



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

Guideline – Applying for a Crown Exemption Under the *Public Health Act* 2016 (WA)

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1. Background

The *Public Health Act 2016* (WA) binds the Crown, requiring the Crown and Crown authorities to comply with the provisions of the Public Health Act, which includes regulations made under the Public Health Act.

The implementation of Stage 5B of the Public Health Act will introduce a suite of new regulations. The Crown and Crown authorities will be required to comply with these regulations.

The Minister for Health may exempt the Crown or Crown authorities from certain provisions of the Public Health Act and/or regulations for a specified period of time.

2. Purpose

Part 17 of the Public Health Act authorises the Minister for Health to issue exemptions for a specified period of time to the Crown or Crown authorities for:

- one or more provisions of the Public Health Act
- one or more provisions of the regulations
- a combination of those things.

Crown exemptions provide for instances where it may not be practical or financially feasible for the Crown, or a Crown authority, to immediately comply with the provisions of the Public Health Act or regulations.

The Crown, or Crown authority, may apply for an exemption from the Public Health Act and/or regulations. The Minister for Health may issue an exemption of up to 10 years.

The Minister for Health may attach a condition to an exemption requiring the exemption-holder to develop a compliance plan within a period specified in the exemption. This must be developed in consultation with the Chief Health Officer.

This document outlines the circumstances where the Crown, or Crown authority, may apply for an exemption from the Minister for Health and how to fulfil their obligation of developing a compliance plan.

2.1. In scope

The Crown and Crown authorities, the crown exemption application process, responsibilities within the Crown exemption and compliance plan, and ongoing reporting processes.

2.2. Out of scope

Exemptions cannot be issued to the Crown or Crown authorities for any of the following provisions of the Public Health Act:

- Part 9, which relates to notifiable infectious diseases and related conditions
- Part 11, which relates to serious public health incident powers
- Part 12, which relates to public health emergencies
- Part 15, which relates to inquiries
- Part 16, which relates to powers of entry, inspection and seizure
- Part 18, which relates to liability, evidentiary and procedural matters
- Part 19, which relates to miscellaneous matters.

3. Crown and Crown authority exemption application process

Where the Crown or a Crown authority cannot meet its obligations under the [Public Health Act](#) or its subsidiary legislation, the Crown or Crown authority should apply for an exemption using the following process

<p>1. Submission of Application form</p>	<ul style="list-style-type: none"> • An exemption application must be in an approved form (available on the Department of Health website) • Exemption application forms should be submitted to the Department of Health – Office of the Chief Health Officer. • The Crown or Crown authority may voluntarily include a compliance plan with an exemption application, consultation on the compliance plan with the Chief Health Officer is not required at this stage.
<p>2. Chief Health Officer reviews the application for exemption</p>	<p>The Chief Health Officer reviews the exemption application and prepares advice and recommendations for the Minister in relation to the application.</p>
<p>3. Minister for Health determines outcome of the exemption application.</p>	<p>The Minister may issue an exemption, with or without conditions, or refuse the exemption application.</p> <ul style="list-style-type: none"> • An exemption can be issued for a period of up to 10 years. • Where a compliance plan is required as a condition attached to the exemption, the Crown or Crown authority must develop a compliance plan in consultation with the Chief Health Officer (see page 5).
<p>4. Minister for Health informs exemption-holder and publishes notice in <i>Gazette</i>.</p>	<ul style="list-style-type: none"> •The exemption-holder is advised of the outcome of the exemption application, associated timelines and any conditional requirements that are attached to the exemption. •The Minister for Health must publish notice of the exemption in the <i>Gazette</i>.
<p>5. Exemption-holder must ensure exemption and compliance plan is publicly available.</p>	<ul style="list-style-type: none"> •Details of the exemption must be published on a website maintained by, or on behalf of, the exemption-holder. •Details of the exemption and any compliance plan required must be included in the annual report of the exemption holder’s accountable authority.
<p>6. Annual review of compliance plan</p>	<p>If a compliance plan is required as a condition attached to the exemption, the exemption-holder must undertake annual review of the compliance plan.</p>

4. Exemption requirements

4.1. Exemption application

Applications for a Crown exemption must be submitted using the [application form](#). It is essential all sections of the form are completed when applying. The application is to be submitted to the Department of Health, Office of the Chief Health Officer. Before issuing an exemption, the Minister for Health must obtain and have regard to the advice and recommendations of the Chief Health Officer.

4.2. Parameters of the exemption

An exemption will commence on the day specified by the Minister for Health in the exemption issued.

If the exemption does not state when it takes effect, it will commence the day after the notice is published in the *Western Australian Government Gazette (Gazette)*.

An exemption can be issued for no longer than 10 years and will expire at the end of the period specified in the exemption unless it is sooner revoked.

An exemption cannot be amended to extend its duration. A new exemption application will need to be submitted if an extension is required. The new application can have the same or different terms.

An exemption must specify the following:

- the exemption-holder, which is a Crown authority or a Minister on behalf of the Crown
- the provisions of the Public Health Act and/or the regulations to which the exemption applies
- the terms of the exemption
- the conditions attached to the exemption (if any)
- the period for which the exemption is issued.

5. Compliance plans

The Minister for Health may attach a condition to an exemption where the exemption-holder must develop a compliance plan within a period specified in the exemption. A compliance plan sets out the steps the exemption-holder will take to achieve full or partial compliance with the exempted provisions of the Public Health Act or regulations before the exemption expires.

A compliance plan is not required to be submitted in an application for an exemption, however a draft compliance plan may support an exemption application. When submitting a draft compliance plan as part of an exemption application, this does not need to be done in collaboration with the Chief Health Officer. However, if a compliance plan becomes a condition attached to an exemption, the exemption-holder must work in consultation with the Chief Health Officer to finalise their compliance plan. There is an additional consultation requirement if the exemption-holder is not a Minister; the Minister for Health must consult with the Minister responsible for the exemption-holder. The compliance plan must then be approved by the Minister for Health.

A [compliance plan template](#) is available on the Department of Health website. An exemption-holder may amend a compliance plan, or replace a compliance plan with a new plan, at any time. Any changes to a compliance plan must go through the same process of consultation with the Chief Health Officer and will be subject to approval from the Minister for Health.

Under section 275 of the Public Health Act, an exemption-holder that is required to have a compliance plan must review it annually. The agency that prepared the compliance plan is required to ensure the plan remains current and the deliverables and timelines are being met.

The process for developing a compliance plan is as follows:

1. Development of draft compliance plan	The exemption-holder must develop a draft compliance plan using the compliance plan template available on the Department of Health website . This draft should include as much information as possible about how and when compliance with the exempted provisions of the Public Health Act and/ or regulations will be achieved.
2. Submit draft compliance plan to Chief Health Officer	The draft compliance plan should then be submitted to the Chief Health Officer for review - oadg_pahd@health.wa.gov.au
3. Chief Health Officer review	The Chief Health Officer will review the draft compliance plan and may support the draft compliance plan, request that amendments be made, or request that the exemption-holder provide further information. Where further information is requested by the Chief Health Officer, the review period will be extended to allow for the receipt of that information
4. Amendment	The exemption-holder must make the amendments requested by the Chief Health Officer prior to re-submitting their draft compliance plan to the Chief Health Officer.
5. Submission to Minister for Health	Once the Chief Health Officer supports the exemption-holder's draft compliance plan, it will be submitted to the Minister for Health.
6. Consultation with responsible Minister	If the exemption-holder is not a Minister, the Minister for Health must consult with the Minister responsible for the exemption-holder before approving a compliance plan.
7. Approval or refusal of approval	The Minister for Health may either approve or refuse to approve a compliance plan. ·Approval may be granted with or without modifications. Any modifications made to the compliance plan must be agreed with the exemption-holder and the responsible Minister (if any). ·If the Minister for Health refuses to approve a compliance plan, the Minister will direct the exemption-holder to submit a revised compliance plan for approval
8. Publication	The exemption-holder must publish the approved compliance plan on a website maintained by or on behalf of the exemption-holder.
9. Annual review	The exemption-holder must review the compliance plan annually.

6. Exemption publication and reporting obligations

6.1. Website publication

An exemption-holder must ensure the following information is readily available to the public, without charge, on a website maintained by, or on behalf of, the exemption-holder:

- all current exemptions held by the exemption-holder; and
- an up-to-date version of all current compliance plans developed by the exemption-holder and approved by the Minister for Health.

6.2. Annual reports

The annual report submitted by the accountable authority of a Crown authority under Part 5 of the *Financial Management Act 2006* must include:

- the details of each exemption held by the Crown authority during any part of the year to which the report relates; and
- a report on the progress of any compliance plan developed by the Crown authority and approved by the Minister for Health that was in place during the reporting period.

If an exemption-holder does not have an accountable authority that can comply with the annual report requirements, then the Department of Health must include the information required in their annual report. The exemption-holder must provide the Department of Health with all the information necessary to report.

7. Amending or revoking exemptions

Before amending or revoking an exemption, the Minister for Health must:

- give notice to the exemption-holder of the Minister for Health's intention to amend or revoke the exemption; and
- give the exemption-holder a reasonable opportunity to make submissions on the matter.

These conditions do not apply to an amendment or revocation of an exemption at the request of the exemption-holder.

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