



Submission: Local Government Act 1995 Review

(Health and Environment, Inquiries into Local Government)

This joint submission of the Pesticide Action Group of Western Australia and Save Our Trees WA presents key areas of concern in regard to Local Government policies and operational practices. We hope that the Review will identify how the Local Government Act and other relevant legislation may be strengthened to provide better protection to the health and well-being of local communities and their environment.

We have also considered the focus points in Phases 1 and 2 of the Consultation Paper and offer the following comments.

The focus of phase 1 is modernising local government.

- **Electronic availability of information.**

Residents who search council websites for pesticide spraying details frequently complain that information is not readily available. It is our view that due to the intensity of routine pesticide spraying activities over vast areas of public land, a dedicated **state website** is required. The community should be provided with easy access to information on all proposed local and state government pesticide spraying programmes for the year as well as a daily pesticide spraying register, the names and maps of all places to be sprayed, product brand names, active ingredients, Material Safety Data Sheets, manufacturers' literature and associated health warnings.

- **Meeting public expectations for accountability, including gift disclosures.**

There is an expectation in the community that electors, ratepayers and residents will be consulted in regard to all “operational practices” that present an alleged or scientifically proven risk to public health and the natural environment. Pesticides (**scheduled poisons**) are known to pollute the environment and to adversely affect the community: human health, pets, wildlife, air, ground water, soil and vegetation. Evidence shows that they often result in the disease and death of thousands of trees and shrubs in the metropolitan area and across the state (eg. Cities of Stirling and Joondalup, Hexazinone poisoning of approximately 8,000 trees and shrubs, Railway Reserve Moora to Geraldton, Glyphosate and Metribuzin poisoning of thousands of trees). Residents’ complaints about the routine spraying of a cocktail of scheduled poisons continue to be ignored as our public officers who have a **Duty of Care** and **Fiduciary Duty** to the community typically take little or no action to remove this unnecessary risk of harm.

The strong level of resistance to community concerns about the risks associated with the routine application of pesticides on public land has for many years raised questions about gifts or financial inducements from industry.

- **Meeting community expectations of standards, ethics and performance.**

Sound ethics and best practice in line with many international examples such as the Canadian provincial “cosmetic” pesticide bans would dictate the removal of pesticides alleged or known to pollute our environment and expose the community to health risks. Known health risks include acute and chronic effects: Pesticide Illness with Flu-like symptoms, birth defects, various cancers, neurological diseases and gut disorders. Thousands of petitioners have been ignored in the City of Stirling (approximately 3,600 in 2007) as well as thousands across the state in numerous petitions to individual councils and the State Parliament. Petitions calling for a “**Royal Commission into the Use of Pesticides and Harm to Public Health**” have been ignored. Requests for a Comparative Risk Assessment of weeds and pesticides have been ignored.

Evidence from the local government areas of Stirling, Melville, Nedlands, Mandurah, Subiaco, Bassendean, Cambridge and numerous others shows that residents have experienced a strong and unreasonable resistance to change that would remove an unnecessary risk of harm from involuntary exposure to a cocktail of pesticides.

The local government Act 1995 defines the role of councillors

2.10 Role of councillors

A councillor —

- (a) represents the interests of electors, ratepayers and residents of the district;*
- (b) provides leadership and guidance to the community in the district;*
- (c) facilitates communication between the community and the council;*
- (d) participates in the local government’s decision-making processes at council and committee meetings; and*
- (e) performs such other functions as are given to a councillor by this Act or any other written law.*

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Relevant legislation

It appears that the Local Government Act, 1995, does not require councillors to question the reliability of officer recommendations and to request formal Comparative Risk Assessments and formal **Community Consultation** on matters that affect the health and well-being of the community and the natural environment.

State Health and Environment legislation does not protect public health and the environment from the frequently claimed “lawful” “**operational matters**” that promote and result in the widespread application of a cocktail of pesticides (scheduled poisons) in the management of public spaces.

The **Criminal Code, Sect 266**, however, suggests that knowingly causing harm by NOT taking reasonable Precautions to avoid danger is a criminal offence:

Duty of person in charge of dangerous thing

(2) It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

[Section 266 amended by No. 43 of 2009 s. 8.]

The focus of phase 2 is positioning local government to deliver for the community.

This will include:

- **Increasing community participation in local government decision-making.**

As many concerned citizens wanting to protect the environment or themselves and their children from the adverse effects of routinely sprayed pesticides (on footpaths, kerbs, medians, roadsides, laneways, parks, reserves, urban bushland, river foreshores and coastal dunes...) are generally advised that these are “**lawful**” “**operational matters**”, they are readily and informally dismissed from participation in the local government decision-making process. The relevant public officers generally do not perceive that there is any need to take precautionary measures, even when faced with scientific and medical evidence of harm to public health and the environment, simply because of the stated lawfulness of these highly controversial practices.

- **Improving financial management, including through local government enterprises.**

Answers to Questions by a resident at the 6 February Ordinary Council Meeting of the City of Stirling revealed that in the Financial Year 2017-2018, the budget for the use of pesticides was **\$1,317,228** and listed were the following pesticides: Jolt, Destiny, Sempra, Dimension, Previcur, Garlon, Metsulfuron, Lontrel, Fusilade, Pantera, Dedicate, Primo Maxx, Spearhead or Kamba Maxx, Poa Check, Tupersan, Halosulfuron, Chlorosulfuron, Crab Grass killer, Synerol and Pulse. Ten of these poisons listed are for use in “Natural Areas”.

What is the case for the costly “war on weeds” in urban areas?

Many residents and ratepayers question **the financial cost** to local governments of the routine application of pesticides in the management of public land. Local Governments, however, appear to make **arbitrary decisions** in regard to the need for community consultation on this highly controversial area of financial cost to the community. Typically officers refuse to undertake **formal community consultation** and the necessary **Comparative Risk Assessment (Pesticides v. Weeds)** in support of their declared chemical “war on weeds”. This failure in accountability is contrary to the Fiduciary Duty of public officers and the Role of Councillors as stated in Sect 2.10 of the Local Government Act 1995.

Untenable dual role of WA Health as State Pesticide Regulator

The dual role of WA Health as protector of public health and State Pesticide Regulator is untenable and has failed many Western Australians who have suffered and continue to suffer due to the widespread application of pesticides both in our food and environment.

The Pesticide Action Group of Western Australia (est.2013) and Save Our Trees WA (est.2015), continue to receive calls from distressed residents, often when they are suffering ill health and trying without success to stop the routine and widespread application of pesticides on public land near their home or recreational areas. Generally, chemical rings at the base of trees, with or without dye, provide evidence that sick and dying trees have been poisoned. Complaints in regard to the removal of public trees are very common.

Most disturbingly, the dead rings and stripes that become visible days or weeks after spraying provide a clear indication of the extent of some herbicide applications, even in close proximity to residential areas. **WA Health has remained mute on this obvious risk** to public health and there is a strongly held view that its role as protector of public health is being compromised by its role as state pesticide regulator.

There is little doubt that WA Health as well as State and Local Governments in general are failing to address these growing community concerns.

Inquiry into the City of Melville and Local Government autonomy

As recently as Friday, 2 March, a distraught and very ill resident of the City of Melville complained that she had made an emotional plea to an officer for the City to stop the spraying of nearby public land but that the request again fell on deaf ears.

The City of Melville and other Local Governments have received numerous complaints in emails and calls over many years regarding their pesticide spraying practices. To act in the interests of electors, ratepayers and residents is the clearly defined role of Councillors; it is not the role of the largely industry funded Australian Pesticides and Veterinary Medicines Authority. To ensure that a cocktail of pesticides is not applied in areas where they may pose a risk to public health and the environment is not the role of the APVMA; it is the shared responsibility of the WA Health, Environment and Local Government authorities.

Frequently made claims, as in a letter (Your Ref: 66-02405) to a resident of Margaret River from the Local Government Chief of Staff, Mr. Gary Hamley that *“local governments are individually responsible in regard to the proper use of chemicals that have been approved for use by the relevant authorities”* illustrate the level of resistance to community concerns that the current levels of pesticide use are **not** “proper” and the disturbing fact that the community is being dismissed and denied the right to be consulted in the decision-making process about practices that are blatantly a risk to the community and the environment.

The APVMA and pesticide manufacturers’ label instructions cannot prevent involuntary exposure to pesticides. There is a commonly held view, however, that the purpose of the WA Health Act and the Local Government Act is to protect the community’s interest and

prevent harm such as can occur from pesticide drift and volatilizing agricultural poisons that are routinely sprayed on public land in urban areas, including footpaths and laneways, from where they then trespass through natural processes into private gardens and into private homes through open doors and windows.

Local Government autonomy is not an acceptable reason for poor decisions that are made in the absence of common sense, sound scientific and medical evidence of the risk of harm and a transparent process that promotes community awareness and broad formal consultation.

When once thought “safe” is no longer safe

There is overwhelming evidence from numerous international sources that the falsely claimed “safe” weed killer “glyphosate” is NOT safe to human health and the environment. This clearly poses a dilemma for local and state government authorities who have promoted its widespread use for many years ahead of a cocktail of other pesticides that are also widely used in both agricultural and urban environments.

It appears that rather than face the fact that non chemical weeding methods are far more desirable and that the urban “war on weeds” is an unnecessary dramatization, some authorities have foolishly and recklessly substituted Glyphosate spraying programmes with pesticides that have an even higher risk according to the Schedule of Poisons. The ubiquitous nature of Glyphosate due to decades of false claims of safety is not a good reason for it to be substituted with other poisons, particularly in the urban environment.

Anecdotal evidence that needs to be investigated is that volunteers have even been permitted by officers in charge of natural areas to spray Fusilade (a level 6 poison) from hand held spray packs without any understanding of the risks to the germination of native seeds (Rokich Report) and human health, including harm to the unborn child due to its effects on retinoic acid in the developing foetus.

An Argentinian study shows how the ubiquitous Glyphosate is causing bees to starve. The falsely claimed safe Glyphosate is not only a listed Class 2A Probable Carcinogen, it has become a serious environmental pollutant causing harm to the web of life. State and Local Government Authorities, however, continue to ignore mounting scientific evidence of harm.

<http://www.glyphosate.news/2016-06-27-study-shows-honeybees-are-starving-because-of-roundup.html>

From the poisoning of Kimberley weeders to the poisoning of children in urban areas

It is very disturbing that similarly to the false claims of safety about 2,4-D made decades ago to adversely affected Agricultural Protection Board chemical weeders, state and local government authorities repeat the mantra that the use of registered pesticides is lawful, implying safety.

Example of a systemic failure - Glyphosate in soil at Miles Park Community Centre

Independent testing of soil samples taken from the metropolitan area has revealed trace levels of a variety of pesticides. The example of Miles Park in Belmont is particularly disturbing. The WA ChemCentre was unable to undertake the testing due to a “systems failure” and forwarded soil samples after approximately three weeks to Analytical Reference Laboratory, ARL.

The disturbingly high levels of 45 mg/kg of Glyphosate in surface soil at this community centre indicate that pesticide spraying practices are out of control and that the Local Government Act Review must address the “autonomy” of Local Governments and their failure to a) monitor pollution levels on public land resulting from pesticide spraying “operational practices” and b) to act in the interest of electors, ratepayers and residents by removing a known risk of pesticide drift and chemical trespass onto nearby homes and gardens.

Example of pesticide residue in urban soil at Miles Park:

Soil

11EH0085

P Taylor

9422 9915

PO Box 474

Nedlands 6009

ATTENTION: Alex Jones

REPORT OF EXAMINATION OF: 2 soil samples

RECEIVED FROM: Alex Jones

ON: 12th September 2011

Herbicides

Lab No 11EH0085-1 11EH0085-2

Sample ID Jon ML Jon FS

Analyte mg/kg mg/kg

MPCA <0.05 <0.05

Clopyralid <0.05 <0.05

Diflufenican 0.1 <0.05

Glyphosate

Lab No 11EH0085-1

Sample ID Jon ML

Analyte mg/kg

Glyphosate 45

“<” signifies a result that is less than the limit of quantitation for the method.

METHODS

Analyses were performed by an external NATA accredited laboratory.

These results apply only to the sample(s) as received.

Unless requested otherwise, sample(s) will be disposed of after 60 days of the issue of this report.

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Peter Taylor

Science Business Manager

Scientific Services Division

18th October, 2011

The health and well-being of the community must be at the heart of the Local Government Act and other relevant legislation. It is hoped that the Review will make this a priority and provide the Local Government Minister as well as the Health and Environment Ministers with the powers to take precautionary action to remove a known or alleged risk of harm to our health and environment

Alexandra Jones

Co chair

Pesticide Action Group WA

Save Our Trees WA

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9th March, 2018