

Final report: Public Health “General Duty” Evaluation

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FINAL REPORT PUBLIC HEALTH “GENERAL DUTY” EVALUATION

Summary

The new Public Health Act in South Australia replaced the Public and Environmental Health Act 1987. The new Act introduced a General Duty, which gives Environmental Health Officers (EHOs) the power to take action if they consider that harm is being done that presents a risk to public health. A series of workshop were run in 2011 and 2012 to familiarise EHOs with the new Public Health Act, including the General Duty. This project surveyed EHOs and undertook extended interviews with a selected group. Data collated by SA Health on the use of Section 92 (2014-2017) was also analysed. The results indicate that the General Duty is being used very rarely; only once or twice a year in a few councils and mostly not at all in most other councils. Only a few councils use it more extensively than that. Many EHOs consider that they need more training in the use of the General Duty, and that there are elements of the General Duty that are confusing and time consuming. Another common complaint was the need for preliminary notices to be issued prior to issuing a General Duty notice, which was seen as confusing for the recipient of a notice, and time consuming for the EHO.

In response, a workshop based on case studies identified by the respondents to the survey and interviews has been scheduled for February 2020. The material from the workshop will be converted to an online training tool that will be able to be accessed by EHOs.

Introduction

The General Duty was introduced in the South Australian Public Health Act 2011 and became operational in March 2013. The General Duty (s56) states: “A person must take all reasonable steps to prevent or minimise any harm to public health caused by, or likely to be caused by, anything done or omitted to be done by the person.”

The role of the General Duty was to futureproof the Act, by covering unforeseen public health risks not yet covered by regulatory tools. The General Duty allows local government authorised officers (generally Environmental Health Officers (hereafter EHOs) who, having determined that an activity is a risk to public health (or is likely to cause a risk), to have to power to act. They can do this by serving a preliminary notice to “secure compliance with the General Duty”. It was claimed that the General Duty has been recognised “greatest change in the approach to public health legislation ... with an all-embracing forward-thinking approach designed for the needs for the 21st century” (Reynolds, C. 2012 Section 56 of the South Australian Public Health Act: the general duty to protect public health. *Public Health Bulletin SA*).

There was a series of South Australian Public Health Act information workshops run by the Local Government Association (LGA) for EHOs to inform EHOs about the new South Australian Public Health Act. Part of these workshops included risk assessment and an overview of the General Duty. At the time, there was excitement about the broad nature of the power of the General Duty, but also trepidation about applying an unknown compliance tool (pers comm.)

To ensure the General Duty is used to its fullest extent it is necessary that we understand how it is being used in South Australia. This project sought to determine the extent to which the General Duty is being used by local government authorised officers, under what circumstances it is being used, and when it is not being used, whether there are specific reasons for this being the case.

Materials and Methods

The project was undertaken in stages. The first stage of the project was to survey Environmental Health Officers (EHOs), team leaders and managers within environmental health sections in local government about their use of the General Duty. The survey was created using Qualtrix® and disseminated using the EHA(SA) emailing list. The approach was approved by the Flinders University Social and Behavioural Ethics Research Committee (Approval number 8053). The survey questions can be found in Appendix 1.

The survey was open for three months. Following the survey, a series of face to face or telephone semi structured interviews were undertaken with selected survey respondents. This included participants who had indicated that they had used the General Duty and as well as others who indicated that they had not. Several additional individuals (identified through contacts) who demonstrated expertise in the use of the General Duty were also interviewed at this stage. This stage explored issues around the use of the General Duty and when it has been used successfully.

SA Health provided all reports from 2014-2018 submitted by councils of section 92 notices issued. These reports do not clearly separate s 92 notices issued to secure compliance with regulations or policies from those issued under the General Duty, but as the report requires a “summary of the matters that section 92 notices were issued to deal with” it was possible to determine, in most cases, which notices issued for compliance with the General Duty. This provided a comparison with the answers given in the survey and interviews and allowed an estimate of the extent of the use of the General Duty across South Australia.

Interviews were transcribed into Microsoft Word® and entered into NVIVO® software (a qualitative data analysis package). All quantitative data was analysed and/or graphed using Microsoft Excel®. This allowed the researchers to determine which councils across SA are using the General Duty, under what circumstances problems and successes associated with the use of the General Duty and what further training in the use of the General Duty is required.

Results and Discussion

Online survey

There was a total of 35 respondents to the survey. All respondents were from local government in South Australia. Of these, 14 responders represented two or more employees employed at the same councils. 17 councils were represented in the survey.

Most survey participants were familiar with the use of the General Duty, and many had used it (Figure 1). This suggests that survey respondents were skewed towards those that were using the General Duty, when compared with the SA Health data reporting the use of section 92 (discussed below).

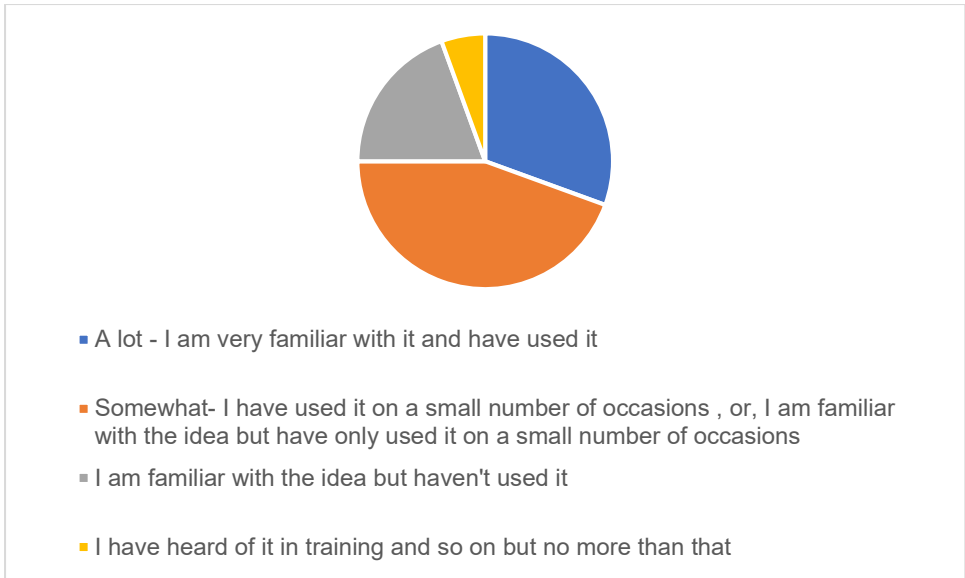


Figure 1. Responses to the question: Do you know anything about the General Duty in the Public Health Act 2011 [SA]?

Of those that had used the General Duty, it had mostly been used for severe domestic squalor issues (also called insanitary conditions, squalor and hoarding, housing conditions) and asbestos management. A few respondents had used it for legionella control in warm water systems, mosquitos associated with swimming pools, pest control including rats and pigeon control, and to enforce a clan lab clean-up. The General Duty had also been used several times for wastewater systems, suggesting there are uses for the General Duty even where regulations exist. A full list of reported uses is contained in Appendix 3.

Most survey participants had attended at least one of the workshops run several years ago to implement the Public Health Act (26/36 respondents). Respondents all found the workshops useful, with eight indicating that the workshops were extremely useful, 11 indicating that they were moderately useful, two indicating slightly useful and four indicating that they were neither useful nor useless. No respondents indicated value less than this (Figure 2).

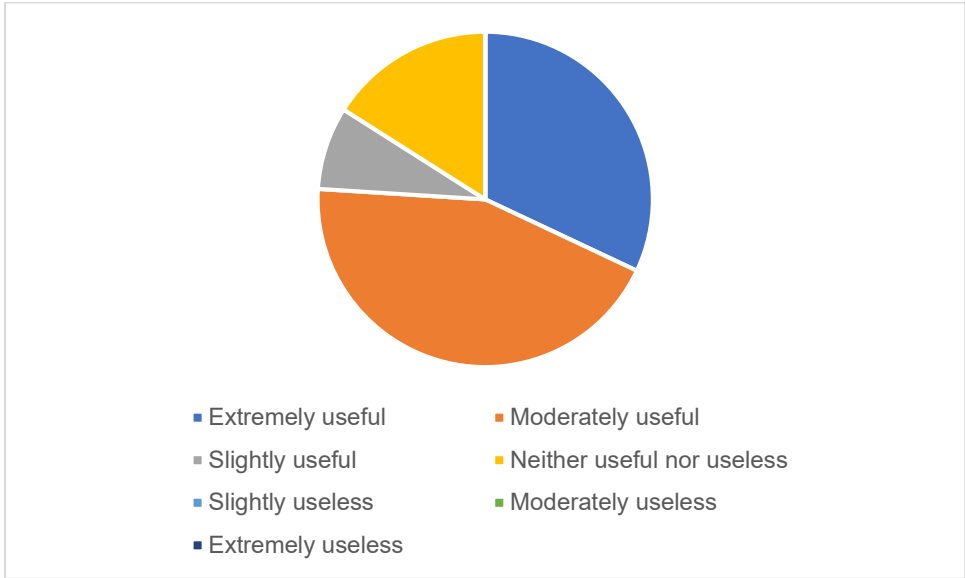


Figure 2. Responses to the question: How useful were the workshops run to familiarise you with the New Public Health Act?

During these workshops, the “General Duty Assessment under the South Australian Public Health Act 2011: A guide and template”:
<https://www.lga.sa.gov.au/webdata/resources/files/F19-%20General%20Duty%20Assessment%20Tool%20Final%20v1%2003.14-1.pdf> (hereafter called the "Guide and Template") created by the Local Government Association and SA Health for assessment under the General Duty was introduced. The value, and the use of the Guide and Template by survey respondents was explored (Figure 2). This showed clearly that the Guide and Template is seen as a valuable tool, and therefore the authors of this report consider that the “Guide and Template” should continue to form the basis of training.

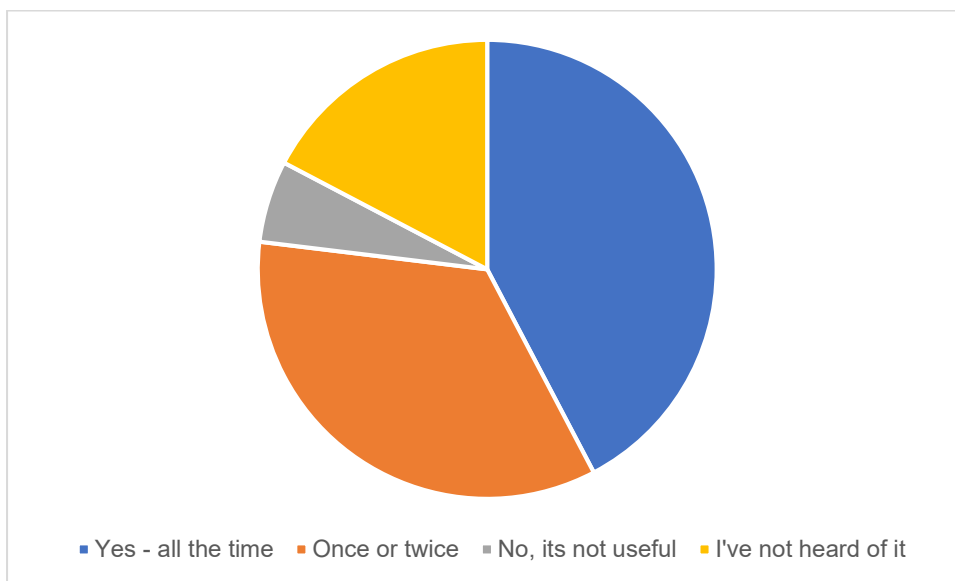


Figure 3. Responses to the question: Do you use the "Guide and Template" created by the LGA for assessment under the General Duty?

Examples of responses given by survey participants of when the “Guide and Template” was used include:

- *Hoarding and squalor prior to the policy coming out.*
- *Recently when no preliminary notice was issued - serious risk*
- *To determine if suitable to use the General Duty*
- *We've used it to both justify a General Duty Notice, and also where we haven't taken action*
- *While we don't formerly use it every time - we would have regard to this in our decision making*
- *But have adapted it to a more simple checklist to fit our software*
- *Whenever we anticipate using the general duty to serve a S92 notice.*

A full list is contained in Appendix 4.

Survey participants were asked whether they wanted more training in the use of the General Duty. It was clear that EHOs would like more training, and there was a preference for case study-based training delivered face-to-face, although some of the rural or regional council EHOs wanted online training. To respond to this, we have developed a training package that will be delivered in February 2020. Part of this will be recorded and an online version delivered to members.

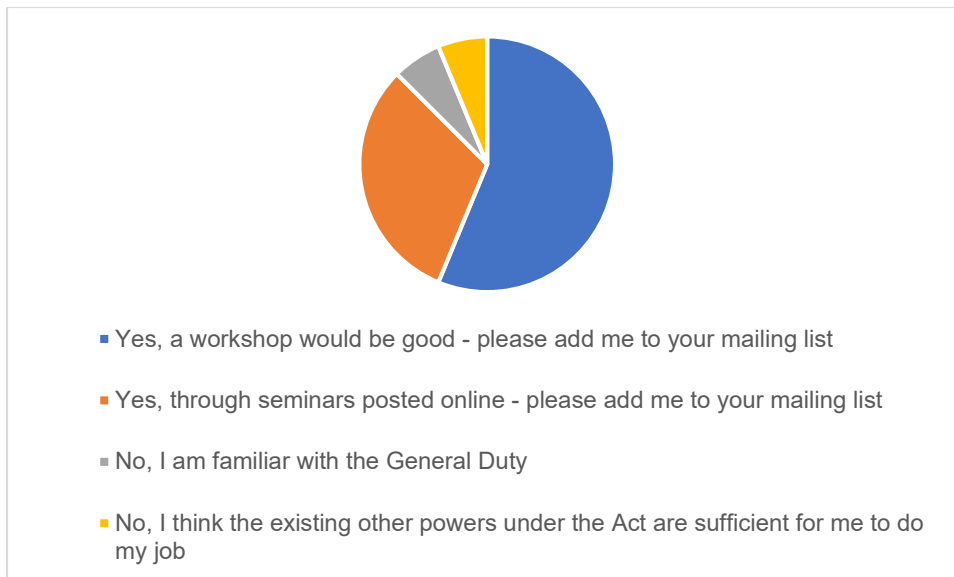


Figure 4. Would you like to get a better understanding of the use of the General Duty - through case studies, etc?

To determine who might participate in the interviews, the survey participants were asked whether they were willing to talk more about the General Duty to one of the researchers. Of these, sixteen indicated that they were willing to talk more.

Section 92 reports

Under the Public Health Act 2011 [SA], local councils are required to submit reports on the use of Section 92 to SA Health annually. SA Health provided copies of these reports to the researchers. It was therefore possible to determine whether the survey data represented the broader population of EHO activities, to a certain degree. [Question 2.1 .1 says: in total how many section 92 notices were issued? but this doesn't include preliminary notices. This means that data on preliminary notices is not collected, although there are some councils that do report preliminary notices].

It was found that many councils are not issuing section 92 notices, and many councils are issuing very few notices (Appendix, Figure 5). This supports our findings above that very few councils are using section 92, and even fewer councils are using the General Duty.

Interviews

Eight extended interviews were conducted with representatives from councils and two interviews with people involved in delivery of services to local governments. These interviews were designed to find out more about the use of the General Duty, particularly the areas that EHOs would like further training in, and barriers to the use of the General Duty.

The most common issue is the complexity of the issuing of the notice, specifically the requirement for issuing a preliminary notice. For example:

“In some instances now people are using the Nuisance Act instead of the General Duty because the Nuisance Act does not require a prelim notice”;

“the prelim notice seems to serve to diminish the importance of what is going on – if the receiver get 28 days to think about it and then another 28 days to act, it seems like the public health issue is not very urgent”;

“the prelim notices are so confusing...our first notices were probably wrong....”;

“The prelim notice is confusing for the defendant”.

However one respondent noted that: *“It may not please me to muck around with the prelim notice, but it needs natural justice. If its an emergency, use the emergency powers”.*

Areas that interviewees would like more training in included: 1. Defining harm:

“I would like some workshops on those grey areas – the cases that might use the General Duty but harm is not clear”

“I would also like to see a decision making tool developed that had a route to follow if the answer to “is it harm?” is no, is there still something that can be done?”

2. Issuing verbal notices:

“Also, how to issue a verbal notice...we need practice...it has to be done quickly and the template is too long and too difficult...we need to know what is important”

3. Case studies:

“Case studies would be really good”

“It would be good to know what people are using the General Duty for”

“I would be willing to contribute to developing case studies”

“We need more on the emergency powers – has anyone issued an emergency notice?...can we look at that?”

Other proposals include:

1. Better or more templates (different templates for different issues):

“The templates are clunky and too complex for a simple issue”

2. A database of the use of the General Duty:

“it would be good to have a database that showed what people are using the General Duty for. This would be really helpful”

3. Increased resourcing

It [the General Duty] has increased the resource burden. Assessments now take double the time and an increase in paperwork. These impacts have not been recognised”.

Notwithstanding, there were a number of very positive comments about the General Duty, including:

...it is good for asbestos because it fits the ‘not one size fits all’ ... you can’t tell whether something is asbestos by looking, and testing for it is expensive and there is no cost recovery. So it is better to use the General Duty...that way the testing to show it is not risk to public health is the responsibility of the defendant”.

Conclusions

It is clear from the responses that there are areas where the General Duty is being seen as confusing or complex. A workshop that includes a series of case studies, including the use of the emergency powers and issuing a verbal notice, is required.

In response, this project has developed a series of case studies that look at when the General Duty has been used. These case studies form part of a workshop to inform EHOs about best practice use of the General Duty. This will be delivered as a face to face workshop and also presented as an online teaching tool. The workshop is to be advertised through Environmental Health Australia, the body representing Environmental Health Officers in South Australia, and through the EHA Managers' Forum. The workshop will be delivered at Flinders in the City, 182 Victoria Square, Adelaide, on Monday 3rd February 2020. Parts of the workshop will be recorded to form the basis of an online package that will be made available to EHOs, team leaders and managers that cannot attend in real time or would like to have access to refresher resources (a draft agenda is included in Appendix 6).

Appendices
Appendix 1: Survey



Do you know anything about the General Duty in the Public Health Act 2011 [SA]?

- A lot - I am very familiar with it and have used it
- Somewhat – I have used it on a small number of occasions , or, I am familiar with the idea but have only used it on a small number of occasions
- I am familiar with the idea but haven't used it
- I have heard of it in training and so on but no more than that
- I'm not really sure what the General Duty is
- Something else:

If you have used the General Duty, can you please indicate for what (eg: cockroach control in a hostel, etc)

If you have used the General Duty, would you be willing to talk more about the process to one of the researchers?

- Yes - contact me by email or phone on:
- Maybe yes - contact me by email or phone on:
- No I'd prefer not to be contacted

If you have not used the General Duty, do you anticipate that you will in the future?

- Yes
- Maybe
- No
- Not applicable

If you have not used the General Duty, would you be willing to talk more about why to one of the researchers?

- Yes - contact me by phone or email on:
- Maybe yes - contact me by email or phone on:
- No I'd prefer not to be contacted

Would you like to get a better understanding of the use of the General Duty - through case studies, etc?

- Yes, a workshop would be good - please add me to your mailing list
- Yes, through seminars posted online - please add me to your mailing list
- No, I am familiar with the General Duty
- No, I think the existing other powers under the Act are sufficient for me to do my job

Do you use the "Guide and Template" created by the LGA for assessment under the General Duty? Under what circumstances?

- Yes - all the time
 - Once or twice
 - No, its not useful
 - I've not heard of it
-

Did you go to any of the Public Health Act workshops run several years ago to help implement the Public Health Act 2011?

- Yes
 - No
-

Were they useful?

- Extremely useful
 - Moderately useful
 - Slightly useful
 - Neither useful nor useless
 - Slightly useless
 - Moderately useless
 - Extremely useless
-

Are you willing to identify yourself? If so, can you give your name and your role? and indicate whether you are a local government or state government based EHO or other profession?



We thank you for your time spent taking this survey.
Your response has been recorded.

Appendix 2: Interview questions (guide only)

- Have you used the General Duty?
- Can you tell me when you used it – under what circumstances?
- Were you prepared/did you feel confident to use the GD?
- Was the training run by the LGA sufficient to make you confident? Did you seek support from elsewhere?
- Do you feel confident to teach someone else to use the GD?
- If you have not yet used the GD...can you explain to me why?
- Were you prepared/did you feel confident to use the GD?
- Was the training run by the LGA sufficient to make you confident? Did you seek support from elsewhere?
- Do you feel confident to teach someone else to use the GD?
- Are you involved in the development of Public Health Plans? Would you like to be?
Do you think PHPs are a valuable tool for public health protection?

Appendix 3: Identified uses of the General Duty

- Severe domestic squalor.
- housing conditions
- Squalor issues, legionella control in warm water systems, mosquito activity associated with swimming pools
- Insanitary condition, asbestos
- Asbestos management; generally avoid using General Duty by using Regulations and Policies (domestic squalor & clandestine drug labs).
- pigeon control in a commercial building
- Connection of a shack to a Community Wastewater Management Scheme (CWMS)
- poor plumbing maintenance which led to spillage of sewage to neighbouring property in a sewerage area, property with needles and broken glass which required access to be prevented, squalor
- Usually rat infestations of properties that are affecting neighbouring properties.
- Failing on-site wastewater control system
- Derelict properties
- wastewater controls
- Private swimming pool breeding mosquitos, demolition of property containing asbestos, warm water system containing legionella due to multiple legionella notifications - this system was compliant with the Regs, but not compliant with the Act
- Squalor, Pest infestation, Vector control
- Clandestine drug lab rental premises
- asbestos fences,
- Domestic Squalor, Mosquitoes breeding in a pool, Asbestos, failing septic tank that requires connection to SA Water mains sewer
- cal lab testing/assessment and remediation, hoarding and squalor, provision of sanitary fixtures in residence
- Inadequate sanitation on a domestic premises
- cockroach control, squalor
- Squalor
- mobile cleaning business - discharge of waste
- hoarding and squalor, swimming pool noncompliance
- Squalored conditions in residential property, clandestine drug lab in residential property
- Squalor, asbestos, possible drug lab
- Determining validity of complaints to assess whether legislation is available to investigate

Appendix 4: Responses to the question: Do you use the "Guide and Template" created by the LGA for assessment under the General Duty? Under what circumstances?

Once or twice - Hoarding and squalor prior to the policy coming out.

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Yes - all the time - but have adapted it to a more simple checklist to fit our software

Yes - all the time Whenever we anticipate using the general duty to serve a S92 notice.

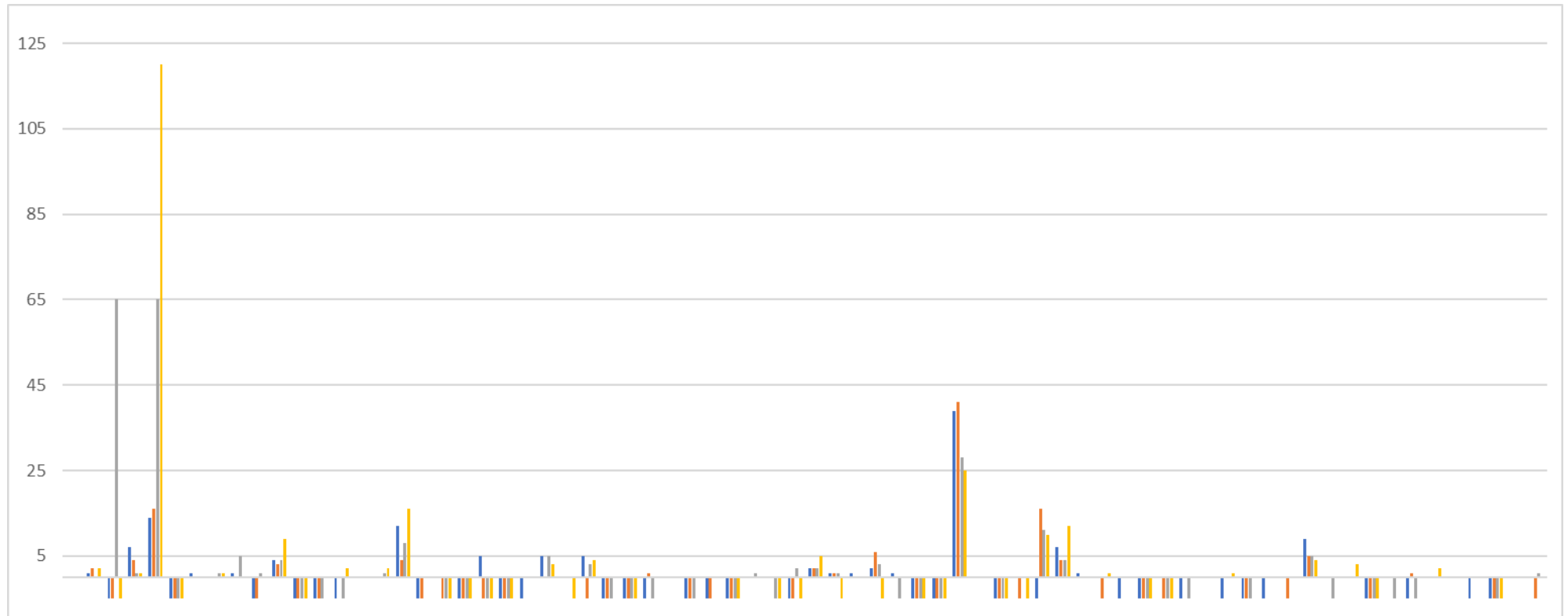


Figure 5: SA Health data indicating reported section 92 notices from SA Councils (all section 92 notices). Blue = 2014, orange = 2015, grey = 2016, yellow = 2017. Negative indicates no report submitted.

Appendix 5:

Draft agenda: Use of the General Duty: A workshop for Local Government Environmental Health Officers

Welcome

Acknowledgement of Country

Overview of the LGA-funded study: Purpose and findings

Case study 1. Issuing a preliminary notice

Activity 1. Around your table, consider the information you will need to issue a preliminary notice [with accompanying s. 92 notice]

Activity 2. Around your table, write a preliminary notice

Case study: Onkaparinga City Council

Case study 2. Issuing an emergency notice

Activity 3. Around your table, consider the information you will need to issue an emergency notice [with accompanying s. 92 notice]

Activity 4. Around your table, write an emergency notice

Case study: Eastern Health Authority

Case study 3. When it goes further...

Activity 5: Around your table, consider the information you will need to respond to an appeal

Case study: Normans and Kelledy Jones lawyers

General discussion

Activity 6: Around your table, consider these and make comments on the paper provided

- What areas of the “Guide and Template” are useful? What areas are too detailed? [purpose: develop a user-friendly “Guide and Temple, or several variations]
- Define “harm”

Question and answer session

Activity 7: Around your table, consider each question as it is raised – What information do you require? What approach is best? [facilitated by researchers and lawyers]