



# Preparing for stage 3

1. **Automatic designation of Environmental Health Officers as authorised officers [section 312]**
2. **Future designation of authorised officers following stage 3 [ section24]**

## **Public Health Act 2016**

The purpose of this document is to assist local government enforcement agencies to prepare for the commencement of **Part 2, Divisions 2 and 4** of the *Public Health Act 2016* (the Act) which will commence at stage 3 of implementation of the *Public Health Act 2016*.

The Department of Health will advise local government of the date stage 3 will come into effect as soon as a date is known. It is anticipated that this may occur late January.

Please note that this document is not a substitute for reading the Act and it is important to read the relevant provisions of the Act that will come into effect at stage 3.

## Preparing for stage 3

To prepare for stage 3 of implementation of the Act, enforcement agencies must:

1. Identify all persons who hold a current appointment as an environmental health officer (EHOs) who are to be automatically designated as an authorised officer [section 312]
2. Prepare a certificate of authority template (ID cards) for your local government [section 30]
3. Determine the designation requirements (the Acts or provisions of the Acts the person will be designated or any restrictions/limitations to the designation) to be included on the certificate of authority for each person to be designated as an authorised officer [section 30 and section 312(1)(b)]
4. Develop a list of authorised officers, which must be maintained [section 27]

## Key messages

- The designation of authorised officers and the appointment of environmental health officers is now the responsibility of local government (enforcement agencies). The Department of Health no longer has a role in the designation or appointment of EHOs/authorised officers.
- Once stage 3 comes into effect, all designations must be made under the *Public Health Act 2016*, and no longer under the *Health Act 1911* [to be renamed the *Health (Miscellaneous Provisions) Act 1911*].

## Overview - Designating Authorised Officers [section 24]

An authorised officer is a person or class of persons who are designated under section 24 of the Act the authority to administer and enforce provisions of the Act or another specified Act on behalf of an enforcement agency.

The Act enables an enforcement agency to designate as an authorised officer:

- a) environmental health officers, as appointed under the Act; or

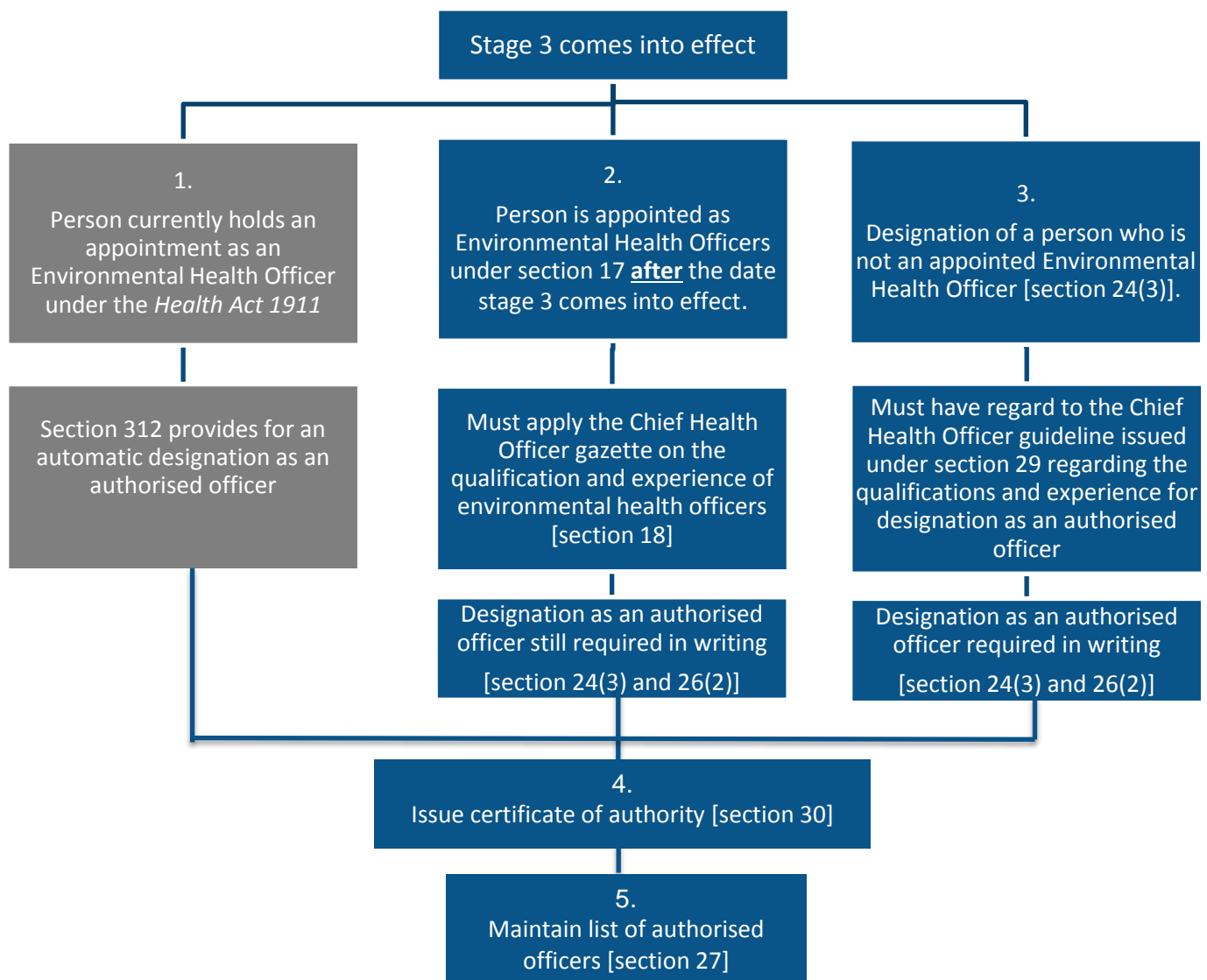
- b) persons who are not environmental health officers, but who possess other appropriate qualifications and experience to perform particular functions under the Act or other Acts; or
- c) a mixture of both.

**Designations must be made in writing and each authorised officer must be issued with a certificate of authority [sections 26 and 30].**

Two or more local governments may jointly designate a person or classes of persons as authorised officers [section 24(4)].

**Flow chart on designating authorised officers**

The below chart broadly outlines three circumstances in which a person may be designated an authorised officer under the Act.



## **1. Persons holding a current appointment as an environmental health officer under the *Health Act 1911* [automatic designation]**

A person holding an appointment as an environmental health officer under the *Health Act 1911* on the day stage 3 comes into effect will be automatically designated as an authorised officer under the Act [**section 312**].

An enforcement agency will not need to designate these persons in writing but will need to issue each of these officers with a certificate of authority in accordance with section 30 of the Act.

## **2. New environmental health officer appointments [day after stage 3]**

Any person appointed as an environmental health officer under section 17 of the Public Health Act the day after the commencement of stage 3 must have at least one of the qualifications and/or experience gazetted by the Chief Health Officer under section 18.

The appointment of an EHO is the responsibility of local government and does not need to be in writing. The appointment can be done in accordance with whatever process is used by a local government for employing staff or contractors.

A person appointed as an environmental health officer under section 17 of the Public Health Act may be designated as an authorised officer in writing and be issued with a certificate of authority.

The automatic designation provided by section 312 will not apply to new environmental health officer appointments that occur after the date of stage 3 of implementation.

## **3. Persons who are not appointed environmental health officers**

An enforcement agency may designate as an authorised officer persons who are not also an appointed environmental health officer under section 17 of the Public Health Act. This can be done if the enforcement agency considers the person has appropriate qualifications and experience to perform the particular functions that they will be designated to perform. The Act enables an enforcement agency to specify conditions or restrictions to which the person's authority is subject, based on their qualifications and experience.

Though an enforcement agency has the discretion to assess what will constitute appropriate qualifications and experience, when making these designations an enforcement agency must have *regard* to any Chief Health Officer guidelines issued under section 29 of the Public Health Act.

As the Act is being implemented in a staged manner, the Chief Health Officer guidelines under section 29 will initially require that persons designated as authorised officers should:

1. hold a qualification approved by the Chief Health Officer under section 18 of the Public Health Act; or
2. have been previously approved by the Executive Director, Public Health to be appointed as an environmental health officer, under the *Health Act 1911*; or
3. hold qualifications and experience approved by the Western Australian Environmental Health Officers Professional Review Board.

As new subsidiary legislation under the Public Health Act is implemented, these guidelines will be updated to include other qualifications and experience.

## **4. Issuing a certificate of authority [section 30]**

An authorised officer must be issued with, and show evidence on request, of their authorisation under the Act. This is achieved by issuing any person who is authorised under the Public Health Act with a 'Certificate of Authority' card.

Section 30(2) sets out the requirements for the content of the certificate which must contain the following information:

- (a) state that it is issued under the Act
- (b) state the name of the person to whom it is issued and bear a photograph or digital image of that person and the person's signature
- (c) state the date, if any, on which it expires
- (d) specify
  - a. the Acts or provisions of the Acts for the purposes of which the person is designated as an authorised officer
  - b. any provisions of an Act that are excluded from the designation
- (e) specify any conditions or restrictions to which the person's authority is subject; and
- (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

Where necessary, a local government may issue an authorised officer with a temporary certificate of authority. This must comply with all of the above criteria other than the photograph/digital image and/or the designated authorised officer's signature. A temporary certificate of authority is valid for a period not exceeding one month.

An authorised officer must carry their certificate of authority cards with them. If asked to show their ID card (section 30(3)) and he or she cannot, the authorised officer cannot exercise the relevant powers of the Act.

Please refer to the example [Certificate of Authority template](#) available on the [Department's website](#).

### **Signing the certificate of authority**

Under section 30(2) the certificate of authority is signed by both the person who issues it and by the authorised officer to whom it is issued. Using section 21(1)(b)(i), local governments may delegate the power to issue certificates of authority to their Chief Executive Officer ('CEO'). The CEO, as the authorised delegate, would then need to sign the certificate along with the authorised officer being issued with the certificate.

The [Department of Local Government and Communities](#) has published a "[Delegation Guideline](#)" which provides assistance to local government regarding the nature of delegations, how to go about determining whether to use delegations and other related matters.

### **Consolidating authority cards [section 31(3)]**

If a person is designated as an authorised officer for the purposes of another written law, and that other written law requires the officer to also be issued with a certificate or other document evidencing their identity or appointment, section 31(3) of the Act provides the ability for the authorised officer to consolidate these identity cards into the one identify card.

### **Specifying provisions of an Act on a certificate of authority**

#### ***Automatic designations (under section 312)***

Section 312(1)(b) of the Public Health Act specifies the Acts and provisions of the Acts for the purposes of which a person who holds a current appointment as an environmental health officer is automatically designated to perform.

The certificate of authority prepared by a local government for these officers should be consistent with section 312.

**Example wording:** “The authorised officer is so designated for the purposes conferred by section 312(1)(b) of the *Public Health Act 2016*”.

Alternatively a local government may choose to list the relevant provisions under section 312(b) in a certificate of authority that are applicable for each person e.g. or section 312(1)(b)(i)(ii)(v).

### ***New designations***

Where a person designated as an authorised officer does not fall within section 312, the local government is required to specify the Acts and provisions of those Acts for the purposes of which that officer is designated to perform.

The main parts of the Public Health Act that local government authorised officers must be designated for, and may need to be specified/restricted on a certificate of authority include:

- Part 8 – Registration and licensing
- Part 9 – Notifiable infectious diseases and related conditions
- Part 14 – Improvement notices and enforcement orders
- Part 16 – Powers of entry, inspection and seizure

It is important to specify the specific Parts of the Public Health Act that the designation relates to on the certificate of authority, rather than only stating the *Public Health Act 2016*. This is because other Parts of the Public Health Act also require duties to be performed by authorised officers which may not be relevant to local government authorised officers. Therefore this distinction is required on the authority card.

**Example wording:** “The authorised officer is so designated for the purposes conferred by:

- (i) Part 8, 9, 14, 16 of the *Public Health Act 2016*
- (i) *Health (Miscellaneous Provisions) Act 1911* sections 145(1), 157(2), 173 (paragraph (a) of the definition of authorised person), 181, 183, 184(1), 227(1), 228(1), 234(1), 257, 262(3), 265(1), 267(1)(c), 268(a), 277(1)(b) and (3), 280(2), 349(1), 351(1), (2) and (5), 352(1) and (2), 358(2) and 375;
- (ii) *Food Act 2008*

Note: The certificate of authority does not need to reference subsidiary legislation, as a reference to an Act includes its subsidiary legislation. However, if an enforcement agency believes an authorised officer should be restricted from enforcing specific regulations; this may be listed as a condition or restriction in accordance with section 30(2)(e).

### **Example certificate of authority**

An example certificate of authority template is available on the Departments website [www.health.wa.gov.au](http://www.health.wa.gov.au) and at the end of this document. This is not a prescribed form, and can be modified to suit local government’s requirements, as long as it contains the content specified in section 30(2).

## **5. Maintaining a list [section 27]**

An enforcement agency must prepare and maintain a list of all of its authorised officers.

Although it is not specified in the Act, it is recommended that the list includes:

- the person’s name
- persons job title
- qualifications and experience that were considered in their designation

- date of designation
- specify the Acts and provisions of the Acts the designation relates to
- list any conditions or restrictions of the designation

The maintenance of a list of authorised officers may form part of the local government annual reporting requirements to the Chief Health Officer [section 22].

### **Revoking or ceasing of a designation**

Any person designated to be an authorised officer by a local government ceases to be an authorised officer if the designation of the person is revoked or ceases to have effect [section 28].

An enforcement agency may revoke a designation in writing under section 26.

Where an authorised officer's designation is revoked or ceases to have effect, the officer is required to return their certificate of authority to the local government as soon as practicable [section 32].

### **Frequently asked questions**

#### ***What process must be followed under section 17 when appointing an Environmental Health Officer?***

The appointment of an EHO does not need to be in writing, and can be done in accordance with whatever process is used by a local governments for employing staff. However, a person appointed as an EHO whom is to be designated as an authorised officer must have one of the approved qualifications and experience approved in the gazette.

#### ***Can enforcement agencies continue to employ technical officers / assistants to assist with the enforcement of public health legislation?***

Many local governments employ technical officers to assist with numerous tasks, such as the collect of water samples, to support enforcement of public health legislation. The role of a technical officer can still continue and is unaffected by the changes.

Such technical officers may be able to be designated as authorised officers in the future once the Chief Health Officer Guideline on the qualifications and experience of authorised officers is updated at stage 5 of implementation of the Act.

#### ***What happens if the certificate of authority cards are not issued on the day that stage 3 occurs?***

The certificates of authority need to be provided as soon as possible following the date stage 3 comes into effect. Under section 30(3) of the Act, authorised officers must produce the certificates:

- (a) if asked to do so by the person in charge of any premises entered under the Act by the authorised officer; or
- (b) if asked to do so by a person who, under the Act, is required by the authorised officer to produce anything or to answer any question.

EHOs who receive an automatic designation under section 312(1) of the Act will still have the powers to enforce the range of Acts listed under section 312(1), even without the certificate of authority; however they cannot enforce the relevant powers referred to in section 30(3) if they cannot produce their certificates.

### **Who must sign the certificate of authority?**

Under section 30(2) of the Act, the certificate of authority is signed by both the person who issues it and by the authorised officer to whom it is issued. The certificate needs to state the capacity in which the person issuing the certificate is acting.

Using section 21(1)(b)(i), local governments may delegate the power to issue certificates of authority to their Chief Executive Officer ('CEO'). The CEO, as the authorised delegate, would then need to sign the certificate along with the authorised officer being issued with the certificate.

### **What should we do if the Council is not available to delegate the function of signing certificate of authorities when stage 3 occurs?**

If this situation arises, it is understood that the CEO as the executive head of the organisation may sign and issue temporary certificates as required for enforcement action. Accordingly, as soon as the council became available they would delegate the authority to the CEO to issue the certificates. New certificates must then be issued by the CEO from this date.

The [Department of Local Government and Communities](#) has published a "[Delegation Guideline](#)" which provides assistance to local government regarding the nature of delegations, how to go about determining whether to use delegations and other related matters. Local government should refer to this guideline for any queries related to the delegation process.

### **Further information**

An online presentation to explain this fact sheet is available on the Department of Health's Youtube webpage at [www.youtube.com/playlist?list=PLG6RagF80ivpSA\\_0O7YR7ImZBfBfaeXsi](http://www.youtube.com/playlist?list=PLG6RagF80ivpSA_0O7YR7ImZBfBfaeXsi)

Alternatively email queries to: [PublicHealthAct@health.wa.gov.au](mailto:PublicHealthAct@health.wa.gov.au)

### **Acknowledgements**

This document has been reviewed by the Public Health Act Reference Group (Local Government), who is responsible for reviewing Department of Health publications designed to support local government to administer and enforce the *Public Health Act 2016*.

## Summary of items to consider

To support the implementation of stage 3, the following table outlines a number of issues enforcement agencies may need to consider. This is not a comprehensive list, and enforcement agencies may need to give consideration to other internal processes not mentioned in this table.

All items need to be prepared and ready to be actioned on the date stage 3 comes into effect.

Action Y/N	Issues to consider	Explanatory information
	Establish a process for the designation of authorised officers in writing	Ideally, designation processes should be consistent with existing internal processes for designating authorised officers under other Acts, including the <i>Food Act 2008</i> , <i>Tobacco Products Control Act 2006</i> , <i>Dog Act 1976</i> or <i>Cat Act 2011</i> . A designation process should be established if one does not exist. This may include creating a standard designation in writing template.
	Written designation sign off	Determine who, within the enforcement agency, will be responsible for signing / approving the written designation of authorised officers on behalf of the enforcement agency e.g. Chief Executive Officers (CEO) (refer to section 21).
	Organise a certificate of authority template	Create a certificate of authority template card that can be used for identification purposes and determine who will be delegated the authority to sign the authority cards on behalf of the enforcement agency e.g. Chief Executive Officers (CEO) (refer to section 21).
	Identify persons to receive automatic designations under section 312	Identify all persons who hold a current appointment as an environmental health officer (EHOs) who are to be automatically designated as an authorised officer [section 312]
	Automatic designations specifications	For persons who will receive an automatic designation under section 312(1)(b), determine: <ul style="list-style-type: none"> <li>what provisions will need to be specified on each person's certificate of authority e.g. specify the Acts and provisions of the Acts the designation relates to outlined under section 312(1)(b)</li> <li>what conditions or restrictions of designation may be required (if any)</li> </ul>
	Non-automatic designations	Be prepared to determine the designation requirements to be included on the certificate of authority for each person to be designated as an authorised officer into the future (after stage 3) [section 30 and section 312]]
	Create a system for recording and maintaining a list of authorised officers	Determine who will be responsible for maintaining a list of authorised officers under the Act, and ensuring this list is maintained e.g. human resources or public health.
	Position (job) descriptions	Review position / job descriptions for environmental health officers to ensure updated terminology under the <i>Public Health Act 2016</i> and <i>Health (Miscellaneous Provisions) Act 1911</i> and associated regulations



## Example certificate of authority

Below is a certificate of authority template. This is available on the Department's website.

This is not a prescribed or approved form and can be modified to suit a local government's requirements, as long as it contains the content specified in section 30(2) of the Act.

### Front of card

<p>&lt;Agency Logo&gt;      Certificate of Authority <i>Public Health Act 2016</i></p> <p>This is to certify that &lt;insert enforcement agency&gt; has designated &lt;insert person's name&gt; as an authorised officer under section 24 of the <i>Public Health Act 2016</i>.</p> <p>This certificate of authority expires &lt;date if any&gt;.</p> <p>Signed by:</p> <p>.....</p> <p>&lt;name of authorised delegate&gt;</p> <p>&lt;capacity of delegate (e.g. CEO)&gt;</p> <p>&lt;date of issue&gt;</p>	<p>[Include digital photo of the person to be designated an authorised officer]</p> <hr/> <p>Signature of person</p>
---	--

### Back of card

<p>The authorised officer is so designated for the purposes conferred by:</p> <ul style="list-style-type: none"><li>• <i>insert relevant Act or provisions of Act for which purposes the person is designated [e.g. section 312(1)(b) of the Public Health Act 2016]</i></li></ul> <p>This designation is subject to the following conditions or restrictions:</p> <ul style="list-style-type: none"><li>• <i>insert details of conditions or limitations [e.g. restricted from Part 16 of the Public Health Act 2016]</i></li></ul>
--