

Aquatic Facilities

GUIDANCE NOTE 4

Aquatic Facility/Water Body Remedial Action Pathway (AF WRAP)

Purpose

The following information and pathway is aimed at providing local government environmental health officers (EHO's) with clarification and assistance regarding the statutory powers, options available and potential steps to follow, when deciding what actions can be applied in relation to an aquatic facility, that it is found to be sub-standard and requires urgent remedial action and attention.

This is particularly important when considering that certain problems within an aquatic facility/water body may have immediate implications, that potentially could put the health of patrons using the facility at risk or seriously affect their health.

Please Note: The flow-chart and table located on the last two pages of this guideline, provide a quick reference guide of available remediation actions, processes and steps.

Determine if the Aquatic Facility/Water Body is Captured by the Regulations or is Crown Exempt

Step 1

Ask the following question:

"Is this facility or water body captured by the Health (Aquatic Facilities) Regulations 2007 (the regulations) or is it Crown exempt?"

Please Note: The following types of water bodies are currently captured by the regulations and Code of Practice for the Design, Construction, Operation, Management and Maintenance of Aquatic Facilities (the Code):

"swimming pools (including various other pool types' e.g. diving, hydrotherapy, spa, toddler, wave etc), water playgrounds and waterslides."

Spray-grounds may also be captured if they form part of an aquatic facility that includes any of the aforementioned water bodies.

In addition, if any of those water bodies captured, are controlled or used by or in connection with any club, school, business, association, or body corporate (excluding an aquatic facility operated by a strata company in which there are less than 30 lots) and the water body is not naturally occurring, nor uses a sole supply of water directly from the ocean, then the regulations recognises these as water bodies within an aquatic facility.

Please Also Note: With regard to the exclusion of aquatic facilities operated by a strata company, in which there are less than 30 lots, please note that the Executive Director, Public Health (EDPH) has approved the regulations to be amended, to exclude only residential aquatic facilities with less than 30 lots. Therefore, in the interim, the DOH would ask local governments to only exclude residential facilities with less than 30 lots when applying the current strata title definition.

Government Aquatic Facilities

If an aquatic facility is owned/operated by the government special consideration may need to be given. Generally, it would be expected that government facilities comply with the regulations, and Code, in order to satisfy and fulfil a duty of care.

However local governments should initially ensure that government aquatic facilities located in hospitals, hostels, or even schools, for which they propose to impose certain regulatory requirements e.g. issue improvement/closure orders, have in the first instance received a certificate of compliance and permit to operate issued by the (EDPH).

This will in many instances require the Department of Health (DOH) to work in conjunction with local government to ensure that the government aquatic facility is inspected and complies with the repealed *Health (Swimming Pools) Regulations 1964* (the repealed regulations).

Once the facility is deemed by the DOH to comply with the repealed regulations, the EDPH may issue the operator of the government facility with a certificate of compliance and permit to operate in respect of the relevant government aquatic facility. A copy of the certificate of compliance and permit to operate will then be sent to the operator/occupier and the respective local government for their record.

Please Note: For Group 2-4 aquatic facilities, the regulations require confirmation of compliance, with the repealed regulations before 1 October 2009 (subject to an impending regulation amendment). After this time, all inspection reports for aquatic facilities, received by the DOH from local government, may require compliance to be confirmed in accordance with the Code or be subject to EDPH closure.

Therefore, it would be appreciated if local government EHO's give urgent attention to the inspection of all non-EDPH approved Group 2-4 aquatic facilities (including government facilities), for which a copy of a certificate of compliance and permit to operate has not been received.

Local government EHO's should contact the DOH's Applied Environmental Health Branch, on 9388 4911 if they require further information regarding these inspections.

Facilities Not Captured by the Regulations or Crown Exempt

Provide Operator/Management Personnel with Written Remedial Recommendations

If the aquatic facility/water body is not captured by the regulations, or is Crown exempt and does not have a certificate of compliance and permit to operate, then only appropriate remedial recommendations and actions regarding the aquatic facility/water body should be provided to the operator/management personnel of the facility.

It is important to ensure that all recommendations be made in writing, for although these may not be able to be enforced from a statutory law perspective, they do put the operator/management personnel of the facility on notice in terms of their duty of care.

Generally, the operator/management personnel of the facility will fulfil a duty of care and voluntarily act in accordance with written recommendations, providing they are rational, or reasonable, even if water body closure is recommended for a given period of time.

Facilities Captured by the Regulations

Option 1 - EHO Provides Operator - Verbal & Written Remedial Recommendations

Although an aquatic facility may be captured by the regulations, it is not always requisite that an EHO proceed down an enforcement pathway in the first instance.

For example, if the operator, or management personnel of the facility are receptive, and cooperative, to heed EHO recommendations, to voluntarily close the water body, and/or undertake relevant remedial actions, then verbal advice, followed by written recommendation, may be the most appropriate and effective method to achieve the desired outcome.

Option 2 - EHO Issues Improvement Order

If the operator, or management personnel of the facility are receptive, and cooperative to heed EHO verbal, or written recommendations, but the EHO still feels it is necessary, or important to issue a written statutory notice, or;

If the operator or management personnel of the facility are not receptive, and cooperative to heed EHO verbal or written recommendations then:

The EHO may issue the operator of the facility with an improvement order.

Please Note: Until 1 October 2009 (subject to impending regulation amendment), an improvement order for Group 2-4 aquatic facilities, can only be issued on the basis that, the aquatic facility is a risk to the health of persons using the facility or the operation of it is likely to cause such a risk.

(see *subregulation 22 (1) (b)* of the regulations).

At the completion of this transitional timeframe, improvement orders for Group 2-4 aquatic facilities, may also be issued for matters relating to specific operational requirements (Sections 5, 6 and 7), and design and construction requirements (clauses 2.12, 2.22, 2.23, 2.24 & 2.25) of the Code.

Risk to Public Health

A risk to the health of persons using the facility might for example include the identification of chemical water quality parameters outside the prescribed requirements, or non-installation/operation, or ineffective operation of filtration, disinfection, or circulation plant and/or equipment e.g. pumps, filters, automatic chemical dosing equipment, which may have the effect of reducing chemical, physical or microbiological water quality.

A risk to the health of persons using the facility might also include physical deformities to the facility e.g. pool gates not closing, tripping hazards on concourse, sharp edges around pool edges, or other fractured or broken equipment, which might create a risk of children drowning, or patrons in general sustaining cut, abrasion, incision, or other types of injuries, resulting from poor maintenance or repair of facility.

Other examples might include the absence of safety suction in spa-pools, plant-room and chemicals not secured to prevent unauthorised entry, or chemicals stored in a manner that is potentially dangerous or hazardous, or use of electrical equipment and appliances within the pool area when the facility is in use.

Please Note: An Improvement Order must be issued using the EDPH [approved form](#) and detail all information prescribed by (*subregulation 22 (2)* of the regulations).

Improvement order and closure order forms were previously circulated electronically to local government principal EHO's and are only available for local government purposes. If respective local government authorities require electronic copies to be re-circulated, then please email swimmingpools@health.wa.gov.au to request the relevant forms and an officer will attend to your request at the earliest possible convenience.

Option 3 - EHO Can Recommend EDPH Close (Swimming Pools Only)

For Group 2-4 aquatic facilities, during the transitional period, if a particular water body of concern is a swimming pool, then the local government/EHO can provide written recommendation and evidence to the EDPH pursuant to *regulation 38 (3)* of the regulations with regard for *regulation 4A (1)* of the repealed regulations, to close the pool, based upon the water used in a swimming pool been unsafe, due to its unsatisfactory quality, or the inadequacy of the treatment to which it has been subjected.

Generally speaking the criteria used to determine that water quality within a swimming pool is unsafe, would be the presence of Naegleria in the water body (using thermophilic Naegleri spp. identification by PathWest Waters laboratory as rationale to effect a closure), or in the case of a swimming pool heated above 32°C the presence of Pseudomonas aeruginosa at levels >100CFU/100mL.

Zero free chlorine in the swimming pool could potentially also be cause to effect a closure, if in particular the facility log-books show a trend of low free chlorine results, or results have not been kept at all, and there is an absence, or apparent problem with the operation of automatic disinfection and monitoring equipment.

Please Note: Spa pools and waterslides can not be closed pursuant to the afore-mentioned regulation as these water bodies were not captured under the repealed regulations definition of a swimming pool.

Option 4 - EHO Issues Closure Order ONLY If Operator Fails to Comply with Improvement Order

The provision to issue an operator of an aquatic facility a closure order, for failure to comply with an improvement order, applies to all aquatic facility groups, and water body types including swimming pools.

Closure Orders for Group 2-4 Aquatic Facility during the Transitional Context

Presently and until completion of the transitional regulation time-frame '1 October 2009' (subject to the impending regulation amendment), a local government EHO is limited to issuing an operator of a Group 2-4 aquatic facility, with a closure order in respect of their aquatic facility, **only** if satisfied that the operator has **failed to comply with an improvement order** given in respect of that facility.

(see *subregulation 23 (1) (b)* of the regulations).

Closure Orders for Codes Operational/Construction Requirements

Presently closure orders may only be issued to Group 1 aquatic facility operators, for non-compliance with the Code's operational requirements (sections 5, 6 and 7) if they constitute a serious risk to public health.

Closure orders can not be issued to:

- **Group 1-4** aquatic facility operators, for non-compliance with the Code's design and construction requirements (clauses 2.12, 2.22, 2.23, 2.24 & 2.25), which constitute a serious risk to public health, and to;
- **Group 2-4** aquatic facility operators, for non-compliance with the Code's operational requirements (sections 5, 6 and 7), that constitute a serious risk to public health;

UNTIL '1 October 2009' [completion of the transitional period (see *regulation 38* of the regulations)]

Please Note: The regulations also require the following:

1. Local government to give the EDPH a copy of the closure order as soon as practicable, and in any event within 48 hours after the closure order has been given (*subregulation 23 (3)*).

After regular working hours the EDPH can be notified of an aquatic facility/water body closure, by contacting the DOH's after hours emergency contact number: (08) 9328 0553.

2. The EDPH to confirm, or cancel the closure order, within 48 hours of the closure order having been given or the closure order automatically expires (*subregulations 23 (4) & (5)*).
3. The closure order be issued using the approved form and detail all information prescribed by (*subregulation 23 (6)*).

For comparison of other information provided in relation to improvement/closure orders, please refer to [Aquatic Facilities Guidance Note 2](#)

Serious Risk to Public Health

As with those issues considered significant to warrant a swimming pool closure, under the repealed regulation closure provision e.g. identification of Naegleria, presence of Pseudomonas aeruginosa > 100CFU/100mL, and zero free chlorine, where there is an absence, or history of low free chlorine log-book results, in combination with absence, or apparent problem with the operation of automatic disinfection and monitoring equipment, these issues are also considered significant, or rather may be construed to represent a significant risk to public health.

Those issues considered to represent a significant risk to public health, which potentially may have the effect of resulting in facility, or water body closure, are not limited in scope to swimming pools as were the repealed regulations, but rather extend to all aquatic facility/water body groups and types.

In addition, the scope of serious risk to public health extends beyond primary water quality safety issues, and thus includes all aspects related to aquatic facility design, construction, operation, management and maintenance.

Some other examples of serious risk to public health, in reference to aquatic facilities could include a loose stool faecal accident in an aquatic facility water body i.e. has the potential to transmit and infect other patrons with *Cryptosporidium* oocysts, a chlorine gas leak, exposed or frayed electrical cables in plant-room, or pool area or plant and equipment without residual current device protection.

Option 5 - Local Government May Prosecute Occupier/Operator of Aquatic Facility/Water Body

In most situations, prosecution would be a non-preferred pathway of remediation, but yet this option is available to local governments and may bring about the desired outcome, if the operator does not voluntary act or comply with a written order for the aquatic facility/water body concerned.

Local government does not necessarily have to follow the recommended remediation sequence of actions, and may in fact decide to prosecute the occupier/operator in the first instance for non-compliance. Generally, however it would be encouraged that prosecution be the last resort in a remediation pathway.

Please Note: The table found on the last page of this document, lists specific areas of non-compliance subject to prosecution.

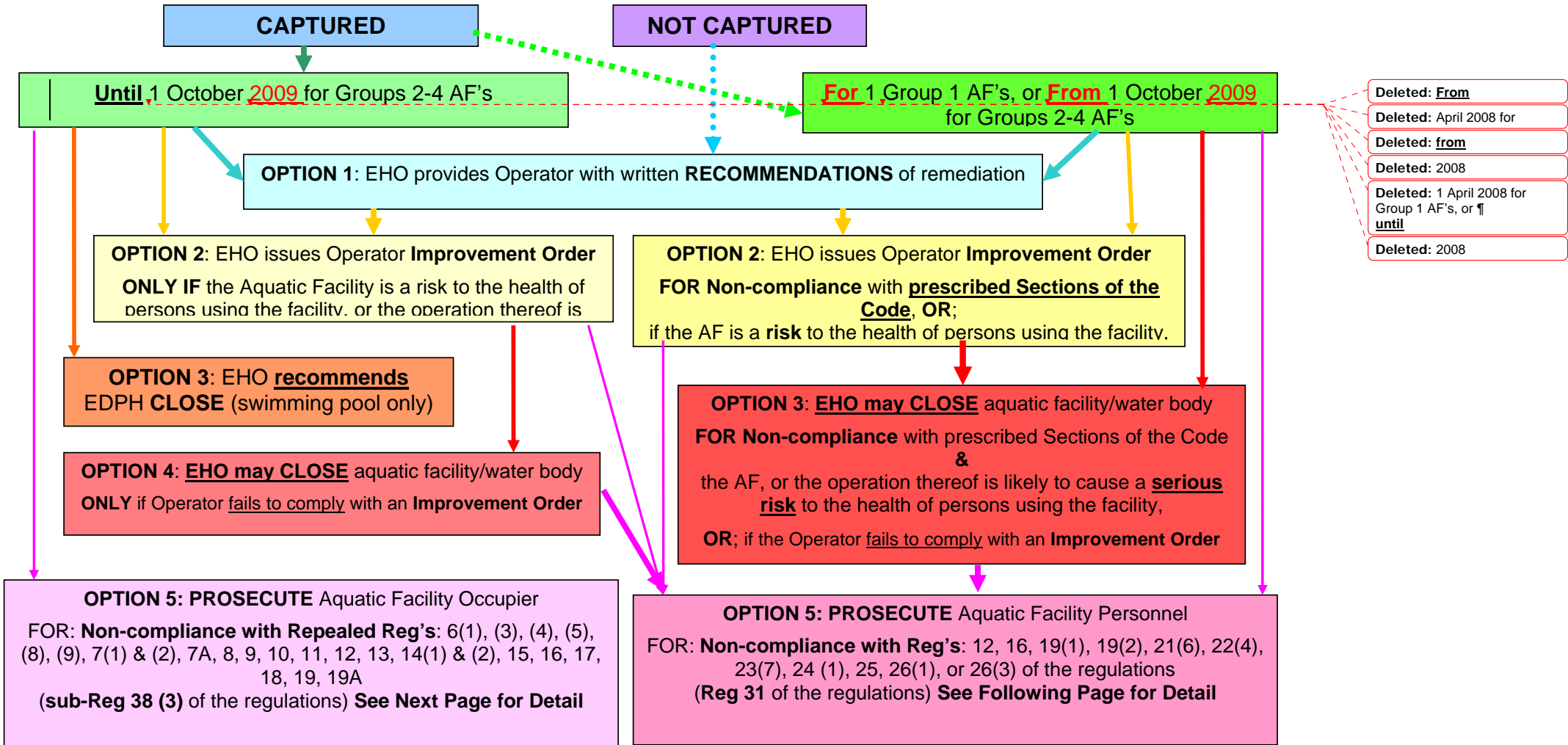
For further information or questions pertaining to this matter, the regulations, or Code, please email swimmingpools@health.wa.gov.au, or alternatively contact Monday - Friday (9am-5pm) the:

Environmental Health Directorate
Department of Health
PO Box 8172
Perth Business Centre
Perth WA 6849

Phone: (08) 9388 4999
Fax: (08) 9388 4905



STEP 1 - DETERMINE IF THE AQUATIC FACILITY/WATER BODY IS CAPTURED BY THE REGULATIONS



Areas of Non-Compliance Subject To Prosecution

Throughout the duration of the applicable transitional regulatory time-frames the following swimming pool breaches of non-compliance with the repealed regulations constitute an offense and are subject to prosecution (*subregulation 38 (3)* of the regulations):

Areas of Non-compliance Subject to Prosecution	Repealed Reg Provision
Lighting	6
Pool Floor Colour	6
Electrical Installation	6
Provision of Sanitary Facilities	7 (1) & (2)
Depth Markings	7A
Fencing	7A
Pool Floor Gradient	7A
Diving Boards	7A
Concourse	7A
Pool Sterilization, Filtration and Circulation Equipment	8
Filtration System Design and Operation	9
Inlets and Outlets	9
Make-up Water	9
Chlorine Injection	9
Water Clarity	10
Chemical Standards	11
Collection & Recording of Water Samples	12
Chlorine Gas Storage	13
First Aid Room or Place	14(1)
Qualified Person	14(2)
Maintain Pool, Fixtures & Fittings in Clean & Working Condition	15
Entry of Infected Person not Permitted	16
Animals to be Kept Away from Pools	19
Backwash Water Disposal	19A

Furthermore, following completion of applicable transitional regulatory time-frames, the following breaches of non-compliance with the regulations, for aquatic facilities/water bodies constitutes an offense and is subject to prosecution (*regulation 37*):

Areas of Non-compliance Subject to Prosecution	Regulation Provision
Operation of Aquatic Facility without Certificate of Compliance	12
Operation of Aquatic Facility outside Permit to Operate Scope	16
Operational Requirements of the Code (Sections 5,6 & 7)	19(1) & 38(1)
Safety Requirements of the Code (clauses 2.12-2.25)	19(2) & 38(4)
Operator Fails to Collect Water Samples (Exemption Provision)	21(6)
Operator Fails to Comply with Improvement Order	22(4)
Operator Fails to Comply with Closure Order	23(7)
Certain Persons Not to Enter or Use Water Body	24(1)
A Person who Pollutes a Water Body	25
Animals not to enter Aquatic Facilities	26(1)
Assistance Animals not to Enter Water Body	26(3)