporting guidance.

Case study 1: Regulation of mobile food trucks in WA

Mobile food trucks are a popular and increasing presence at local events and tourist or recreational areas. However, the current regulatory framework does not adequately address food safety issues associated with these mobile businesses.

For example, mobile food trucks are known to serve food in multiple LG entity areas, including those who have not licensed or inspected the businesses. As there is no central register of licensed mobile food trucks, LG entities cannot quickly check licensing and inspection records of mobile food trucks operating in their area. For the LG entities we audited, inspection and enforcement practices vary, compounding the impact of this issue.

⁶ Does not include Christmas and Cocos Islands.

The Department, along with LG entities have identified these issues and are working to find solutions. The Department told us it is currently developing and piloting a central register of mobile food trucks.

The Department provides inadequate regulatory guidance and support for LG entities

The Department has not reviewed key documents it provides to LG entities on business risk assessments, compliance, enforcement and roles and responsibilities for a number of years. For example:

- The guidance for conducting business risk assessments was last reviewed in 2010, despite the Department's policy requiring it to be reviewed annually. This review is important to ensure that guidance to LG entities is clear and is interpreted consistently. For example, there is limited guidance about whether businesses need to be reassessed when non-compliance is found. The 2 LG entities audited did not always reassess businesses when non-compliance was found.⁷
- The compliance and enforcement guideline has not been reviewed and updated since 2014. It has not been updated to reflect the Department's decision that written warnings are an inappropriate enforcement option when inspectors identify non-compliance with the Standards. At the 2 audited LG entities, we found instances where they were not using improvement notices to formally enforce compliance.

A lack of up-to-date and clear guidance increases the risk entities will respond to and follow-up non-compliance inconsistently.

LG entities also told us that they are increasingly seeking information and support from other LG entities and jurisdictions, such as for compliance advice for egg products. This is due, in part, to the Department not having readily available staff or documented guidance. The Department runs food safety training workshops for LG entities and businesses about emerging issues and stakeholder feedback is mainly positive. However, LG entities advised that they are finding it increasingly difficult to access specific support for regulatory issues from the Department. Frequent and accessible food safety information will help encourage consistent regulatory practices.

Twenty percent of food businesses have not been inspected on time

The Department has not completed all required inspections and is not following its own good practice inspection frequencies. We reviewed all 30 consumer food businesses monitored by the Department. At October 2019, 6 were overdue for inspection; 4 of these are in Kings Park where there are only 8 food businesses in total. The business inspections not carried out according to guidance and overdue included:

- 1 high risk business inspection that was 9.5 months overdue
- 4 medium risk businesses that were overdue between 1 and 3 years for an inspection.

Without timely inspections, the Department cannot be sure it effectively manages food safety risks and that businesses are meeting the Standards. The Department advised its capacity to complete inspections and other food safety activities has been reduced through recent

⁷ Western Australian Auditor General's Report, *Regulation of Consumer Food Safety by Local Government Entities*. Report 28: June 2019-20.

organisational restructures. We note since being made aware of the findings the Department has committed to conducting overdue inspections, with 3 now completed.

Inspection records were generally well documented, but compliance history records can be improved

Department EHOs generally had clear documentation to support the results of inspections and any subsequent enforcement actions. In a sample of 13 inspection reports from 2018 and 2019, we found the reports included itemised non-compliance, photographic evidence and documentation of discussions with the business. Appropriately and consistently documenting inspection outcomes and providing these to businesses aligns with recordkeeping good practice and assists with carrying out future compliance activities.

However, at inspections, EHOs did not use a checklist to systematically assess compliance with the Standards. Use of a checklist is required by the Department's procedures. By not using a consistent process for inspections, the Department cannot ensure it has fairly and thoroughly inspected all businesses against the same Standards.

We also found weaknesses in how the Department records and tracks business compliance history. The Department has not recorded the results of its inspections and follow-up activities in its central register since 2017. This means to understand a businesses' compliance history, an EHO would need to access and review a number of inspection and enforcement documents. This is inefficient and increases the risk that the Department does not follow-up non-compliant businesses.

Enforcement of non-compliance was not always timely or did not occur

The Department uses improvement notices as the first enforcement option when non-compliance is identified, consistent with its guidelines. In our sample of 13 inspection reports from 2018 and 2019 we found the Department issued improvement notices to all businesses when non-compliance was identified. This sends a clear and important message to businesses that their food safety practices need to be improved.

While the Department issued improvement notices, it did not always follow them up and when it did, it was not timely. EHOs set timeframes for follow-up according to the severity of the non-compliance. Of the 13 improvement notices, 7 had no evidence of a follow-up inspection, and 2 were not followed up until 4 and 5 months after the required date. Delays in follow-up inspections increase the risk that the public will be exposed to unsafe food practices, particularly at businesses already found to be non-compliant with the Standards.

Recommendations

The Department should:

1. ensure the support and information it provides to LG entities is up-to-date, accessible and responsive to current issues

Department response: Agreed

The guidance materials and support information on the Department's website for LG entities and consumers is in the process of review and will be updated to reflect current consumer food safety issues.

Implementation timeframe: 31 December 2021.

2. update its data collection processes to provide it with a comprehensive and accurate picture of food safety regulation to respond to needs of the LG entities

Department response: Agreed

- a. A draft proposal has been developed to improve the reporting requirements under the Act. There will be consultation with LG entities in this regard, due to the proposal potentially requiring changes to LG entity databases.

As part of this process there is an opportunity to consider how further data could be collected to address the information, i.e. the frequency and type of non-compliance found; whether risk-based inspections are completed according to an appropriate schedule and whether enforcement and follow-up is actioned consistently within, and across LG entities.

Note: New questions have already been agreed to for next reporting period (i.e. 1 July 2020 – 30 June 2021), and negotiations are underway with LG entities for the following reporting period (i.e. 1 July 2021 – 30 June 2022).

- b. The Department acknowledges that the data collection process from the 137 LG entities would benefit from being updated from the current manual approach to a more automated, self-populated system of data collection and management.
- c. The Department will scope and develop an approach for the verification of data, in consultation with LG entities, and explore options i.e.; benchmarking against other jurisdictions, and other States and Territories; and/or an annual to bi-annual process of verification limited representative sample of LG entities.

Implementation timeframe:

- a. Request for relevant data, completion date 30 June 2021.
 - b. An automated system for data collection, requires further consideration, planning and costing. This is subject to Department procurement processes. Ongoing timeframe to be considered as part of the planning and costing process.
 - c. 31 December 2021.
3. review and improve its procedures and staff guidance to ensure non-compliant food businesses are followed up, and Standards enforced in a consistent and timely manner

Department response: Agreed

The Department will:

- a. Review Standard Operating Procedures to improve guidance on non-compliant food businesses and following-up on non-compliant food businesses.
- b. Identify training needs of authorised officers relevant to consumer food safety and the Act.
- c. Develop and implement a training schedule for ongoing professional development of authorised officers.

Implementation timeframe:

a-c. Third quarter 2021.

- 4. ensure food business inspections are prioritised and carried out according to the schedule and best practice

Department response: Agreed

The schedule for food safety assessments of not in a district (i.e. Kings Park, Rottnest Island and Perry Lakes) will be reviewed and updated in accordance with the Department's *WA Food Regulation: Food Business Risk Profiling – Guidance to the classification of food businesses*.

Implementation timeframe:

Food businesses (not in a district) assessments are up to date as of 9 March 2021. Priority afforded to these assessments being completed according to guidance / best practice will be ongoing.

- 5. 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.

Department response: Agreed

The Department will:

- a. Review the Standard Operating Procedure for food businesses not in a district to improve recordkeeping requirements.
- b. Update the Department's website to include information on how the emerging consumer food safety issues are identified and managed in the local, State, National and Bi-national environment.

The Bi-national Food Safety network, with members across all States and Territories, the Commonwealth, New Zealand and Food Standards Australia New Zealand, and the National Food Incident Response Protocol can be engaged for immediate action to discuss, trace and remove food products that pose a risk to consumer health, across multiple jurisdictions, from the marketplace.

In addition, the Food Regulation Standing Committee and the Implementation Sub-committee on Food Regulation seek to address emerging food safety issues, like fermented beverages (i.e. kombucha), by way of developing guidelines, processes, and supporting action to amend to food standards contained in the Australia New Zealand Food Standards Code, as needed.

- c. Commit to improving current practices and procedures, to update, review and monitor the existing central register recording compliance history information; and schedule follow-up action related to food business non-compliance.

Longer term, the current method / central register used by the Department for managing food business compliance history requires modernisation and it is envisaged that introduction of digital technologies and automated processes are the preferred option.

Implementation timeframe:

- a. 30 September 2021
- b. 30 September 2021
- c. 30 September 2021. An automated system requires further consideration, planning and costing. This is subject to Department procurement processes. Ongoing timeframe to be considered as part of the planning and costing process.

Response from the Department of Health

The Department welcomes the OAG's findings and supports all 5 recommendations. The Department is mindful of the potential resource implications that will need consideration during the implementation process when addressing the recommendations.

The Department is committed to continuous improvement principles and, as indicated in the responses to the recommendations, will be implementing measures to address the recommendations for improvement identified by the OAG.

Audit focus and scope

This audit assessed if the Department effectively regulates consumer food safety in food businesses. It focused on the Department's inspection and enforcement processes, support to LG entities, and monitoring and reporting of regulation activities. We did not attempt to detect instances of non-compliance in food businesses.

We also examined how effectively 2 LG entities monitored consumer food safety, inspected food businesses and enforced compliance. This part of our audit was tabled in Parliament on 30 June 2020.⁸

We reviewed the Departments practices for regulating food safety, including:

- its food business register for all 30 food businesses not in a LG entity area
- policies and procedures for regulating food businesses
- records and data on food businesses and regulatory activities
- risk assessments, and 13 inspection records and enforcement actions from a sample of 10 food businesses (5 high risk and 5 medium risk) from 2018 and 2019
- the timeliness and consistency of follow-up inspections and enforcement actions.

We accompanied an EHO on a food business inspection carried out by the Department. We also assessed how the Department provides support to LG entities and the food industry on food safety in WA.

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

This audit did not review hospitals, primary producers or the primary production and processing of bivalve molluscs.

This was an independent 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 \$118,000.

⁸ Western Australian Auditor General's Report, *Regulation of Consumer Food Safety by Local Government Entities*. Report 28: June 2019-20.

Auditor General's 2021-22 reports

Number	Title	Date tabled
17	Department of Communities' Administration of Family and Domestic Violence Support Services	11 March 2021
16	Application Controls Audits 2021	9 March 2021
15	Opinions on Ministerial Notifications – Tax and Funding Information Relating to Racing and Wagering Western Australia	26 February 2021
14	Opinion on Ministerial Notification – Hotel Perth Campaign Reports	24 February 2021
13	Opinion on Ministerial Notification – Release of Schedule of Stumpage Rates	24 February 2021
12	Grants Administration	28 January 2021
11	COVID-19 Relief Fund	21 December 2020
10	COVID-19: Status of WA Public Testing Systems	9 December 2020
9	Western Australian Registry System – Application Controls Audit	26 November 2020
8	Regulating Minor Pollutants	26 November 2020
7	Audit Results Report – Annual 2019-20 Financial Audits of State Government Entities	11 November 2020
6	Transparency Report: Major Projects	29 October 2020
5	Transparency Report: Current Status of WA Health's COVID-19 Response Preparedness	24 September 2020
4	Managing the Impact of Plant and Animal Pests: Follow-up	31 August 2020
3	Waste Management – Service Delivery	20 August 2020
2	Opinion on Ministerial Notification – Agriculture Digital Connectivity Report	30 July 2020
1	Working with Children Checks – Managing Compliance	15 July 2020

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